

Ijtihad: Its Meaning, Sources, Beginnings and the Practice of Ra'y

by

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Introduction

- **Introduction**

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

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

We expect writers and scholars who have specialty in this field to contribute to the soundness and validity of these studies through constructive criticism relevant to the subject studied here. Any constructive criticism is very useful for correcting errors and removing shortcomings, and effective in eliminating ambiguities and omissions. Besides rendering vital service to scholarship, it is beneficial to the author, who is forced to be more careful in his statements and precise in his research. The intellectual history of Islam is indicative of the debt that the development and expansion of legal and other scientific studies owe to diverse viewpoints and competent criticism.

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

Also, the very force of *ijtihad*, from the era of *tashri`* (legislation) to the present (as discussed in detail in the article on the epochs of *ijtihad*), as a legitimate activity is derived from criticism and debate. Because, in Islamic fiqh, *ijtihad* has had the meaning of a free and independent effort of the *mujtahidun*, undertaken for the purpose of advancement and expansion of the Islamic sciences. This development was not possible except through freedom of scholarly research, free expression of different views and clash between views of the *mujtahidun*, scholars and thinkers.

By practising *ijtihad*, a *mujtahid* deduces the *ahkam* (laws) of the Shari'ah for issues and problems regarding which there is no specific express text (*nass*), by relying on legal sources and principles and by benefiting from the ideas of other *mujtahidun*. On account of this, it may be said that *ijtihad* plays the role of an evolutionary and dynamic force in legal studies which provides solutions to contingent issues of life and fulfils the needs of changing times and the requirements of new phenomena of human civilization. Therefore, Islamic *fiqh* does not suffer with inertia, stagnation and passivity vis-a-vis the demands of the times, of life and its manifestations; it also advances along with them. It is for this reason that it has been said that *ijtihad* has been throughout Islamic history the force which has been constantly developing and expanding the boundaries of fiqh with respect to its applications, while maintaining

the stability of legislation. Thus, *ijtihad* is essential for Islamic fiqh, without which it cannot be dynamic and progressive.

On the basis of this, closing of the gates of *ijtihad* is contrary to the perennial mission of Islam in all ages, and, most certainly, alien elements have played an active role in promoting this ominous venture. For the enemies of Islam, it has been, and still is, the best weapon to strike Islamic law with, and the most effective instrument for eliminating it from scientific, cultural, economic, social and political arenas. Because, closing of the gates of *ijtihad* renders fiqh ineffective and incapable of providing answers to emergent and contingent issues of life

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

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

The most outstanding achievement of Shi'i fiqh has been to keep open the gates of *ijtihad* throughout the course of history. Its superiority over other schools of fiqh, whose doors were closed after the death of their founders (namely, Abu Hanifah al-Nu'man ibn Thabit, the founder of Hanafi School; Malik ibn Anas al-'Asbahi, the founder of the Maliki School; Muhammad ibn Idris al-Shafi'i, the founder of the Shafi'i School; and Ahmad ibn Hanbal, the founder of the Hanbali School), lies here. (An exposition of this issue from various aspects and a critique of the speech of the editor of the Kuwaiti journal *al-Mujtama'*, Isma'il al-Shatti, delivered at the U.A.E. university on Nov. 1, 1982, wherein he denounced the claim about the continuity of *ijtihad* as a 'conspiracy against the faith,' will come in our article on the epochs of *ijtihad*.)

• **Main Topics of Discussions**

We shall deal with the following topics in this study:

The lexical meaning of the word '*ijtihad*'.

The meaning of *ijtihad* in the utterances of the Prophet (S).

The technical meaning of the term *ijtihad*.

Two different meanings of *ijtihad* as a technical term used by Muslim *fuqaha*'.

Acceptance of *ijtihad* as an independent source of law in Sunni fiqh.

Causes of the emergence of *ijtihad bi al-ray* and other conjectural instruments among the Ahl al-Sunnah.

Arguments offered in favour of *ijtihad bi al-ray* and their refutation.

The beginnings of *ijtihad* in the sense of *ray*.

The period during which *ijtihād bi al-ray* was known as *tawil*.

The continued use of the term *ijtihād* in the sense of *ray*.

Change in the meaning of *ijtihād* from its original sense of *ray*.

The meaning of the term *ijtihād*.

The difference between the two meanings of *ijtihād* from the point of view of the effects and consequences of each of them.

Delimiting of the new meaning of *ijtihād* by al-Muhaqqiq al-Hilli.

The times since when the Shi'ah and the Ahl al-Sunnah felt the need for *ijtihād*.

Ijtihad in the days of the Imams (A).

Ijtihad, a perennial spring of Islamic fiqh.

The first legist who opened the doors of Shi'i *ijtihād*.

The difference between the styles of *ijtihād* during the period of the Major Occultation and afterwards.

The development of *ijtihād* in Sunni fiqh.

The decline of *ijtihād* in Sunni fiqh.

The impact of the backwardness of Sunni fiqh on the Sunni society.

The Akhbari stand against *ijtihād*.

The factors and causes behind the Akhbari rejection of *ijtihād*.

Wahid al-Behbahani's crusade against Akhbarism.

The factors and causes behind al-Behbahani's success and advancement.

The synthesis of Akhbari and Usuli outlooks regarding *ijtihād*.

The Prophet (S) and *ijtihād*.

The place of *ijtihād*.

• **The Term Ijtihad**

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

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

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

Said al-Khuri says: *Ijtihad* means undertaking effort and endeavour in performing some task. For instance it is **اجْتَهَدَ فِي حَمْلِ الْحِجَارِ** 'He exerted himself to carry the stone', but nobody says: **اجْتَهَدَ فِي حَمْلِ الْخَرْدَلِ** (*Khardalah*=mustard seed). [7] He further adds that *jahd* (verbal of *jahada*) is used in the sense of strength - as in **أَفْرَغَ جَهْدَهُ** (he did all

in his power) as well as in the sense of trying hard, as in is **الزَّعْجُ عِنْدَهُ أَصَابَ مُجْهَدًا** used in the sense of strength. [8]

Al-Munjid states: **اجْتَهِدَ فِي الْأَمْرِ جَهْدًا وَبَذَلَ وَسْعَةً**

Ahmad al-Qayyumi writes: *Juhd* in the usage of the people of the Hijaz and *jahd* in the non-Hijazi usage means exerting one's strength and power, and it has been said that *juhd* means strength and *jahd* means toil and strain. [9] He further adds: **اجْتَهِدَ فِي الْأَمْرِ بَذَلَ وَسْعَةً وَطَاقَةً فِي عَلَيْهِ يَتْلَعُ مَجْهُدَةً وَتَعْلَلُ إِلَى نَهَائِهِ** (*Ijtihada* means: he spent his strength and capacity to attain his goal and his ultimate objective'). [10]

Al-Allamah al Turayhi states: It occurs in a hadith that: **الْفَعْلُ الصَّادِقُ: جَهْدُ الْبِقَلِ** ('the best of charities is that which is given by one in indigence'). [11]

He also says: means: **اجْتَهِدَ يَمِينُهُ أَيْ بَذَلَ وَسْعَةً فِي الْيَمِينِ وَبَالَغَ فِيهَا** (*ijtihada bi yamanihi* means: He tried hard and did his utmost in order to fulfil his promise'). [12] He explains that *ijtihaad* involves doing one's utmost while striving and making effort. [13]

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

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

On the basis of this definition, the statements of the two Usuli scholars, Shaykh Hasan al-Amali al-Jiba'I [15] and Akhund al-Khurasani, [16] and others about this term, that the literal meaning of *ijtihaad* is undergoing difficulty and hardship for accomplishing something, appear to be incomplete and controvertible.

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

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

صَلُّوا عَلَيَّ وَاجْتَهِدُوا فِي الدُّعَاءِ .

Pronounce benedictions over me and be diligent in prayer. [17]

أَمَّا السُّجُودُ فَاجْتَهِدُوا فِي الدُّعَاءِ فَقَدْ أَنْ يُسْتَجَابَ لَكُمْ .

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

فَضْلُ الْعَالِمِ عَلَى الْمُجْتَهِدِ مِائَةٌ دَرَجَةٍ .

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

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

- **`Ijtihad' In the Utterances of Some Sahabah**

‘A’ishah is reported to have said:

كَانَ رَسُولُ اللَّهِ يُجْتَهِدُ فِي الْعَشْرِ الْآخِرِ مَا لَا يُجْتَهِدُ فِي غَيْرِهِ .

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

Talhah ibn `Ubayd Allah is reported to have stated:

عَنْ رَجُلَيْنِ عَلَى عَهْدِ رَسُولِ اللَّهِ كَانَ أَحَدُهُمَا أَشَدَّ اجْتِهَادًا مِنَ الْآخَرِ فَقَرَّ الْمُجْتَهِدُ مِنْهَا فَامْتَنَحَهُ .

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

Abu Said al-Khudri is reported as having said:

كَانَ رَسُولُ اللَّهِ إِذَا حَلَفَ اجْتَهِدَ فِي الْيَمِينِ .

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

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

فَاجْتَهِدَ بِيَمِينِهِ مَا فَعَلَ .

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

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

إِنْ كَانَ فِي الْجَنَّةِ صَبْرٌ وَإِنْ كَانَ غَيْرَ ذَلِكَ اجْتَهِدْتُ فِي الْبُكَاءِ .

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

- **'Ijtihad in the Utterances of the Imams (A)**

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

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

وَعَلَيْكُمْ بِالْجِدِّ وَالْإِجْتِهَادِ وَالتَّأَهُبِ وَالِاسْتِعْدَادِ وَالتَّرَوُّدِ فِي مَنْزِلِ الزَّادِ .

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

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

وَاللَّهِ إِنِّي لَأُحِبُّ رِيحَكُمْ وَأَزْوَاعَكُمْ فَأَعِينُوا عَلَى ذَلِكَ بِوَرَعٍ وَاجْتِهَادٍ وَعَلِّمُوا أَنَّنَا لَا
تُنَالُ إِلَّا بِالْعَمَلِ وَالْإِجْتِهَادِ .

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

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

أَوْصِيكَ بِتَقْوَى اللَّهِ وَالْوَرَعِ وَالْإِجْتِهَادِ .

I advise *you* to fear God, to be pious, and to be diligent (in fulfilling your duties). [27]

- **Ijtihad as a Technical Term**

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

(a) The great 'Allamah Sayf al-Din al-'Amidi al-Shafi'i (d.631/1234) says: *Ijtihad* means putting in of effort and endeavour in order to reach presumption (*zann*)

regarding one of the *ahkam* of the Shari'ah in such a manner that one feels that he can do nothing more. [28]

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

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

(d) Abu Hamid Muhammad al-Ghazali al-Shafi'i (460-505/1068-1111) quotes the writer of *Fawatih al-rahamut* to the effect that: *Ijtihad* is the effort made on the part of the faqih to derive a presumed *hukm* of the Shari'ah. [29]

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

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

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

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

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

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

• Critique of the Above Definitions

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

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

1. The argument creates presumption.
2. The argument creates certainty.
3. The argument creates neither presumption nor certainty.

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

The exclusion of the second kind in the definitions cited - that is that the argument should create certainty - is due to the fact that certainty is different from presumption and the word 'presumption' does not include it. As to the exclusion of the third - in which an argument does not produce either presumption or certainty - the reason is that the argument may not create presumption. For instance, if the validity (*hujjiyyah*) of *al-shuhrat al-fatwa'iyyah* or *khavar al-wahid* or *al-'ijma' al-manqul* is presupposed in such a way that despite not causing presumption they should still be regarded as *hujjah*, then, according to this hypothesis, the derivation of *ahkam* of the Shari'ah by means of *al-shuhrat al-fatwa'iyyah*, *khavar al-wahid* and *al-'ijma' al-manqul* would not be *ijtihad* - since we have supposed that they do not create presumption - and in the light of the said definitions *ijtihad* means attainment of presumption.

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

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

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

Regarding this vicious circle, al-Muhaqqiq al-Qummi writes: The *faqih* is a scholar who knows the Divine *ahkam* through the means of reliable (*mu'tabar*) proofs (*adillah*) and sources (*manabi*). This ability does not materialize without *ijtihad*, and

without it no faqih can exist. Accordingly, the definition of 'faqih' rests upon defining *ijtihad*, and vice versa.

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

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

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

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

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

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

In fact, if *ijtihad* means exactly what it has been described to be in the definitions, its rejection is justified: for, to claim something as a *hukm* of the Shari'ah on the basis of presumptive and unreliable grounds (*dala'il*) and to act according to them is not permissible in Islamic law. Verses of the Quran expressly forbid reliance on presumption and conjecture. God Almighty has stated in the Quran:

يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ ...

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

In another place He says:

وَمَا يَنبَغُ أَكْثَرُهُمْ أَلاَّ ظَنًّا إِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا ...

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

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

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

Accordingly, the result of *ijtihad* in the context of deduction of *ahkam* of the Shari'ah is to refer new *furu'* to the fundamental *usul* (which are the general precepts of the Book and the Sunnah) and to apply the *usul* to their corresponding instances. It is by means of *ijtihad* that sufficient evidence or *hujjah* regarding a *hukm* of the Shari'ah is secured for answers to emergent and contingent issues. *Ijtihad* is not meant for providing presumption or conjecture. It is this sound meaning of *ijtihad* that the Usulis have accepted, and whosoever has faith in Islam and believes in its eternal and immortal character is bound to accept it in accordance with the precepts of the Shari'ah and the dictates of reason. Because, it is not possible to posit the *ahkam* of the Shari'ah for issues for which there is no specific express text without sufficient evidence and valid grounds, and this is a conception which Muhammad Amin al-'Astarabadi also accepts.

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

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

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

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

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

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

• **Second Definition of Ijtihad**

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

(a) The great scholar Abu Hamid Muhammad al-Ghazali al-Shafi'i says: "*Ijtihad* is the effort (on the part of the *mujtahid*) and employment of one's utmost powers to extract a command (*hukm*). This term is not used unless when it involves hardship and strain. Hence it is said **اجْتَهَدَ فِي حَمْلِ الْحِمْلِ** 'He exerted himself to carry the millstone'. But it will not be said that: **اجْتَهَدَ فِي حَمْلِ الْبُرْدَةِ**, 'He exerted himself to carry a grain of mustard seed.' But in common usage this word is specifically used for the effort made by the *mujtahid* in the way of acquiring the knowledge of the *ahkam* of the Shari'ah." [33] Al-Ghazali further remarks: "*Ijtihad* in its complete

sense is to make utmost effort in achieving a goal so that it is not possible for one to do anything more." [34]

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

Critique of the Second Type of Definitions

The above-mentioned definitions also are incomplete and defective in spite of their being closer to a technical definition and freedom from the defects of the former ones. They are still imperfect because the word *'waza'if* (lit. duties) needs to be added; because, besides having to deduce the *ahkam* of the Shari'ah, a *mujtahid* is supposed to procure the Practical (*al usul al-'amaliyyah*) and the Rational Rules (*al-'ahkam al-'aqliyyah*) - such as *Bara'ah*, *takhyir* and *Ihtiyat*. Thus the field of operation of the *mujtahid* includes the *ahkam* of the Shari'ah as well as the Practical and the Rational Rules, whereas the above-mentioned definitions focus merely on the former alone. In this sense, it is not a comprehensive definition.

Third Definition of Ijtihad

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

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

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

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

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

Critique of the Third Type of Definitions

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

- **Fourth Definition of Ijtihad**

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

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

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

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

Critique of the Fourth Type of Definitions

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

Secondly, the titles that have been mentioned in traditions, like '*faqih*, '*arif*, (*عَرَفَ أَجْكَاتَنَا*) *nazir*, (*تَقَرَّرَ عَلَيْنَا وَغَرَابَاتُنَا*) *rawi*, (*رَوَى عَدْبَتَنَا*) as in the widely accepted tradition narrated by `Umar ibn Hanzalah, and other such titles which are mentioned in other *riwayahs* - are not applicable to one who merely possesses the capacity, but apply only to those in whom the capacity has reached the stage of actualization. Capacity (*malakah*) is a potential ability; it may or may not reach the point of actualization. It is for this very reason that the phrase *يُقْتَدَرُ بِهَا* has to follow the words *فَلَكَّة* above definitions.

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

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

Further Clarification

It is evident that the actual *ahkam* issued by the Sacred Lawgiver (like obligatory duties and impermissible acts, etc.) are known to apply to all the *mukallafun*. This essential knowledge with the possibility of chastisement is before every *mukallaf*. And since every sane person essentially knows that God Almighty has prescribed certain duties for him, his rational faculty enjoins him to comply with the dictates of reason in comprehending his duties, and to obtain the certainty of their fulfilment; and - as is said in *'ilm al-'usul* - the certainty of execution brings the certainty of fulfilment.

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

1. He should himself perform *ijtihad* and comprehend his duties, according to the criteria, from the sources of the Shari'ah.
2. He should follow the rulings of an all-round (*jami` al-shara'it*) *mujtahid*.
3. He should choose the path of *ihtiyat* (i.e., among other things, refrain from every act that is not known for certain to be permissible).

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

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

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

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

A Misconception

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

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

This argument is not valid, for the capacity of *ijtihad* is not similar to other qualities. Other qualities cannot be actualized without many attempts and persistent repetition, but the capacity of *ijtihad* can be acquired without deducing any *hukm*. For instance, the quality of valour is acquired by repeatedly exposing oneself to danger and through performance of acts involving danger, because their continuation gradually drives out fear from the heart, to the extent that one can take part in big battles without any fear and nervousness in his heart. Similar is the case with generosity and self-denial: repeated performance of the act of generosity leads man to such a point when he can bear to be thirsty and hungry in order to feed others.

Therefore, the realization of these qualities needs repeated performance, whereas the capacity of *ijtihad* does not need any such practice. On the contrary, unless one possesses the capacity of *ijtihad* and the ability to derive the *ahkam*, he cannot perform *ijtihad* and derive *ahkam* of the Shari'ah. Hence it is the exercise of deriving which is dependent upon the capacity, not the capacity on repeated derivation. It is possible for a person to possess the capacity of deriving the *ahkam* without having derived even a single *hukm*; as the capacity of *ijtihad* depends upon learning certain sciences like Arabic grammar and syntax, vocabulary, tafsir, rijal and `ilm: al-'usul, etc., whose knowledge enables one to derive the *ahkam* of the Shari'ah. Therefore, the act of derivation from the viewpoint of realization is posterior to the capacity - contrary to other qualities whose realization follows performance.

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

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

- **Fifth Definition of Ijtihad**

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

Critique of the Fifth Definition

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

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

According to Abu Bakr al-Razi, the term *ijtihad* has been applied to the following three meanings: (1) *Qiyas*, when the cause (*`illah*) does not lead to the *hukm*, for it may not possibly contain the *hukm* (on account of its being an incomplete and not a complete cause). As a result, the cause does not lead to certainty about the desired *hukm*, which has to be based on *ijtihad* and derivation through ray. (2) Anything that gives rise to presumption without the existence of a cause, like *ijtihad* regarding time, direction of *Qiblah*, price of a commodity, etc. (3) Argument based on *usul* for positing a *hukm* of the Shari'ah. [\[39\]](#)

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

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

Another scholar has defined *ijtihad* as effort and endeavour made in deriving the *far'i ahkam* of the Shari'ah, or securing legal validity through (the study of) its

elaborate *adillah*. If the criterion of the validity of an act is considered acquisition of *hujjah*, the above given definition is safe from the objections raised against the earlier definitions, as *hujjah* is inclusive of: certainty; the *adillah* that lead to certainty (such as reliable *usul* and *dicta*); and presumption, in accordance with the Sunni outlook. Similarly the term *hujjah* covers presumption during the period of closure of doors of certainty, in accordance with the belief of those who believe in such a closure.

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

Objections Against the Definition

It may be objected that the above definition is not logical or technical, for a technically and logically correct definition should closely correspond to the thing defined, whereas the said definition is rather loose. It states that *ijtihad* is to derive and determine *ahkam* from the sources; it does not specify that the person performing derivation should also possess the capacity, whereas the *mujtahid* is one who possesses the capacity of *ijtihad*. This objection is valid, unless it is said that *ijtihad* depends on the capacity and it is not possible to derive *ahkam* from reliable sources except through that capacity, and here possession of the capacity is taken for granted.

Note

It is appropriate here to clarify one thing about the capacity of *ijtihad*: it is a capacity acquired through the knowledge of ten types of disciplines on which derivation and understanding of the *ahkam* of the Shari'ah depends. In this regard, the requirement of another faculty - the so-called *quwwah qudsiyyah* - is not essential, for the-*ijtihad* which is acceptable to all means derivation of the Shar'i *ahkam* from the sources, and in the same way as a just' (*'adil*) *mujtahid* can perform this task, it can also be performed by a *mujtahid* who is not 'just'.

• Two Different Conceptions of Ijtihad

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

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

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

In the second conception *ijtihad* means deduction of the *fari ahkam* from the reliable sources (the Quran, the Sunnah, *ijma`* and *`aql*). *Ijtihad* in this sense occurs in the writings of Ahmad Mustafa al-Zarqa', the author of *al-Madkhal al-fiqhi al-`amm*, and Shi'i fuqaha' have subscribed to this view long since. According to this conception, the activity of the *mujtahid* involves deduction of the laws of the Shari'ah for emergent issues and new phenomena of life by employing general principles and rules. Thereby the *mujtahid* refers new secondary issues to the general principles and applies the general laws to their particular instances in external reality, thus obtaining the *ahkam* governing them. According to this conception, *ijtihad* is not counted as an independent source of law parallel to the Quran and the Sunnah, but merely as a means for deriving and determining the *ahkam* from the sources.

- **Ijtihad as an Independent Source in Sunni Fiqh**

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

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

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

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

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

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

It may be said in justification of the above-mentioned statement that the equating of ray with *ijtihad* is for the reason that the personal judgement of a *mujtahid* in the event of absence of any express text of the Quran and the Sunnah is synonymous with *ijtihad bi al-ray* and hence this sort of *istinbat* has been named ray as well. But other practices like *qiyas*, *istihsan*, *masalih mursalah*, *istislah*, *sadd al-dhara'i*, *fath al-dhara'i*, *madhhab al-Sahabi*, *Shari'at al-salaf*, *`urf*, etc. (which shall be discussed in detail) each one of them is considered an instance of *ijtihad*, but is not equivalent to or synonymous with *ijtihad bi al-ra'y*. The reason for the error in equating *ijtihad* with *ijtihad bi al-ray* is that the meaning of *ijtihad* has been confused with that of one of its elements.

Notes:

[1] *Al-Nihayah* vol. 1, p. 219.

[2] *Al-Nihayah* vol. 1, p. 219.

[3] *Lisan al-Arab*, vol. 3, p. 133.

[4] 9:79

[5] *Lisan al-Arab*, vol. 3, p. 133.

[6] *Ibid.*, p. 135.

[7] *Aqrab al-mawarid*, vol. 1, p. 144.

[8] *Aqrab al-mawarid*, vol. 1, p. 144.

[9] *Al Misbah al-munir*, vol. 1, p. 144.

[10] *Al Misbah al-munir*, vol. 1, p. 144.

[11] *Majma' al-bahrayn*, vol. 3, p. 32.

[12] *Majma' al-bahrayn*, vol. 3, p. 32.

[13] *Majma' al-bahrayn*, vol. 3, p. 32.

[14]. *Sihah al-lughah*, vol. 1, p. 457.

[15]. *Ma'alim al- usul*, p. 232.

[16]. *Kifayat al-'usul*, vol. 2, p. 42.

[17]. *Sunan al-Nasa'i*, the chapter on the command to pronounce benedictions on the Prophet (S), vol. 1, p. 90; see also the *Musnad Ahmad ibn Hanbal*, vol. 1, p. 199.

[18]. *Sahih Muslim, kitab al-salat*, hadith 207; *Musnad Ahmad ibn Hanbal*, vol. 1, p.219.

[19]. *Muqaddimah of Sunan al-Darimi*, vol. 1, p.100.

[20]. *Sahih Muslim, kitab al-itikaf*, hadith 8; see also *Sunan Ibn Majah,, kitab al-sawm*, hadith 1767.

[21]. *Sunan Ibn Majah, kitab al-ru'ya* ; hadith 3925; *Musnad Ahmad ibn Hanbal*, vol. 3, p.163.

[22]. *Musnad Ahmad ibn Hanbal*, vol. 3, pp. 33,138.

[23]. *Sahih al-Bukhari*, vol.3, p.136.

[24]. *Sahih al-Bukhari, kitab al jihad*, vol.2, p. 93; *Musnad Ahmad ibn Hanbal*, vol. 3, pp. 260, 283.

[25] *Wasa'il al-Shi ah*, vol. 1,twentieth of *abwab muqaddamat al-ibadat*, ahadith 1, 11, 20.

[26] *Wasa'il al-Shi ah*, vol. 1,twentieth of *abwab muqaddamat al-ibadat*, ahadith 1, 11, 20.

[27] *Wasa'il al-Shi ah*, vol. 1,twentieth of *abwab muqaddamat al-ibadat*, ahadith 1, 11, 20.

[28]. *Al-'Ihkam fi usul al-'ahkam*, vol. 4, p. 218.18.

[29]. *Al-Mustasfa fi usul al-fiqh*, p. 55.

[30]. *Al-Madkhal ila `ilm usul al-fiqh*, p. 55.

[31]. *Majma' al-bahrayn*, vol. 3, p. 32.

[32]. *Ma'alim al-'usul* p. 232.

[33] *Al-Mustasfa fi usul al-fiqh*, vol. 2, p. 350.

[34] *Al-Mustasfa fi usul al-fiqh*, vol. 2, p. 350.

[35] *Usul al-fiqh*, p. 357.

[36] *Usul al-fiqh*, p. 357.

[37]. The journal *Hadarat al-Islam*, No. 2, p. 2.

[38]. *Masadir al-tashri`*, p. 7.

[39]. *Irshad al-fuhul*, p. 250.

[40]. *Kifayat al-'usul*, vol. 2, p. 422.

[41]. *Al-Risalah*, p. 477.

[42]. *Ibid.*, p. 504.

[43]. *Tamhid-e ta'rikh-e falsafeh-ye Islami*, p. 138.

Section 2

The Holy Qur'an as the First Source of Ijtihad

• **The Holy Qur'an as the First Source of Ijtihad**

Jurisprudents of the various Islamic sects have expressed different views concerning the sources of *ijtihad*. Before these are examined in detail, their brief description will be in order.

1. The first view pertains to the majority of Imamiyyah jurisprudents of the Ja'fari school. They maintain that the Book, the Sunnah, *ijma`* (consensus), and *`aql* (reason) constitute the sources of *ijtihad*.

2. However, some, like the Akhbaris, who follow Mulla Muhammad Amin al-'Astarabadi (d. 1033/1623) accept only the Sunnah as the source for derivation of *ahkam*.

3. Some, like the jurisprudents of the Hanafi school, regard the Book, the mutawatir Sunnah, statements of the Companions, the Companions' consensus, *qiyas*, *istihsan* and *`urf* (custom) as the sources of *ijtihad* - as mentioned by Abu Zuhrah in his *Ta'rikh al-madhahib al-'arba`ah*.

4. Some others, like the *`ulama'* of the Maliki school, followers of Malik ibn Anas al-'Asbahi, believe these sources to be the Book, the Sunnah, consensus of the jurists of Madinah, *masalih mursalah* (a kind of *qiyas*), such statements of the Companions as are not based on *ray*, and *qiyas mansus al-illah*. This is according to Dr. Subhi Mahmasani, in his book entitled *Falsafat al-tashri` Al al-'Islam*.

5. Another group, like the Shafi'i jurisprudents, followers of Muhammad ibn Idris al-Shafi'i, regard the Book, the Sunnah, *ijma`*, and *qiyas mustanbat al-illah* as the sources of *ijtihad*. This too has been mentioned in *Falsafat al-tashri` fi al- Islam*.

6. According to some others, like the *`ulama'* of the Hanbali school, followers of Ahmad ibn Hanbal al-Shaybani, the sources of *ijtihad* are: the Book, the Sunnah and the fatwas of the Sahabah when these do not contradict the Book and the Sunnah - even *mursal* and *daif* traditions.

7. Some others, like the *`ulama'* of the Zahiri school, followers of Dawud ibn 'All al-Zahiri al-Isfahani, restrict themselves to the Book, the Sunnah, and *ijma`*. Furthermore, they see no scope for *ijma`* after the era of the Caliphs. In the words of the second leader of this school, Ibn Hazm al-'Andalusi al-Zahiri, anyone who claims *ijma`* on questions arising after the period of the Caliphs makes a false statement.

It is notable that whatever has been mentioned above on the subject are not the only viewpoints; there are many others as well. For example, Ustadh Mubammad al-Dawalibi in his book *al-Madkhal ila `ilm usul al-fiqh*, describes the sources for

inference of *ahkam* as: (1) the Book, (2) the Sunnah, (3) *ijma`* and (4) *ijtihad*. This view has been accepted by Muhammad Rashid Rida, the renowned author of *al-Wahy al-Muhammadi*. Furthermore, according to that which has been ascribed to Malik ibn Anas al-'Asbahi the sources of *ijtihad* comprise: (1) the Book (2) the Sunnah (3) *ijma`* (4) *qiyas*, (5) *istihsan* (6) the principle of *istislah*, (7) *al-madhab al-Sahabi*, (8) *sadd al-dhara'i* (9) *fath 'al-dhara'i*, (10) *qanun al-salaf*, (11) *istishab*, (12) *istiqlal* (13) *bara'ah asliyyah*, (14) *'urf*, (15) *istidlal*, etc.

However, we will confine ourselves to the above views, proceeding to examine the impact of these different views of *ijtihad* and legal deduction.

It is evident that the theoretical differences about the sources of *ijtihad* should lead the jurisprudents, in the process of legal deduction vis-a-vis new problems and developments, to adopt different courses resulting in divergent *fatawa*. Hence we find different schools of thought in the history of jurisprudence and *ijtihad*.

However, of the many schools of thought, only five came to be officially recognized, namely, the Ja'fari, the Hanafi, the Maliki, the Shafi'i, and the Hanbali. With the passage of time the others have been abandoned and forgotten.

- **The Sources of Ijtihad:**

We will now discuss and examine the sources of *ijtihad*, one by one, in order to gain a better acquaintance with the basic sources for inferring and deducing the *ahkam*.

As indicated earlier in our discussion, the very first source of *ijtihad* is the Book. Accordingly, the subject of discussion in this article will be the Qur'an, held in common accord by jurisprudents of all schools of thought in Islam (including, besides the well-known five, the Zahiri, Jariri, Tamimi, Nakh'i, Awza'i, Thawri, Laythi, Kalbi, and other schools now extinct) as the primary source of reference for identifying the *ahkam* of the Shari'ah.

If any occasional difference among the schools of thought is discernible concerning the Qur'an, it relates to opinions concerning the interpretation of the verses, and other problems like *naskh* (abrogation), *tahr'if*, the criteria of *amr* and *nahy*, *'amm*, *mutlaq*, etc. However, this procedural aspect does not affect the purpose of our present discussion. The Holy Qur'an represents the primary source of Divine laws and, as such, the Book has precedence over the other sources to be consulted for obtaining the *ahkam* of the Shari'ah. The Qur'an has been, and will remain - in addition to being the comprehensive source of Divine laws - the criterion for judging traditions and ahadith. It is on this very basis that from the time of the Holy Prophet (S) till now and for ever, the Book remains the primary source of reference for Islamic jurisprudents. The history of jurisprudence and *ijtihad* testifies to this fact. However, when this basic source is examined from the standpoint of *ijtihad* and legal deduction, certain noteworthy issues arise. It is invariably essential to pay due attention to such matters as *fiqh al-Qur'an* (juristic study of the Qur'an), the determination of the Qur'anic verses having a bearing on legal deduction, the determination of the *muhkamat* and the *mutashabihdt*, the problem of restriction (*takhsis*) of the general import (*'amm*) of the verses by *khavar al-wahid*, the

legitimacy of interpreting the Qur'an in the light of *khavar al-wahid*, etc. These are issues that simply cannot be ignored. Their effect on the derivation of *ahkam* from the Qur'an, too, cannot be overlooked.

An Overview of the Ayat al 'Ahkam:

A significant number of Qur'anic verses constitute *ayat al-'ahkam* (legally relevant verses). These verses have been, and are, the basis for deriving *ahkam*. Their number totals approximately five hundred. These were gradually revealed on various occasions during the years following the Prophet's Hijrah. Accordingly, the *ayat al-'ahkam* are to be sought in the Madani verses.

The *ayat al-'ahkam* lay down the Islamic laws and rules concerning social, penal and economic matters. In contrast, the Makkan verses mostly describe and prescribe doctrinal and ethical principles.

Over the centuries, the great Islamic jurists have painstakingly carried out continuous research concerning the *ayat al-'ahkam*, and in the course of their deductive endeavour have discovered many points of juristic and scientific interest. Many of the results of their efforts are now available to us.

Initial Research Concerning the Ayat al-Ahkam:

To know when and by whom the first investigation into the *ayat al-'ahkam* was conducted is essential for familiarity with the history and development of *ijtihad*. Although there is no consensus in this regard, it is worthwhile that we recall what some scholars have opined in this connection.

1. `Allamah Sayyid Hasan al-Sadr, in his esteemed work *Ta'sis al. Shi'ah li al-`ulum al-Islamiyyah* (p. 321), writes that the first book concerning *ayat al- ahkam* was written by Muhammad ibn Sa'ib al-Kalbi (d. 146/763). This view has been endorsed by Ibn al-Nadim in his *al-Fihrist* (p. 57), wherein he writes: "Al-Kalbi's *Kitab ahkam al-Quran* has been narrated by `Abbas"

2. According to some the first research in this regard was conducted by Muhammad ibn Idris al-Shafi'i (d. 204/819), the founder of the Shafi'i school. `Allamah Jalal al-Din `Abd al-Rahman al-Suyuti (d.911/ 1505) in his *Kitab al- awa'il* accepts this, and writes: "Al-Imam al-Shafi'i was the first writer on the subject of *ayat al-'ahkam*."

3. According to *Tabaqat al-nuhat*, some scholars are of the view that the first to write on *ahkam al-Qur'an* was `Allamah al-Qasim ibn Asbagh ibn Muhammad al-Bayyati al-Qurtubi al-'Andalusi (304/916).

Among the aforementioned claims, the one in regard to the great Shi'i scholar Muhammad ibn Sa'ib al-Kalbi has greater validity, since his time precedes that of al-Shafi'i and al-Qasim ibn Asbagh al-Bayyati. That which has been claimed by al-Suyuti appears to signify his intention to mention the first Sunni writer on *ayat al- ahkam*. .

From among the Sunni `ulama', 'Ali ibn Mush al-Qummi (d. 305/ 917) from the Hanafi school, Abu Ishaq Isma'il ibn Ishaq (d. 282/895) from the Maliki, and Abu Ya'la Kabir (d. 458/1066) from the Hanbali, appear to be the first researchers in this field.

- **The Works on Qur'anic Fiqh:**

For acquainting ourselves further with the historical background of the subject under discussion, it seems appropriate that we list the important writings on *ayat al- ahkam* by `ulama' of Islam.

A. Shi'i Works on Fiqh al-Qur'an:

1. *Ayat al- ahkam* by Muhammad ibn Sa'ib al-Kalbi (d. 146/763). Besides this book, he had written a complete tafsir of the Qur'an.

2. *Tafsir al-khamsimi'at ayah fl al-'ahkam*, by Muqatil ibn Sulayman al-Khurashni al-Balkhi (d. 150/767).

3. *Tafsir ayat al- ahkam*, by Hisham ibn Muhammad ibn Sa'ib al-Kalbi al-Kufi (d. 204 or 206/819 or 821).

4. *Ahkam al- ahkam*, by `Abbad ibn al-`Abbas al-Taliqani (d. 385/995).

5. *Sharh ayat al-'ahkam*, by Isma'il ibn `Abbad (d. 385/995).

6. *Al-Ibanah `an ma'ani al-qira at*, by Makki ibn Abi Talib al-Qaysi (d. 437/1045).

7. *Fiqh al-Qur'an fi ayat al-'ahkam*, by Qutb al-Din al-Rawandi (d. 573/ 1177).

8. *Tafsir ayat al- ahkam*, by Muhammad ibn al-Husayn al-Bayhaqi al-Nishaburi (d.c. 576/1180).

9. *Al-Nihayah fi tafsir al-khamsimi'at ayah fi al-'ahkam*, by Ahmad ibn `Abd Allah Mutawwaj al-Bahrayni (dc. 771/1369).

10. *Kanz al-`irfan fi fiqh al-Qur'an*, by Fadil Miqdad ibn `Abd Allah al Suyuri al-'Asadi al-Hilli (d. 826/1423). This book has been translated into Persian.

11. *Minhaj al-hidayah fi tafsir ayat al-ahkam*, by Ahmad ibn `Abd Allah, known as Ibn al-Mutawwaj (d.c. 836/1432).

12. *Ayat al-'ahkam*, by Nasir ibn Jamal al-Din (d.c. 860/1456).

13. *Ma`arfa-sa'ul wa madarij al-ma'mul fi tafsir ayat al- ahkam*, by al Hasan ibn Shams al-Din al-'Astarabadi (d.c. 900/1494).

14. *Ayat al- ahkam*, by `Ali ibn Muhammad al-Shahaftiki (?) al-Mashhadi (d.907/1501).

15. *Tafsir shahi fi ayat al-'ahkam*, by Abu al-Fath ibn Amir al-Husayni (d. 986/1578). This book has been written in Persian.
16. *Zubdat al-bayan fi sharh ayat ahkam al-Qur'an* and *Tafsir ayat ahkam al-Qur'an*, by Ahmad ibn Muhammad, known as al-Muqaddas al-'Ardabili (d. 993/1585).
17. *Ayat al-'ahkam* by Muhammad ibn 'Ali al-Husayni al-Mar'ashi (d. during the reign of Shah Tahmhsib I).
18. *Ayat al-'ahkam*, by Muhammad ibn 'Ali al-'Astarabadi (d. 1026/ 1617).
19. *Tafsir ayat al-'ahkam*, by Rafi` al-Din Muhammad Husayn al Mar'ashi (d. 1034/1625).
20. *Tafsir shahi fi sharh ayat al- ahkam*, by Muhammad Yazdi, known as Shah Qadi (d.c. 1040/1630).
21. *Masalik al-'ifham fi tafsir ayat al-'ahkam*, by Fadil Jawad al-Kazimi (d. mid 11th century).
22. *Fath abwab al jinan fi tafsir ayat ahkam al-Quran* by Muhammad ibn Husayn al-`Amili (d.c. 1080/1669).
23. *Mafatih al-'ihkam fi sharh ayat al- ahkam al-Qur'aniyyah*, by Muhammad Said ibn Siraj al-Din al-Tabataba'i (d. 1092/1681). This book represents an exposition of *Zubdat al-bayan* by al-Muqaddas al-'Ardabili
24. *Inas al-mu'minin bi iqtibas `ulum al-Din `an al-nibras al-mujiz al mubin fi tafsir al-'ayat al-Quraniyyat al-lati hiya al- ahkam al-'asliyyah- wa al-far`iyyah*, compiled by Muhammad ibn `Ali al-Musawi al-`Amili (d. 1139/1726).
25. *Tahsil al-itminan fi sharh Zubdat al-bayan fi tafsir ayat al-'ahkam min al-Qur'an*, by Muhammad Ibrahim, known as Mir Ibrahim al-Husayni al-Tabrizi (d. 1149/1736).
26. *Qalayid al-durar fi ayat al- ahkam bi al-'athar*, by Ahmad ibn Isma'il al-Jaza'iri (d. 1150 or 1151/1737 or 1738).
27. *Dala'il al-maram fi tafsir ayat al-ahkam*, by Muhammad Ja'far ibn Sayf al-Din al-'Astarabadi, known as Shari'atmadar (d. 1263/ 1847).
28. *Al- Wajiz Al tafsir ayat al-'ahkam*, by `Abd al-Husayn ibn Ibrahim al-Makhzumi (d. 1279/1862).
29. *Nathr al-duraral-'aytam fl sharh ayat al-'ahkam* and *al-Durar al-'aytam fi Tafsir ayat al-'ahkam*, by `All ibn ja'far al-'Astarabadi (d. 1315/1897).

30. *Muwaddih al-'ahkam fi sharhiha*, by Muhammad ibn Fadl Allah al-Musawi al-Sarawi (Pahne Kolayi) (d. 1342/1923).

31. *Miqlad al-rashad fi sharh Ayat al-'ahkam*, by Muhammad Mahdi alBanabi al-Maraghehi (d.c. 1345/1926).

32. *Ayat al- ahkam*, by Muhammad Baqir ibn Muhammad Hasan Qayini (d. 1352/1933).

Of course, there are many other books and treatises written by Shi'i scholars that have been omitted from the above list, which represents only a selection.

B. Zaydi Works on Fiqh al-Qur'an:

Some `ulama' among the Zaydis who have acquired well-deserved fame have compiled books on *ayat al- ahkam*. Following are some of their works:

1. *Sharh ayat al- ahkam*, by Yahya ibn Hamzah al-Yamani (d. 749/1348).

2. *Ayat al- ahkam*, by Ahmad ibn Yahya al-Yamani (San'a') (d. 840/ 1436), not printed.

3. *Sharh ayat al- ahkam*; by Muhammad ibn Yahya Sa'di al-Yamani (d. 957/1550).

4. *Ayat al- ahkam*, by Husayn al-`Amri al-Yamani (d.c. 1380/1960).

5. *Sharh Ayat al- ahkam*, by Yahya ibn Muhammad al-Hasani, not printed.

C. Hanafi Works on Fiqh al-Qur'an:

Among the Hanafi `ulama', too, several have attained fame as contributors to the development of fiqh al-Qur'an. Some of their works are noted below:

1. *Ahkam al-Qur'an*, by 'Ali ibn Hajar Sa'di al-Maruzi al-Khurasani (d. 244/858)

2. *Ayat al- ahkam*, compiled by 'Ali ibn Musa (d. 305/917). He belonged to Qumm, and was the leader of Hanafis in his time.

3. *Ahkam al-Qur'an*, by Ahmad ibn Muhammad al-'Azdi al-Tahawi al-Misri (d. 370/933).

4. *Sharh ahkam al-Qur'an*, compiled by Ahmad ibn `Ali al-Razi, known as al-Jassas (d. 370/980).

5. *Mukhtasar ahkam al-Qur'an* by Makki ibn Abi Talib al-Qaysi al-Qayrawani (d. 437/1045).

6. *Anwar al-Qur'an fl ahkam al-Qur'an*, by Muhammad Kafi ibn Hasan al-Basandi al-Iqhisari (?) (d. 1025/1616).

7. *Anwar al-Qur'an fi ahkam al-Qur'an*, by Muhammad Shams al-Din al-Harawi al-Bukhari (d. 1109/1697), apparently not printed.

8. *Ahkam al-Qur'an*, by Isma'il Haqqi (d. 1127/1715).

9. *Madarik al-'ahkam* and *Anwar al-Qur'an* by `Abd Allah al-Balkhi (d. -1189/1775), not printed.

10. *Ayahkam al-Quran* by `Abd Allah al-Husayni al-Hindi (d. 1270/ 1853).

11. *Nayl al-murad min tafsir ayat al-'ahkam*, by Muhammad Siddiq al-Bukhari (d. 1307/1889).

D. Maliki Works on Fiqh al-Qur'an:

Several among the Maliki `ulama', as well, have been noted for their substantial research and contributions to fiqh al-Qur'an. Some of these are noted below:

1. *Ahkam al-Qur'an*, by Abmad ibn Mu'dhal (d. 240/854).

2. *Ahkam al-Qur'an*, by Muhammad ibn `Abd Allah, known as Ibn alHakam (d. 268/881).

3. *Ayat al-'ahkam*, by Isma'iI ibn Ishaq al-'Azdi (d. 282/895).

4. *Ayat al- ahkam*, by al-Qasim ibn Asbagh al-Qurtubi al-'Andalusi (d. 304/916).

5. *Ahkam al-Qur'an*, by Muhammad ibn Ahmad al-Tamimi (d. 305/917).

6. *Ahkam al-Qur'an*, by Musa ibn `Abd al-Rahman, known as Qattan (d. 306/918).

7. *Ahkam al-Qur'an*, by Muhammad ibn al-Qasim, known as Ibn al-Qurtubi (d. 355/966).

8. *Ahkam al-Qur'an*, by Ahmad ibn `Ali, known as al-Baghathi (d. 401/1010).

9. *Ayat al-'ahkam*, by Muhammad ibn `Abd Allah al-Andalusi, known as Ibn al-`Arabi (d. 542 or 543/1147 or 1148).

10. *Ahkam al-Qur'an*, by `Abd al-Mun'im ibn Muhammad al-'Andalusi al-Gharnati (d. 597/1200).

11. *Ayat al- ahkam*, by Yahya ibn Sa'dun al-'Azdi al-'Andalusi (d. 670/ 1271).

12. *Jami ` ahkam al-Qur'an al-mubin*, by Muhammad ibn Ahmad al'AnsAri al-Khazraji(d. 671/1272).

Of course, there are other Maliki works on the subject besides those mentioned.

E. Shafi'i Works on Fiqh al-Qur'an.

Several Shafi'i `ulama' have attained fame for their compilations concerning fiqh al-Qur'an. Some of their works are noted below:

1. *Ahkam al-Qur'an*, compiled by Muhammad ibn Idris al-Shafi'i, the leader of the Shafi'i school of fiqh (d. 204/819).
2. *Ahkam al-Qur'an*, by Ibrahim ibn Khalid, known as Abu Tur alKalbi (d. 240/854).
3. *Ayat al-'ahkam*, by Ahmad ibn al-Husayn al-Bayhaqi (d. 458/1066).
4. *Ayat al-'ahkam*, by 'Ali ibn Muhammad al-Tabarsi (d. 504/1110).
5. An incomplete work by Ahmad ibn 'Ali, known as Ibn Hajar al'Asqalani (d. 852/1448).
6. *Ahkam al-Qur'an*, and *Iklil fi istinbat al-tanzil*, by `Abd al-Rahman ibn Abi Bakr al-Misri (d. 911/1505).
7. *Manar al-Islam fl sharh ayat al-'ahkam*, by Ahmad Zayni Dahlin alHasani (d.1304/1886), Mufti of Makkah.
8. *Ahkam al-Qur'an* by Ahmad ibn Yusuf Samin (d. 756/1355).

F. Hanbali Works on Fiqh al-Qur'an:

Hanbali `Ulama' have also greatly contributed to this subject and compiled several treatises. Of their compilations are:

1. *Ayat al-'ahkam*, compiled by Qadi Abu Ya'la al-Kabir (d. 458/1066).
2. *Ayat al-'ahkam*, by Muhammad Abu Bakr al-Dimashqi al-Raz'i, known as Ibn Qayyim al-Jawzi (d. 751/1350).

G. Zahiri Works on Fiqh al-Qur'an.

Some `ulama' of the Zahiri school have as well written books on fiqh al-Qur'an. Of their works are:

1. *Ahkam al-Qur'an*, compiled by Dawud ibn 'Ali al-Zahiri al-'Isfahani (201-270/816-883).
2. *Ahkam al-Qur'an*, by `Abd Allah ibn Ahmad, known as Ibn al-Muflis (d.324/936).

Among the above-mentioned works, the best, perhaps, are: *Qala'id al-durar fi ayat al- ahkam bi al- athar* by Ahmad ibn Isma'il al-Jaza'iri from the Shi'i `ulama', and

Ayat al-'ahkam by al-Jassas Abu Bakr al-Razi al-Hanafi from among the Sunni scholars. Nevertheless, some of the discussions in these works evidence certain shortcomings. God-willing, the salient features of these works will be described later.

In concluding this section of the article, it seems necessary to make a general observation concerning the jurisprudential study of *ayat al-'ahkam*. The thinkers of the Islamic legal schools have focused their attention and research largely on matters relating to *'ibadat* (rituals), in which no shortcoming is noticeable. The other areas inadequately dealt with include: *aradi* (land), *anfal* (use of natural resources), *jihad*, *qadawat* (adjudication), *hudud*, *qisas*, *ta'zirat*, *civil rights*, economic and social affairs, etc. It is to be hoped that the *'ulama'* will fill this vacuum as early as possible.

- **Legal Deduction from the Qur'an:**

The most authentic of all the sources for identifying the Divine laws is the Holy Qur'an. With regard to this fact, there is no difference of opinion whatever between Shi'i and Sunni scholars. However, in making use of this great and everlasting source, it is essential that one should have knowledge of certain prerequisite matters. Without the knowledge of these prerequisites, an effort to infer *ahkam* from the Qur'an will neither be productive nor indicative of correct judgement.

For properly inferring the Divine *ahkam* from the Qur'an, there exist certain criteria and standards, for the Qur'an has certainly entrusted mankind with the framework for answering all the legal and legislative needs of man until the Judgement's Day. Evidently, one cannot expect to find a detailed and elaborate description of the *ahkam* in some five hundred verses. Thus, in the Qur'anic verses we find mostly the general basic principles, which are susceptible to the derivation of particular laws. Furthermore, in many instances, it is possible to adjudge matters on the basis of an all-inclusive consideration of the Qur'anic statements of a general or specific nature, as well as its *nusus* and *zawahir*. For this very reason, deduction of a *hukrn* from the Qur'an requires expertise in *usul* and jurisprudential principles, and any novice unfamiliar with the subtleties of the revelation can hardly be expected to possess the power of deduction of the *ahkam* of the Shari'ah from the Qur'an.

On the other hand, it is these criteria and standards, as well as the degree of the understanding of scholars of them, that have given rise to differences among the Islamic sects in regard to the deduction of the *ahkam*.

Amir al-Mu'minin `Ali (A) has given a statement in this regard. He says:

إِنَّ اللَّهَ تَبَارَكَ وَتَعَالَى أَنزَلَ الْقُرْآنَ عَلَى سَبْعَةِ أَقْسَامٍ كُلٌّ مِنْهَا شَافٍ كَافٍ، وَهِيَ أَمْرٌ وَذَجْرٌ،
وَتَرْغِيبٌ وَتَرْهِيْبٌ وَجَدَلٌ وَقَتْلٌ وَقِصَصٌ . وَفِي الْقُرْآنِ نَاسِخٌ وَمَنْسُوخٌ وَمُحْكَمٌ وَمُتَشَابِهٌ وَخَاصٌّ
وَعَامٌّ وَمَقْدَّمٌ وَمُؤَخَّرٌ وَعَزَائِمٌ وَرُخَصٌ ، وَحَلَالٌ وَحَرَامٌ ، وَقَرَائِشُ وَأَحْكَامٌ ، مُنْقَطِعٌ وَمُعْطَوْفٌ ،

وَمِنْ قِطْعٍ غَيْرِ مَعْطُوفٍ وَحَرْفٍ مَكَانَ حَرْفٍ . وَمِنْهُ مَا لَفْظُهُ خَاصٌّ ، وَمِنْهُ مَا لَفْظُهُ عَامٌّ مُحْتَمَلٌ
الْغُمُومِ . مِنْهُ مَا لَفْظُهُ وَاحِدٌ وَمَعْنَاهُ جَمْعٌ ، مِنْهُ مَا لَفْظُهُ جَمْعٌ وَمَعْنَاهُ وَاحِدٌ ، وَمِنْهُ مَا لَفْظُهُ ماضٍ
وَمَعْنَاهُ مُسْتَقْبَلٌ ، وَمِنْهُ مَا لَفْظُهُ عَلَى الْخَبَرِ وَمَعْنَاهُ حِكَايَةُ عَنْ قَوْمٍ آخَرٍ ، وَمِنْهُ مَا هُوَ بَاقٍ مُحَرَّفٌ
عَنْ جِهَةٍ ، وَمِنْهُ مَا هُوَ عَلَى خِلَافٍ تَنْزِيلِهِ وَمِنْهُ مَا تَأْوِيلُهُ فِي تَنْزِيلِهِ ، وَمِنْهُ مَا تَأْوِيلُهُ قَبْلَ تَنْزِيلِهِ ،
وَمِنْهُ مَا تَأْوِيلُهُ بَعْدَ تَنْزِيلِهِ .
وَمِنْهُ آيَاتٌ بَعْضُهَا فِي سُورَةٍ وَتَمَامُهَا فِي سُورَةٍ أُخْرَى وَمِنْهُ آيَاتٌ نَصْفُهَا مَنسُوحٌ وَنَصْفُهَا
مَتْرُوكٌ عَلَى حَالِهِ وَمِنْهُ آيَاتٌ مُخْتَلِفَةٌ اللَّفْظُ مُتَّفِقَةٌ الْمَعْنَى ، وَمِنْهُ آيَاتٌ مُتَّفِقَةٌ اللَّفْظُ مُخْتَلِفَةٌ
الْمَعْنَى ، وَمِنْهُ آيَاتٌ فِيهَا رُخْصَةٌ وَإِطْلَاقٌ بَعْدَ الْعَزِيمَةِ ، لِأَنَّ اللَّهَ عَزَّ وَجَلَّ يُحِبُّ أَنْ يُؤْخَذَ
بِرُخْصَتِهِ كَمَا يُؤْخَذُ بِعَزَائِمِهِ ...

On this basis, the inference of the Divine *ahkam*, the laws of the Shari'ah, and Islamic values presuppose sufficient knowledge of these kind of subtleties, nuances, specifics and particulars required for investigation and research into the meaning and significance of the Qur'anic verses. It is obvious that the different categories mentioned in the above narrations are to be found in the Qur'an, and each of them calls for meticulous and intensive study and investigation.

In this article, however, we will confine our discussion to only some aspects of the verses, *zawahir al-Qur'an*, *muhkamat* and *mutashabihat*, the *takhsis* (limitation) of the general statements of the Qur'an by *khavar al-wahid*, and some other issues.

• The Authority of Zawahir al-Qur'an:

That *zawahir* (literal meanings) of the Qur'an have authority (*hujjiyyah*), in that laws can be deduced from the same, is something to be recognized at the outset.

The Akhbhris did not consider the *zawahir* of the Qur'an as a valid basis for action for anyone except the contemporaries of the Holy Prophet (S). They exclude even those who were not present during the period of revelation in Madinah. They believed that the *zawahir* had authority only for those whom the Qur'an was orally addressed to.

They held the conviction that the Qur'an is unlike other scientific books, whose authors generally do not have any specific audience in their minds, having only the exposition of their ideas in view. On the contrary, the Qur'an involves particular addressees to whom it speaks (elsewhere we have discussed the invalidity of this view and given answers to some of the doubts raised by the Akhbaris).

The Usulis on their own part have advanced elaborate arguments upholding the validity of the Qur'anic *zawahir*.

• Muhkamat and Mutashabihat:

The Qur'an itself expressly states that its verses are divisible into two groups: *muhkamat* and *mutashabihat* (3:7). Since the faqih has to deal with both the kinds in

the process of *istinbat* (legal deduction), it is necessary to discuss even if in passing the nature of the two.

The term '*muhkam*' is derived from '*ihkam*', signifying something that is stable, and firmly established and is not vulnerable. Accordingly, the *muhkamat* are verses which are clear and firm, easy to understand without requiring any special investigation and research.

When different components of something have similarity and are of an ambiguous or complicated kind, it is called '*mutashabih*'. Likewise, verses with ambiguous meaning and susceptible to various probabilities are called *mutashabihat*. Their comprehension is not easy without close examination and investigation in depth. To quote a tradition in this regard:

سُئِلَ أَبُو عَبْدِ اللَّهِ عَلَيْهِ السَّلَامُ عَنِ الْمُحْكَمِ وَالْمُتَشَابِهِ ، قَالَ : الْمُحْكَمُ مَا تَعْمَلُ بِهِ وَالْمُتَشَابِهُ مَا اشْتَبَهَ عَلَى جَاهِلِهِ .

Abu 'Abd Allih (al-Imam al-Sadiq) (A) was asked about the *muhkam* and the *mutashabih*. He said: "*Muhkam* is that upon which we act, and *mutashabih* is that which appears ambiguous to one who is ignorant of it (i.e. of the exact import of the verse). (Bihar, vol. 92,p.382)

In the above narration, عَلَى جَاهِلِهِ (to one who is ignorant of it) signifies a fine distinction. It indicates that the *mutashabihat* are not unclear to one and all, including the Masumun (i.e. the Prophet [S], Fatimah [A] and the Imams [A]). The "*mutashabihat*" are so called because of the difficulty that most people face in understanding the verses. Al-Imam al-Shdiq (A) has also pointed out that:

الْمُحْكَمُ مَا يُعْمَلُ بِهِ ، وَالْمُتَشَابِهُ الَّذِي يَشْتَبُه بَعْضُهُ بَعْضًا .

...The *muhkam* is that which is acted upon, and the *mutashabih* is that some of which resembles some other. (Bihar, vol.92, p.383)

In any case, it is obvious that derivation of *ahkam* is easier in the case of *muhkamat*. As for *mutashabihat*, much effort is needed, involving the referring of Sunnah to *muhkamat*. Al-Imam 'Ali ibn Mush al-Rida (A) has said

مَنْ رَدَّ مُتَشَابِهَ الْقُرْآنِ إِلَى مُحْكَمِيهِ هُدِيَ إِلَى صِرَاطٍ مُسْتَقِيمٍ .

...One who refers the *mutashabihat* of the Qur'an to its *muhkamat* is guided to the path. (Bihar, vol.92, p.377).

The *muhkamat* verses are not only clear in themselves, but also help in the interpretation of the other verses. From this point of view, they have been called '*umm al Kitab*' (lit. the mother of the Book), for the *muhkamat* form the foundation of the other verses.

Why Mutashabih Verses?

Considering that the Qur'an is the basic source as well as the primary reference for deriving *ahkam*, a question may possibly arise in one's mind as to why not all the verses of the Qur'an have been revealed as *muhkamat*. In that event, there would have been less differences among the jurists and their *fatwas* (decrees). Further, it may be argued that, especially since the Qur'an is the book of enlightenment and guidance for all mankind and for all ages, not merely a source for the derivation of *ahkam*, it would have been followed without errors or deviations, arising from its misinterpretation, had its verses been entirely *muhkamat*.

In answer to the question mentioned above, certain reasons have been suggested by scholars. Some of these are noted below:

1. Al-Shaykh al-Tusi, in his tafsir, *Tibyan* (p. 11), has said: "Wisdom has required that the Qur'anic words and phrases be used in a way that their understanding should require investigation, effort and exertion, so as to result in the growth of knowledge." That is, since human development and growth, on the level of the individual as well as of society, is a law of God embedded in nature, God has set forth the verses of the Qur'an in such a profound and rich fashion so as to afford human beings to benefit from them and seek inspiration from them in step with their growing intellectual, spiritual and material needs in their individual and social lives, and thus traverse the Divinely-envisaged path of development and perfection without encountering any stagnation.

2. The *mutashabih* verses, by their very existence in the Qur'an, point towards the need that people have for the Prophet (S) and his Successors (A). That is, they cause the people to make recourse to them for necessary clarifications, in the manner of pupils approaching their teachers for the solution of their difficulties. Amir al-Mu'minin (A) has said: "God has set forth the Qur'an in three categories: *muhkam*, *mutashabih*, and *mujmal*, so that the truth should be distinguished from falsehood through the means of the Prophet's Successors."

The importance of what has been stated above becomes clear when we realize the essential need for the Imam's existence and its impact on the growth of humanity and Islamic society. Furthermore, it is realizable by referring to the Qur'anic verses and traditions concerning Imamate and the need for the leadership of society. It is equally recognizable in the light of the realities of human life and the past and contemporary history of human societies in general and of Islamic countries in particular.

The role of an imam, or leader, in guiding or misguiding mankind is not to be denied. God, in order to set apart the righteous leaders, who guide towards light, from those who lead into darkness, and to enable people to distinguish between them on the basis of clear criteria, so that they may elect to follow the righteous leaders, has set forth some of the Qur'anic verses in such a fashion that none other than the Infallible Imams or the Prophet have the requisite capacity of understanding and elucidating them. This fact has been instrumental in prompting believers to seek understanding of the Qur'anic meanings from them. The people's other profound requirements, too,

were answered in this process. This fact has been indicated in the hadith from Amir alMu'minin (A).

سُئِلَ امِيرُ الْمُؤْمِنِينَ عَلَيْهِ السَّلَامُ عَنْ تَفْسِيرِ الْمُحْكَمِ مِنْ كِتَابِ اللَّهِ عَزَّ وَجَلَّ فَقَالَ: أَمَّا
الْمُحْكَمُ الَّذِي لَمْ يَنْسَخْهُ شَيْءٌ مِنَ الْقُرْآنِ فَهُوَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ «هُوَ الَّذِي أَنْزَلَ عَلَيْكَ
الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ» وَأَمَّا هَؤُلَاءِ فَتَأْوِيلَاتٍ مِنَ عِنْدِ أَنْفُسِهِمْ
بِأَرَادِهِمْ وَاسْتَغْنَوْا بِذَلِكَ عَنْ قِسَالَةِ الْأَوْصِيَاءِ ...

Amir al-Mu'minin (A) was asked concerning the exposition of *muhkam* (verses) of the Book of God Almighty. He said: "As to the *muhkam* (verse) which has never been abrogated by any other verse of the Qur'an is the utterance of God Almighty: 'It is He Who sent down upon thee the Book, wherein are *muhkam* verses that are the *umm al-Kitab*, and others are *mutashabih*. Verily, the people have perished on account of the *mutashabihat*, for they did not understand their meaning and reality. Thus they fabricated their *ta'wilat* themselves, in accordance with their own opinions, seeking thereby to be able to do without the Awsiya' (the Prophet's Successors, i.e. the Imams)." vol.93, p.12)

The last sentence of the above tradition indicates that for understanding the *mutashdbihdt* the followers of Islam cannot do without the Awsiya' (A) of the Prophet (S) and that they should refer to them.

3. Some of the *mutashabihat* pertain to the realms of Resurrection and the Hereafter, which are beyond human experience and thought; hence their obscurity is something natural and inevitable.

The Qur'an on Muhkamats and Mutashabihat:

The first verse of the *Surat Hud* states:

... كِتَابٌ أَنْزَلْنَاهُ ...

"A Book whose verses are set *muhkam*"

This can be taken to mean that all the Qur'anic verses are *muhkamats*. However, the twenty-third verse of the *Surat al-Zumar* states:

... اللَّهُ نَزَّلَ أَحْسَنَ الْحَدِيثِ كِتَابًا مُتَشَابِهًا مَثَابًا ...

God has sent down the fairest discourse as a Book, consimilar.(*mutashabihan*) in its opt-repeated.

This can be interpreted to mean that the entire verses of the Qur'an represent *mutashabihat*. The seventh verse of the *Surat Al Imran* states:

هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ...

It is He Who sent down upon thee the Book, wherein are muhkam verses that are the umm al-Kitab, and others are mutashabih. (3: 7)

From this verse, it can be inferred that the Qur'anic verses are of two kinds; some are "*muhkamat*" and some others "*mutashabihat*."

One's first unstudied impression concerning the above verses is that they may seem contradictory. However, on a close examination it will become clear that there is no such contradiction whatsoever. For the first verse, which implies that all the Qur'anic verses are *muhkamat*, signifies that the Divine verses are firm and *muhkam* in regard to their words and phrases, their arrangement, as well as their meaning and similar other aspects. They do not contain any kind of weakness or infirmity whatsoever.

The meaning of the second verse quoted above is that all the verses of the Qur'an are similar (*mutashabih*) in their harmony, consistency, sublimity, clarity, eloquent delivery and miraculous nature. There is neither any disharmony nor any inconsistency in them.

The third verse implies that some of the Qur'anic verses are self-contained, in that their sense does not depend for their full comprehension on that of the other verses, and these are clear and *muhkam*. The other verses which are not such are labelled *mutashabihat*. This explanation ought to suffice for dispelling any impression of a contradiction.

A-Shayhh al-Tusi's Remark:

The great Islamic scholar al-Shaykh al-Tusi says something illuminating in this regard. He states:

Among these verses, there is no inconsistency or contradiction. The first verse denotes that the Qur'an is not vulnerable to any inconsistency or contradiction in its verses. Accordingly, the verses are considered *muhkamat*. The second verse conveys the similarity of some verses with some of others. However, the third verse conveys that the meaning of some verses is comprehensible, and that of some other verses is not so. The meaning of these three verses is nothing except that which has been mentioned. Hence there remains no basis for sensing a contradiction.

Examples of Muhkamat and Mutashabihat:

Here it would be proper to give some examples of *muhkamat* and *mutashabihat* in order to illustrate their character. Here are some examples of the *muhkamat*:

اللَّهُ خَلَقَ كُلَّ شَيْءٍ...

God is the creator of every thing..., (39: 62)

... إِنَّ اللَّهَ عَلَى كُلِّ شَيْءٍ قَدِيرٌ ﴿٦٢﴾

Verily, God is powerful over everything. (2:20)

لَمْ يَكُنْ لَهُ كُفْلٌ وَلَمْ يُولَدْ ﴿٢٠﴾

He has not begotten, nor He has been begotten. (112:3)

... لَيْسَ كَمِثْلِهِ شَيْءٌ ...

... Nothing is like Him (42:11)

The meaning of the above verses is quite distinct and clear. They can be understood without any reflection. The following is an example of a *mutashabih* verse:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ ...

Divorced women shall wait by themselves for three quru' (2:228)

In the above example, the word *quru'* has two different meanings in Arabic. One meaning is menstruation (*haya*) and the other is purity from menses (*tuhr*). Because of this a kind of doubt has come about for jurisprudents "in understanding it. Some of them interpret it as 'purity', while others take it to mean 'menstruation.' In the following verse:

... أَوْ يَعْفوَا الَّذِي بِيَدِهِ عَقْدَةُ الزَّكَاجِ ...

...Or he makes remission in whose hand is the knot of marriage (2:237)

it is not clear whether the one who makes remission is the guardian or the husband, for it can mean either of them. In another example:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ ...

O believers, when you stand up to pray, wash your faces, and your hands up to (ila) the elbows (5:6)

it is not clear whether the word ?? is used in the sense of inclusion or in the sense of 'extreme limit' and whether the extremity is to be included, from the viewpoint of the rule of ablution, in the part of the hand to be washed or not. Furthermore, in the verse:

... فَلَمْ يَجِدُوا مَاءً فَتَيَمَّمُوا صَعِيدًا طَيِّبًا ...

...And if you can find no water, then have recourse to wholesome dust..., (4:43)

the meaning and significance of the word *said* is not clear. It can be understood to mean either the 'ground surface' or 'soil.' Also, in the case of the verse:

... فَأَمْسَحُوا بِوُجُوهِكُمْ وَأَيْدِيكُمْ ...

...And wipe your faces and your 'hands'..., (4:43)

it is unclear as to whether or not the word *aydi* (hands) indicates only the back of the palm, or includes the wrist and the forearm, or includes the forearm and the elbow, or the forearm together with the elbow and the upper arm.

In another verse: *أَوْ لَمَسْتُمُ النِّسَاءَ* (or if you have touched women [4:43]) the meaning and significance of the word *lams* (touch) is unclear as well. Does it mean touching by the hand or sexual intercourse?

There are many other examples, including some cited below:

... ثُمَّ اسْتَوَى عَلَى الْعَرْشِ ...

...Then He sat upon the Throne(7:54)

... وَبَقِيَ وَجْهُ رَبِّكَ ...

...Yet the Face of thy Lord abides(55:27)

... وَنَفَخْتُ فِيهِ مِنْ رُوحِي ...

...And I breathed in him (Adam) of My Spirit ... (15:29)

... يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ ...

...God's hand is above their hands ... (48:10)

... وَنَضَعُ الْمَوَازِينَ الْقِسْطَ لِيَوْمِ الْقِيَمَةِ ...

...And We shall set up the just balances for the Resurrection Day...(21:47)

وَجَاءَ رَبُّكَ وَالْمَلَكُ صَفًّا صَفًّا ﴿٨٩﴾

And thy Lord comes, and the angels rank on rank. (89:22)

وَمَكَرُوا وَمَكَرَ اللَّهُ ...

...And they devised, and God devised (3:54)

There is some ambiguity or the other in all the above verses. Their proper understanding requires a comprehensive and expert knowledge of the Islamic sources and Qur'anic concepts, necessitating in particular reference to the Ahl al-Dhikr, the Household of Revelation, about whom the Glorious Qur'an says

... فَسْئَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ ﴿٧﴾

... Question the People of the Remembrance, if you do not know. (21:7)

• The Hidden Meanings of Qur'anic Verses

Just as the Qur'an contains *mutashabihat* and *mujmalat*, it also contains hidden meanings. That is, besides the literal meanings of the words and their apparent, ordinary sense, other meanings and concepts underlie the same that are beyond the grasp of many. Just as the *mutashabihat* and *mujmalat* cannot be understood without reference to the Ma'sumun (A), the grasp of what lies beyond the apparent meaning of Qur'anic words, too, cannot be attained without reference to the Household of the Revelation.

Marhum `Allamah Majlisi, in his most precious book *Bihar al'anwar* (vol.92, p.78) has reported a hadith:

إِنَّ الْقُرْآنَ نَزَلَ عَلَى سَبْعَةِ أَحْرَافٍ لِكُلِّ آيَةٍ مِنْهَا ظَهْرٌ وَتَطْنٌ وَلِكُلِّ حَرْفٍ حَدٌّ وَنَظْلَعٌ .

Verily, the Qur'an came down on seven letters. Every one of its verses has an exoteric and esoteric aspect, and every one of its letters has a *hadd* (lit. limit) and *matla'* (lit. beginning).

In *Hilyat al- awliya'*, Abu Nu'aym has quoted the above hadith in the following manner:

إِنَّ الْقُرْآنَ نَزَلَ عَلَى سَبْعَةِ أَحْرَافٍ لِكُلِّ حَرْفٍ ظَهْرٌ وَتَطْنٌ وَكُلُّ آيَةٍ عِنْدَ عَلِيٍّ .

Verily, the Qur'an has come down on seven letters. Every one of its letters has an exoteric and esoteric aspect, and every verse is with 'Ali (A).

Al-Imam al-Sajjid (A) says:

كِتَابُ اللَّهِ عَزَّ وَجَلَّ عَلَى أَرْبَعَةِ أَشْيَاءَ ، عَلَى الْإِبَارَةِ ، وَالْإِشَارَةِ ، وَاللَّطَائِفِ ،
وَالْحَقَائِقِ ؛ فَالْإِبَارَةُ لِلْعَوَامِّ ، وَالْإِشَارَةُ لِلْخَوَاصِّ ، وَاللَّطَائِفُ لِلْأَوْلِيَاءِ ، وَالْحَقَائِقُ لِلْأَنْبِيَاءِ .

...The Book of God is constituted of four things: *`ibarah* (diction, text), *isharah* (indication), *lata'if* (subtleties) and *haqa'iq* (realities). The *`ibarah* is for the common people, *isharah* is for the elect, *lata'if* are for the awliya' and *haqa'iq* for the prophets. (*Bihar al-'anwar*, vol.92, p.20)

Al-Imam al-Baqir (A) says:

إِنَّ لِلْقُرْآنِ بَطْنًا وَلِبَطْنٍ بَطْنٌ ، وَلَهُ ظَهْرٌ وَلِلظَّهْرِ ظَهْرٌ ... وَلَيْسَ شَيْءٌ أَبْعَدَ مِنْ عَقُولِ الرِّجَالِ
مِنْ تَفْسِيرِ الْقُرْآنِ ، إِنَّ الْآيَةَ لَتَكُونُ أَوَّلَهَا فِي شَيْءٍ وَآخِرُهَا فِي شَيْءٍ وَلَهُوَ كَلَامٌ مُتَّصِلٌ يَنْصَرِفُ
عَلَى وَجْهِينِ .

The Qur'an has a *batn* (inward or esoteric aspect) and that *batn* (in turn) has a *batn*. And it has a *zahr* (outward or exoteric aspect) and the *zahr* has a *zahr* ... and there is nothing farther from the intellect of men than tafsir of the Qur'an. The beginning of an ayah may concern something and its end some other thing, and it is continuous speech that is susceptible to different interpretations. (*Bihar*, vol.92, p.95)

عَنْ زَيْدِ الشَّحَامِ قَالَ : دَخَلَ قَتَادَةُ بْنُ دَعَامَةَ عَلَى أَبِي جَعْفَرٍ عَلَيْهِ السَّلَامُ فَقَالَ : يَا قَتَادَةُ أَنْتَ
فَقِيهٌ أَهْلُ الْبَصْرَةِ ؟ فَقَالَ : هَكَذَا يَزْعُمُونَ ، فَقَالَ أَبُو جَعْفَرٍ عَلَيْهِ السَّلَامُ : يَعْلَمُ تَفْسِيرَهُ أَمْ
يَجْهَلِي ؟ قَالَ لَا يَعْلَمُ . إِلَى أَنْ قَالَ - يَا قَتَادَةُ إِنَّمَا يَعْرِفُ الْقُرْآنَ مَنْ حُوِطَ بِهِ .

Zayd al-Shahham reports: Qatadah ibn Da'amah came to Abu Ja'far (A). The Imam (A) asked him, "Are you the faqih of the people of Basrah?" "That is what they say," replied Qatadah. Abu Ja'far (A) said, "I heard that you expound the Qur'an"(the tradition goes on until where the Imam says to Qatadah). "Woe to you, O Qatadah! Only those to whom the Qur'an has been addressed understand it." (*Furu' al-Kafi*, vol.8, p.312)

Anyhow, it is definite that one cannot understand a part of Qur'anic meanings and Islamic teachings without reference to the *Awsiya'* of the Prophet (S). No doubt, those who feel it to be unnecessary are bound to fall into error in regard to the *mutashabihat* of the Qur'an, to the extent that instead of referring the *mutashabihat* to the *muhkamat* they may construe the *muhkamat* in their minds as *mutashabihat*. This has led to deviations in the doctrinal sphere, leading to belief in anthropomorphism (*tashbih*), determinism (*jabr*), and absence of the necessity of Divine Justice, not to speak of the adverse effects on deduction of the laws of the Shari'ah and its practical rules and the resolution of social problems.

- **The Qur'an and Khabar al-Wahid:**

One of the controversial issues relating to inference of *ahkam* from the Qur'an is that of the legitimacy of limiting the jurisdiction (*takhsis*) of the Qur'an's general statements (*`amm*) by *khabar al-wahid* (a *non mutawdtir* tradition). Difference of opinion exists in this regard among Islamic scholars. Some consider such a *takhsis* permissible and others regard it as impermissible. Of those who favour it, some have put forward the argument that if the *hujjiyyah* (authority) of *khabar al-wahid* can be substantiated by definite proofs, its use for the *takhsis* of the Qur'an's general statements is permissible. It must be added that a majority of Shiite `ulama' believe in the permissibility of such *takhsis*. Some, like `Isa ibn Aban, believe that if a certain general statement of the Book has been limited by a valid proof (*dalil qati*) other than a *khabar al-wahid*, the latter's use for the same purpose becomes permissible. Some others, like al-Karkhi, have permitted it in the particular case where the Book's *`amm* has been restricted by a separate proof (*dalil munfasil*).

Finally, some, like Qadi Abu Bakr, have refrained from expressing any opinion at all in this connection.

However, those who believe in the impermissibility of such *takhsis* (even when the *khabar al-wahid* is *sahih* and reliable), who belong to Ahl al-Sunnah, have advanced arguments in support of their view. These arguments are briefly stated and evaluated below.

Arguments Against the Permissibility of the Takhsis

1. Some have said that the Qur'an enjoys definite authenticity, i.e. it is *qat'i al-sudur*, whereas the authenticity of *khabar al-wahid* is not free from doubt because of probability of error on the narrator's part. That is, it is *zanni al-sudur*. And it is not reasonable, therefore, that a *mukallaf* person should forego something of definite authenticity for something whose authenticity is only probable.

In answer we might say that the Qur'an is doubtlessly of certain authenticity; yet it is uncertain (*zanni*) from the viewpoint of its indicating the real intent of the Lawgiver, because one cannot be certain of having completely understood the Lawgiver's intent from his understanding of the literal meaning of a verse or its general import and be certain that the general import is not subject to any qualification or restriction.

Furthermore, we should take into consideration the occurrence in the Qur'an of: (1) *muhkam* and *mutashabih*, (2) *mutlaq* and *muqayyad*, (3) *nasikh* and *mansukh*, and (4) *mujmal* and *mubayyin*, etc. On the other hand, although *khabar al-wahid* is *zanni al-sudur*, those who uphold the *hujjiyyah* of *khabar al-wahid* do not consider every such tradition as authentic and reliable. They have laid down certain requirements which a *khabar al-wahid* should fulfil in order to be considered reliable.

Accordingly, in the event a *khabar al-wahid* that has already been proved to be reliable and valid conflicts with a general rule (*`amm*) deducible from the Book's literal meanings, there are two alternatives in front of us:

(i) Setting aside and ignoring the *khavar al-wahid*, despite its fulfilling the criteria of validity, and acting in accordance with the general rule understandable from the Qur'an's literal meanings.

(ii) Adopting the valid *khavar al-wahid* as well as acting upon the verse by limiting the Book's general rule by applying the reliable *khavar al-wahid*. In this case we have neither gone against the *khavar al-wahid* nor set aside the Qur'anic verse.

The scholars have selected the second alternative because they believe that the *khavar al-wahid* is indicative of the absence of a general intent.

In other words, since on the one hand the Qur'an is *zanni al-dalalah* from the viewpoint of one's subjective understanding and inference, and on the other hand the *khavar al-wahid* is *zanni al-sudur*, it is inevitable that we should give precedence to one of these two. In the event the *khavar al-wahid* satisfies the criteria of validity, the same fact would justify giving priority to it over the presumed general import of the Qur'anic verse, and this will not give rise to any difficulty. However, when we act in a contrary fashion and give precedence to the Book's *`amm* over the *khavar al-wahid*, the question will arise as to on what basis precedence is being given to something which is *zanni al-dalalah* over something which is *zanni al-sanad* but of proved reliability. This is a question to which a satisfactory answer cannot be given.

2. Some have pointed out that there are traditions relating to the resolution of conflict between traditions (*'ilaj al-ta'arud bayn al-akhbar*). According to these traditions if the content of one of two contradictory narrations happens to agree with the Qur'an, then that narration should be accepted and the other one should be discarded.

The aforementioned traditions doubtlessly apply to any conflict between a *khavar al-wahid* and the Book's general statement as well. Those traditions make it all the more clear and definite that the *khavar* should be discarded and the Qur'an's general statement should be acted upon, for a tradition can never be construed as strong evidence to the extent of opposing the Book.

In reply we may say that without denying the above-mentioned traditions and their applicability in the appropriate context, it is necessary first to identify the area of their applicability. It is to be seen whether or not they are relevant to the topic of our discussion.

In fact, the above traditions are not relevant to the subject of our present discussion. This is because contradiction between the Book and a hadith can possibly exist only when the two are mutually exclusive, blocking any possibility of a reconciliation, so that acting upon or believing in both would constitute a contradiction.

In other words, in some cases there may be a conflict between a tradition and the essential import of the Qur'anic text. In other instances there may be an incompatibility between a tradition and the general import of the Qur'anic text. In the latter case, a reconciliation is possible, and the tradition can be regarded as one that

elucidates the Qur'anic text. This will not constitute a case of contradiction between the tradition and the Qur'anic verse.

3. Some have argued that those who favour the permissibility of the *takhsis* of a Qur'anic *`amm* through a *khavar al-wahid* are permitting a special kind of *naskh* (abrogation), for *naskh* is also a kind of *takhsis*. If the possibility of *naskh* on the basis of *khavar al-wahid* is not acceptable, then the protagonists of *takhsis* ought to disallow the *takhsis* of the Qur'an by *khavar al-wahid*.

In reply, we may point out that, firstly, *naskh* means the restriction of the jurisdiction of a law in regard to time, whereas *takhsis* is its limitation in regard to individual cases.

Secondly, the impermissibility of *naskh* through *khavar al-wahid* is based on *ijma`* (consensus). There is no such consensus regarding the impermissibility of *takhsis* through *khavar al-wahid*.

Thirdly, *naskh* is not something that can be proven or substantiated by a *khavar al-wahid*, for the Qur'anic verses expound the principles and foundations of the Divine *ahkam* and, as such, they ought to enjoy especial stability and security. From this point of view, should any *naskh* occur therein, the importance of the matter requires that the *naskh* be widely reflected and reported by several narrators through *mutawatir* traditions.

Qur'anic Exegesis Through Khavar al-Wahid:

Having made a cursory appraisal of the topic of *takhsis* through *khavar al-wahid*, that of interpreting the Qur'an through *khavar al-wahid* too may be discussed here. Some believe that such *tafsir* is not permissible. They reason that the authority and reliability of *khavar al-wahid* is confined to the deduction of the practical laws of the Shari'ah. But whenever a *khavar al-wahid* concerns doctrinal issues or pertains to the historical events and anecdotes (*qisas*) mentioned in the Qur'an, or concerns matter of social or moral significance, the grounds justifying reliance on *khavar al-wahid* are not valid in such cases.

Since many Qur'anic verses pertain to issues other than those concerning the *ahkam*, many traditions relating to *tafsir* pertain to such issues. Accordingly, it can be concluded that, on the whole, Qur'anic exegesis through *khavar al-wahid* is not lawful, except in the case of *Ayat al-'ahkam*, which constitute nearly one-sixth of all the verses.

In contrast, many of those who accept the *hujjiyyah* of *khavar al-wahid* also accept its general applicability for the purpose of interpreting the Qur'an as well. In this regard, they do not make a distinction between *ayat al-'ahkam* and other verses. According to their reasoning, the practice of rational people (*sirat al-'uqala*) can be the best testimony for the support of this viewpoint. This is because in the same way as rational people accept definite proofs and *mutawatir* reports, they also accept reliable proofs creating probability (*dalil zanni*). Of course, if a *khavar al-wahid* is not reliable, it cannot be used for interpreting the Qur'an. This is because, firstly, following a *dalil zanni* of an unreliable kind is not permissible. Secondly, to ascribe

something to God without any justification is tantamount to ascribing a falsehood to Him, which is reckoned as an unforgivable sin. Thirdly, there are many ahadith which forbid tafsir based on subjective opinion (*ray*), and those who indulge in it have been threatened with chastisement.

In view of the foregoing, Qur'anic tafsir is lawful only when it is carried out with reference to traditions which are *mutawatir*, or in accordance with a definite proof or a *khbar al-wahid* of established reliability. Qur'anic exegesis through unreliable traditions amounts to interpreting it in accordance with one's subjective judgement and ascribing a falsehood to God, and this is prohibited. The point around which all these judgements revolve is the essential need for safeguarding the Qur'an as the source of all religious knowledge and teachings. Just as the Qur'an has sanctity and credibility, its exposition and explanation too should bear a seal of reliability.

- **Role of Exegesis in Legal Deduction:**

No doubt, the difference of viewpoint regarding Qur'anic tafsir has a significant effect upon the process of a jurist's deduction of *ahkam* from the Qur'an. Hence a *mujtahid* cannot afford to be unfamiliar, in the course of his work, with tafsir and its historical development (to the extent that it has a bearing on legal deduction).

Researchers in the field of Qur'anic studies have identified three separate areas for the sake of classifying and systematizing these studies:

1. *ʿIlm al-tajwid*, dealing with phonetics and the pronunciation of consonants and vowels.
2. *ʿIlm al-qira'ah*; dealing with words, their syllabication and composition and the techniques of recitation.
3. *ʿIlm al-tafsir*, dealing with the meanings of words, the historical circumstances of the revelation of verses (*asbab al-nuzul*), etc. Discussions regarding *nasikh* and *mansukh*, and *muhkam* and *mutashabih* also relate to *ʿilm al-tafsir*. Researchers in Qur'anic sciences have compiled various books and treatises in this field. However, for reasons of space, we shall refrain from mentioning them here.

The Mode of Revelation:

The temporal aspect of the Qur'an's revelation, too, has received attention among the topics of discussion pertaining to Qur'anic studies. However, it is difficult to visualize any effect of the aforesaid topic on the process of legal inference from the Qur'an.

Some are of the opinion that the Qur'an was revealed all at once and completely, although the Holy Prophet recited the same in parts in different contexts. Some others believe that the Qur'an was gradually revealed over a period of time, and its revelation, being in the temporal order of its communication, was also gradual.

Some of the verses, like those of the *Surat al-Qadr*, apparently confirm the first view, and some others, like verse 106 of *Surat al-Isra*; are compatible with the theory of gradual revelation. Be that as it may, this question does not significantly affect *ijtihad* and the understanding of the Qur'an, for it is an established fact that the Prophet (S) conveyed the Qur'anic verses at different times and on various occasions and recited them to the Muslims at Makkah and Madinah over a period of time. The time, place and circumstances of revelation, however, do help in the process of understanding the Qur'in. But the question as to whether or not the verses were revealed at one time and completely or gradually and in parts does not make any difference. Accordingly, we refrain from further discussion in this regard.

Makki and Madani Verses:

The division of the Qur'anic verses into Makki and Madani is also a topic of discussion in the Qur'anic studies. It does considerably affect the understanding of the Qur'an and the Lawgiver's intent, and consequently the deduction of *ahkam*. Experts and researchers have considered twenty of the Qur'anic *surahs* as Madani. Opinions differ in respect of twelve *surahs* and the remaining *surahs* have been reckoned as Makki.

Some investigators have sought for the distinctive characteristics of Makki and Madani *surahs*. A close study of these qualities will indicate the historical order of the exposition of different ethical, spiritual, doctrinal and ritual issues. Al-'Allamah al-Suyuti has specified some special features of Makki *surahs*, as follows:

1. The Makki *surahs* contain verses that mention *sajdah* (prostration).
2. The name 'Makkah' occurs in some of them.
3. The phrase يَا أَيُّهَا النَّاسُ 'O people,' is used therein to address the Muslims in general.
4. The stories of the prophets and of past peoples, as well as the episode of Iblis (with the exception of *Surat al-Baqarah*), are narrated therein.
5. The *surahs* begin with what are called *al-huruf al-muqatta'ah* such as اءم etc.

The presence of these characteristics indicates that a *surah* is Makkan. There are, of course, other characteristics of Makkan *surahs* that have been pointed out, such as the shortness of the *surahs* and verses, powerful phrases and expressions, reference to doctrinal issues, the recurring oaths, arguments addressed to the idolaters and so on. But these characteristics are not generally applicable, though they may be of assistance to the researcher in pursuit of a more definite viewpoint.

The Different Readings:

Another subject relevant to the study of the Qur'an and legal deduction is the difference of readings. There are three matters that need to be studied in this regard.

- (a) The reasons for the emergence of the various readings.
- (b) The identification of reliable and more common readings, both from Sunni and Imami viewpoints.
- (c) The effect of the difference of readings on the understanding of the verses and the Lawgiver's intent and, as a result, on the deduction of *ahkam*.

a. The Reason Behind Variant Readings:

At the outset when the Qur'an was collected and compiled, the scribes and copyists wrote the text without using any diacritical points or marks. They relied on their familiarity with the text for correct reading. However, with the passage of time the readers of the Qur'an faced difficulties in this respect and they came to read and understand the verses in ways that differed slightly from one another.

The emergence of this difference compelled some experts on the recitation of the Qur'an to take steps to specify the correct manner of reading. Seven of such experts came to acquire fame. They were:

1. *Ibn `Amir*: Abu `Imran `Abd Allah ibn `Amir al-Dimashqi (8-118/6269-736) was the expert of *qira'ah* among the people of Syria. It is commonly said of him that he had learnt it under al Mughirah ibn Abi Shihab.

2. *Ibn Kathir al-Makki*: `Abd Allah ibn Kathir ibn `Abd Allah ibn Zadan ibn Firuzan ibn Hurmuz (45-120/664-737). According to a tradition, he had learnt *qira'ah* from `Abd Allah ibn Sa'ib al-Makhzumi. But that which is widely known is that he learnt it from Mujahid.

3. *`Asim al-Kufi*: Abu Baler `Aim ibn Abi al-Najud al-'Asadi (d. 127 or 128/745 or 746), according to various narrations that have come down from him, had learnt *qira'ah* from Abu `Abd al-Rahman alSalami, who had learnt it from 'Ali ibn Abi Talib (A).

4. *Abu `Amr al-Basri*: Zabban ibn `Ala' ibn `Amman al-Mazini (68r-154/687-770) was from Basrah and was an Iranian according to one tradition. He had learnt *qira'ah* in Makkah, Madinah, Kufah and Basrah. He was the most eminent *qari* of his period.

5. *Hamzah al-Kufi*: Abu `Ammar Hamzah ibn Habib ibn `Umarah ibn Isma'il (80-156/699-772) belonged to the tribe of Tamim and was a Kufan. According to the author of *al Kifayat al-kubra wa al-taysir*, he had learnt *qira'ah* from Muhammad ibn `Abd al-Rahman and Talhah ibn Mu'arrif. According to the book *al Mustanir*, he had learnt it from al 'Imam al-Sadiq (A).

According to other traditions he had learnt it from al-Mughirah ibn Muqsim, al-Mansur, Layth ibn Abi Sulaym, Sulayman ibn al-'A'mash, and Humran ibn A'yan.

6. *Nafil al-Madani*: Nafi' ibn `Abd al-Rahman ibn Abi Nu'aym (d. 169/785), an Iranian from Isfahan, had learnt *qira'ah* from the tabi'i scholars of Madinah.

7. *Al-Kisa'i*: Abu al-Hasan `Ali ibn Hamzah ibn `Abd Allah ibn Behman ibn Firuz (d. 189/804), according to Ibn al-Jazari, had acquired the leadership of the *qurra'* of Kufah after Hamzah. He had heard *qira'ah* from al-Imam al-Sadiq (A), al-`Azrami, and Sulayman ibn Arqam, and learnt it from Hamzah, Muhammad ibn `Abd al-Rahman and `Isa ibn `Umar.

Later, other names that were added to these were the following:

1. Khalaf ibn Hisham: Abu Muhammad Khalaf ibn Hisham ibn Taghlib al-Bazzaz (150-229/767-843). He was from Baghdad and is said to have a very powerful memory. Having memorized the Qur'an at the age of 10, he began his study of *qira'ah* at 13.

2. Yaqub ibn Ishaq: Abu Muhammad Ya'qub ibn Ishaq (d. 205/ 820) belonged to Basrah. He said that he had learnt the entire *qira'ah* in a year and a half.

3. Qa'qa: Abu Ja'far Yazid ibn Qa'qa` al-Makhzumi of Madinah was the leading *qari'* of Madinah. He had learnt it from `Abd Allah ibn `Ayyash and `Abd Allah ibn `Abbas.

This was a brief account of the ten *qurra* ; to whom four more names were subsequently added: al-Hasan al-Basri, Ibn Mahid, Yahya ibn Mubarak al-Yazdi and Muhammad ibn Ahmad al-Shanbudhi. These came to be known as "the fourteen *qurra'*". For further details about them one may refer to these books: *Tabaqat al-qura* ; *Tahdhib al-Tahdhib*, *Lisan al-mizan*, and *Tibat al-nashr fi al-qira'at al-`ashr*.

A group of the Prophet's Companions possessed special expertise and fame in the *qira'ah* of the Qur'an. Having learnt it from the Prophet (S) they endeavoured to teach it to others. Among the Tabi'un those who had learnt it from the Sahabah and are well-known are:

`Ubayd ibn `Umayr, `Ala' ibn Abi Riyah, Tawus, Mujahid, Ibn Abi Malkiyyah in Makkah.

Said ibn Musayyib, `Urwah, Salim, `Umar ibn `Abd al-`Aziz, Sulayman ibn Yasar, `Ata' ibn Yasar, Mu'adh ibn al-Harith, `Abd alRahmAn ibn Hurmuz, Ibn Shihab al-Zuhri, Muslim ibn Jundab and Zayd ibn Adam in Madinah.

`Alqamah, al-'Aswad, Masruq, `Ubaydah, `Amr ibn Shurahbil, alHarith ibn Qays, Rabi` ibn Khashim, `Amr ibn Maymun, Abu `Abd alAahman al-Salami, and Zirr ibn Hubaysh in Kufah.

Abu `Aliyah, Abu Raja', Abu al-'Aswad al-Du'ali, Nasr ibn `,&4im, and Yahya ibn Ya`mar in Basrah.

Al-Mughirah ibn Abi Shihab al-Makhzumi and Khalifah ibn Sa'd in Syria.

b. The Reliable Readings:

Now it should be seen to what extent the above-mentioned readings are to be relied upon. Some scholars have divided the *qira'at* into three kinds: *mutawatir*, *ahad* and *shadhdh*. According to this division, the *qira'at* of the seven *qurra'* have been considered *mutawatir*, the *qira'at* of the other three as *ahad*, and those of the next four as *shadhdh*. Some, like Jalal al-Din al-Balqini, have accepted this classification, while al-Suyuti considers the *tawatur* of the seven *qurra'* as doubtful for the following reasons.

1. Because they have been transmitted through *akhbar ahad*.
2. Because some of the seven *qurra'* were not reliable (*muwaththaq*) as narrators.
3. Because these *qira'at* depend on subjective judgement (*ray*) and personal *ijtihad* of the *qurra'*. Had these been received through *tawatur* from the Messenger of Allah (S), there would have been no need of a proof to establish their authenticity.
4. Because some scholars have rejected some instances in the readings of the seven *qurra'*.

According to al-Zarakshi in *al-Burhan fi 'ulum al-Qur'an* (i, 318), those who believe in these seven *qira'at* being *mutawatir* do so on the following bases:

- a. They claim *ijma'* on the affirmation of their *tawatur*.
- b. They furnish evidence in favour of their authenticity on the basis of the care exercised by the Sahabah and Tabi'un in the memorization and recitation of the Qur'an.
- c. They argue that not to regard these *qira'at* as *mutawatir* necessarily leads to regarding the Qur'an also as non-*mutawatir*.

That which is significant in this relation is that believers in the *tawatur* of the seven *qira'at* put a special kind of reliance upon them, to the extent of considering them as permissible bases for deduction of *ahkam*. Those who deny that such a *tawatur* existed do not consider such a reliance as legitimate. 'Abd al-Rahman al-Suyuti in his work *al-Itqan fi 'ulum al-Qur'an* (i, 13.) states that Ibn al-Jazari has divided the *qira'at* into six categories.

1. The readings which are *mutawatir*, having been narrated by so many different narrators that any possibility of a conspiracy to establish something false as true is not imaginable.
2. The *mashhur* readings whose narrators are *'adil* although their number does not reach the extent of *tawatur*.
3. The readings whose narrators are *'adil* but are either different from the writing of the 'Uthmani codices or are not in harmony with the rules of Arabic grammar. This

kind of reading should not be used in reciting the Qur'an, in prayers or something else.

4. The *shadhdh* readings, whose chains of narrators are not *sahih*. An example of it is the reading of Ibn Samigh` of verse 92 of *Surat Yunus*, in which **فَالْيَوْمَ تُعْجِبُكَ يَدَيَّكَ** is read with a *ha'* instead of *jim* and **لَتَكُونَنَّ يَدَايُكَ خَلْقَكَ** is read with *fathah* on the *lam* of **خَلْقَكَ**. The reading of Hafs is **فَالْيَوْمَ تُعْجِبُكَ يَدَايُكَ لَتَكُونَنَّ يَدَايُكَ خَلْقَكَ**.

5. The reading which is *maj`ul* or *mawdu`* (fabricated) is one which is ascribed to its author and has no other basis. An instance of it are the reading mentioned by Abu al-Fadl Muhammad ibn Ja'far al Khuza'i (d. 408/1017) in his book *al Muntaha* that he has attributed to Abu Hanifah.

One of such readings is that of the verse **إِنَّمَا يَخْشَى اللَّهَ مِنْ عِبَادِهِ الْعُلَمَاءُ** (35:28) with *raf`* on '*Allah*' and *nasb* on *al-`ulama'*.

6. Like the *mudraj hadith*, this is a reading in which an expository word or phrase is added to the accepted reading of the text. An instance of this kind is the *qira'ah* of Sa'd ibn Abi Waqqas of 4:12 as **وَلَهُ أَمْرٌ أَوْخَتْ مِنْ أَمْرٍ** with the addition **مِنْ أَمْرٍ**. Another instance of it is the *qira'ah* of verse 2:198 as **لَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَبْتَغُوا فَضْلًا مِنْ رَبِّكُمْ فِي مَوَاسِمِ الْحَجِّ** with the addition of the phrase **فِي مَوَاسِمِ الْحَجِّ**.

For more details in this regard one may refer to these books: *al-Taysir dal-qira'at al-sab`* by al-Dani, *al-Shatibiyyah* by Abu Muhammad al-Qasim al-Shatibi, and *Tibat al-nashr fi al-qira'at al-`ashr* by Ibn al-Jazari.

c. The Effect of the Readings on Legal Deduction:

The difference of readings can influence one's understanding of the doctrinal and ideological issues from the Qur'an as well as effect the deduction of practical *ahkam*. For instance, in the verse **إِنَّمَا يَخْشَى اللَّهَ مِنْ عِبَادِهِ الْعُلَمَاءُ** if the word '*Allah*' be read as *marfu`* (as **اللَّهُ**) and *al-`ulama'* as *mansub* (**الْعُلَمَاءُ**), the meaning becomes something which is not in harmony with Islamic doctrine and ideology (for then if it means, "God is apprehensive of His knowledgeable servants"). Rather, it would then be in accordance with the belief of some non-Islamic modes of thought according to which the prohibited tree in Paradise was the tree of knowledge and that God expelled Adam from Paradise because of his inclination for knowledge. But if the verse is read with *nasb* on "*Allah*" and *raf`* on *al-`Ulama'* the meaning derived is the opposite of the above one and in harmony with the other Qur'anic verses that constantly call man to knowledge, understanding, contemplation and intellection, and consider the basis of man's obedience and servitude to God to be his intellect and consciousness.

Although such differences of reading are few, the knowledge of them and complete familiarity with them is essential for someone who wants to acquire expert

understanding of the Qur'an, both the verses relating to *ahkam* and other verses besides them.

For instance, in verse 222 of *Surat al-Baqarah*, God Almighty says:

فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ وَلَا تَقْرَبُوهُنَّ حَتَّى يَطْهُرْنَ ...
.....Go apart from women during the monthly course, and do not approach them till they are clean. (2: 222)

There is a difference of reading regarding the word *يَطْهُرْنَ*, some read it as *يَطْهُرْنَ* and others as *يَطْهُرْنَ*. If read as *يَطْهُرْنَ* it means that it is permissible to have intercourse with a woman after her menses have ceased but before she has taken a ritual bath. If read as *يَطْهُرْنَ* means that intercourse with her is not permissible before she takes the bath. *يَطْهُرْنَ* means '(until) they become clean' and *يَطْهُرْنَ* means '(until) they clean', i.e. through a ritual bath.

A group of jurists belonging to different schools of Islamic law, including some eminent Shi'i jurists, Abu Hanifah and his followers, have given their *faatwa* according to the first reading. Another group, including Malik, al-Shafi'i and Ahmad ibn Hanbal as well as some Shi'i jurists have given fatwa in accordance with the second reading.

By the way, a third viewpoint is found among the Sunnis according to which '*taharah*' in the verse is taken to mean washing clean of the bloody locale, not bath. Among them are 'Abd al-Rahman al-'Awza'i, the founder of the Awza'i school of law and Ibn Hazm, the second ranking leader of the Zahiri school.

The reason for the divergence of views between the jurists is due to the fact that the word *tuhr* is used in all the three meanings in the Arabic tongue.

• The Comprehensive Character of the Qur'an:

After this brief outline of legal studies relating to the Qur'an, it is necessary to point out that the terms '*fiqh* ; '*faqahah*' and '*faqih*' in the parlance current in Islamic society convey a significance related exclusively to matters of worship and ritual. As a result of it the task of *ijtihad* has practically been confined to about 500 verses, or nearly onesixth, of the Qur'an. Accordingly, the rest of the Qur'anic verses have not been studied sufficiently from the viewpoint of *ijtihad*.

But it is a fact that the *fiqh*, *faqahah* and *tafaqquh* which are mentioned in the Qur'an and many traditions as an activity possessing sublime value are not what these terms have come to mean in our current vocabulary. Rather, the meaning that they signify today may be considered only a part of the real meaning of '*fiqh*' and '*faqahah*' because the spirit of Islam is asocial and an all-embracing one. The movement of the prophets has been a comprehensive and an all-embracing movement which, for the purpose of developing spirituality, devotion and observance of divine laws, has placed the reform of human society, the purification and education of human beings,

their moral development and the implementation of social justice at the head of its programme.

Fiqh or *tafaqquh* includes the recognition and understanding of all the values that the Messenger of Allah (S) has brought in his capacity as the messenger and communicator of the revelation. Evidently, that which the Prophet (S) has brought meets all the real needs of man and those of his spiritual and material life. The Qur'an, obviously, occupies the foremost and the most fundamental position in the message. Accordingly, attention to a part of its contents and neglect of its other parts amounts to deviation from the straight path, which is condemned by the Qur'an, which declares:

وَيَقُولُونَ نُوْمِنُ بِبَعْضِ وَنَكْفُرُ بِبَعْضٍ وَيُرِيدُونَ أَن يَتَّخِذُوا بَيْنَ ذَلِكَ سَبِيلًا ﴿١٥٠﴾
أُولَٰئِكَ هُمُ الْكَافِرُونَ حَقًّا ...

Those who say, 'We believe in part, and disbelieve in part,' desiring to take between this and that a way - those in truth are the unbelievers. (4:150-151).

And also says:

... وَأَحْذَرُهُمْ أَن يَفْتِنُوكَ عَنْ بَعْضِ مَا أُنْزِلَ إِلَيْكَ ...

And (O Prophet) beware of them lest they tempt thee away from any of what God has sent down to thee. (5:49).

To limit *fiqh* to the *ayat al-'ahkam*, and that too to a section of them related to prayer, fasting, hajj and such matters of ritual as *wudu'*, *tayammum* and so on, is equivalent to the exercise of a selective, discriminatory approach in relation to the Divine *8yat* and *ahkam* - something which has taken place unwittingly and unconsciously. The same thing has been responsible for the decline of the Muslim society after the first centuries of rising glory. This is because the Qur'an and Sunnah that guarantee the flourishing life of human society are the *whole* of the Qur'an and the Sunnah in their uncompromised totality. If this totality is ignored or neglected, that guarantee too shall cease to operate.

If we observe that the magnificent Prophet of Islam (S) was able to mould a primitive and unlettered people within half a century into a civilized, progressive and exemplary society with a system of political and social life, law, morality and doctrine superior to all the other systems that existed in the world of those days, that was because he presented a perfect and multifaceted totality to the Muslims. This totality in all its dimensions was understood, absorbed and put into practice by genuine Muslims.

And if we observe that the same Islam lost its effectiveness in the social arena after the passage of some centuries, that was because those who were entrusted with the duty to safeguard its intellectual and ideological frontiers had come to forget its

totality and comprehensiveness, thus depriving Islam of its real power and efficiency. The biggest factor in this crisis was the existence of the unwholesome dominance of the tyrannical and despotic regimes that had captured the leadership of Islamic society in the name of the Prophet's *khilafah* and produced rulers who in the impious state of ignorance and intoxication stood up in the *mihrab* to lead Muslims in congregational prayers. These rulers promoted mercenary scholars and pseudo-fuqaha' devoid of *taqwa* who served their interest and sent into exile the committed, aware and authentic fuqaha' who strove to awaken the people or often subjected them to martyrdom.

Elsewhere, while discussing the ninefold eras of the development of fiqh that followed the period of legislation, the sevenfold eras in the history of *ijtihad*, and the sixfold eras in respect of the exposition of fiqh, we have shown the real faces of these pseudo-fuqaha' and pseudomujtahids, pointing out their nefarious views in every period, and revealed the havoc that has been wrought on the body of fiqh and *faqahah* by these mercenaries in the garb of fuqaha' in their pursuit of worldly gain. The harm done by them to fiqh was so serious that they made fiqh, with its spring of *ijtihad* and all its effusive vigour and dynamism, lose its relevance and withdraw into isolation in front of the expansion of human knowledge and civilization, to the extent that the people of the world came to believe that Islamic law has no solution to the multifaceted problems of life.

Although in the early eras there did exist great fuqaha' and pious and aware *mujtahidun*, but none of them had the free hand - which the *wali-e faqih* does at the present - to take punitive measures against such elements. But that which is certain is that they have been and shall remain the object of history's censure. This is because they have made the shining face of progressive Islamic fiqh to appear dark and clouded and have distorted its features.

In any case, if we really intend to revive authentic fiqh and true *faqahah* and if we have concern for the genuine life of Islam and the Islamic Ummah and revival of the past glory and sublimity of the word of *tawhid*, we should direct our understanding to the totality of the human and the comprehensiveness of Islam in all its dimensions: devotional, economic, political, legal and cultural in the spheres of social and individual life. Only then can we use this invaluable source which is a great Divine trust and the *al-thaql al-'akbar*, for the benefit of humanity in the contemporary era.

Section 3

Factors Responsible for Emergence of the Practice of Ra'y

• **Factors Responsible for Emergence of the Practice of Ra'y**

At the most sensitive juncture in the history of Islam when the Muhammadan Shari'ah was in the course of expansion, the process of *wahy* (revelation) was terminated and with it the epoch of *tashri'* (legislation). The losing of the era of *tashri'* and the demise of the Prophet (S) coincided with the emergence of diverse changes in the world of Islam. These changes were the result of the spread of Islam in new territories and alien soils, followed by new situations and problems each one of which required an answer.

The passage of time did not offer any solution to the problems; rather it added to their intricacy and their number as well. For, with time, sometimes even the problems that had received exposition during the period of *tashri'* were lost in the mazes of ambiguity arising from different narrations and *riwayat* (traditions), thus giving rise to new obstacles in the way of determining the laws (*ahkam*).

At this point, while the Islamic Ummah had no access to *wahy* and had lost the biggest source towards which they looked for the solution of their problems, much greater problems cropped up, and this vacuum was felt more acutely than ever before. Two different outlooks emerged in order to confront this difficult situation in the newly-born Islamic society:

(a) The point of view that the authority for determining the Divine *ahkam* and expounding the Quranic meanings belonged to the House of the Prophet (S) after him, and that they alone, in accordance with the Prophet's express decree, should be referred to for solution of the problems and determination of the *ahkam* of the Almighty. Those who believed in this outlook did not face any insoluble problem in the wake of the cessation of *wahy*, as they knew well that their duty was to refer to the *Ma'sumun* (A). [\[1\]](#)

(b) The view that there was no specified person after the Prophet to interpret and determine the Divine commandments. Its proponents maintained that the Book and the Sunnah of the Prophet (S) were the only sources from which the *ahkam* regarding the new legal issues could be derived.

Those who subscribed to this view later to be known as "Ahl al Sunnah" turned to solve their problems by referring to the Quran and the Sunnah; but they soon realized that it is not at all an easy task to extract all the *ahkam* of the Shari'ah from express Quranic texts (*nusus*) and the Sunnah of the Prophet, and that they are not adequate to answer many of the new issues.

This led the Ahl al-Sunnah into finding other ways and sources of *ijtihad* and to put their trust in the practice of *ray* and personal judgement and to rely on such sources for basing legal conjectures as *qiyas* (analogy), *istihsan*, *masalih mursalah*, *istislah*,

sadd al-dhara'i, *fath aldhara'i*; *madhhab al-sahabi*, *shari'at al-salaf*, *`urf*, *istidlal* and so on as *hujjah* (possessing legal validity).

This was a sketchy description of what we shall discuss in detail below.

- **The Factors Which Generated New, Contingent Issues**

The emergence of new issues after the termination of the period of *tashri'* depended upon various factors:

1. Natural and ordinary factors related to the day-to-day life of the Muslims.
2. Exceptional or extraordinary factors, like wars.
3. Islamic conquests and victories extended Islamic influence in Asia, Africa and some European regions, and, in this way, diverse cultural traditions stepped into the vast domain of Islam. On account of this, new requirements and needs were felt in the same proportion, and Islamic fiqh was bound to answer all of them, in addition to presenting appropriate *ahkam* which could suit different environmental and social conditions.

All these factors put strains on *ijtihad* and made deduction of the laws of Shari'ah more difficult for the Sunni community. This caused the *Ahl al-Ray*-those who believed in the practice of *ray*- the Iraqi school of jurisprudence, whose founder was Abu Hanifah al-Nu'man ibn Thabit (80-150/699-767), and a large group of Sunni fuqaha' to reach the conclusion that the express texts (*nusus*) of the Quran and the Sunnah of the Prophet (S) alone, being limited, cannot provide an answer to the new issues and problems, while the issues of daily life are countless and ever-increasing. Accordingly, they were forced to rely on an *ijtihad* based on *ray* and other such conjectural instruments that were devised before him. This topic will be discussed in the article "*Sayr-e ta'rikhi-ye qiyas dar manabi-ye ijtihad*" (the Historical development of Qiyas as a Source of Ijtihad).

- **The Shi'i Encounter With New Problems**

In the same period, the Shi'ah, who formed a section of the Islamic society, also encountered the new problems that faced the society. They also considered it essential to find solutions to the new problems. But due to their particular point of view, they never came across the above-mentioned strains when facing diverse situations, because, during the days of accessibility to an Imam (A) they went to him for solving their problems, and during the days when they could not find an access to him or during his occultation they could solve the problems of daily life by means of the *usul* and by using them in deriving the *ahkam* of the Shari'ah. They never felt the need for having recourse to *ijtihad* by *ray* and depending upon conjectural legal sources.

According to Ahl al-Sunnah, in instances where the *nass* of the Quran and the Sunnah was not available, the *mujtahid* can legislate laws by exerting his own personal judgement and *ray* and set them forth as divine laws. But according to the

Shi'i point of view, in Islamic law a *mujtahid* has no right to legislate laws regarding new situations and issues, as there is no need for a *mujtahid* to resort to *tashri`* in presence of the general juristic principles which already exist.

- **Different Points of View Among Ahl al-Sunnah**

It is essential to mention this point here that the practice of *ray* was not accepted by the Sunni community without any resistance, and the different Sunni sects were not uniform in this regard. The Ahl al-Hadith (the Hijaz school of fiqh), whose founder was Malik ibn Anas al-'Asbahi (93-179/711-795), were a section of the Sunni community who forbade every kind of *ijtihad* that crossed the limits of the Quran and the Sunnah. Others who held this outlook were the Hanbalis, the followers of Ahmad ibn Hanbal al-Shaybani (164-241/780-855), and the Zahiris, the followers of Da'ud ibn 'Ali al-'Isfahani, known as Abu Sulayman Zahiri (200 or 202-270/815 or 817-883). In the beginning, however, Malik did not subscribe to this outlook and approved the practice of *ray*.

- **Ra'y and Shi'i Ijtihad**

Ijtihad, as accepted by the Shi'ah, involves the application of certain essential and fundamental principles (*usul*) to secondary issues (*furu`*). This results in expansion of fiqh and the laws of Shari'ah in the sense of development and emergence of new instances and diversity of legal applications, and not through legislation of new laws.

But *ijtihad* in the Sunni sense implies *tashri`* or legislation of laws, which forms the part of the *mujtahid's* activity. In other words, in Sunni fiqh, *ahkam* or the laws of Shari'ah also expand along with the expansion and multiplication of the issues. The variety and number of the issues and applications and their external and objective diversity requires variety and diversity of the relevant *ahkam*. Many a time, the general laws that cover those applications are not to be found in the Book and the Sunnah, as if those *ahkam* have no relationship with the *wahy*. Like laws and regulations formulated by non-Muslim nations of the world for their societies, they are also the product of the mind and intellect of human individuals. On account of this, it is not legitimate to acknowledge them as Divine commands and the laws of Islam. We shall discuss this matter in detail later in this article-in the critique of the *Riwayah* of Mu'adh. However, before that, we shall examine the arguments advanced by believers in the practice of *ray* and its supporters.

- **Arguments in Defence of Ra'y and Their Refutation**

The arguments extended by Sunni fuqaha' in favour of *ijtihad* by means of *ray* can be divided into two main parts:

- (1) the arguments derived from the Quran, and
- (2) the arguments produced from the tradition and Sunnah.

1. The Arguments Based on the Quran

In order to prove the validity of the practice of *ra'y*, the fuqaha' of the Ahl al-Sunnah advance certain arguments from Quranic verses. Some of them are the following.

إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ...

1. Verily, We revealed unto thee the Book with the truth, that thou mayest judge between mankind by that which God showeth thee (*araka*, from the same root as *ray*) (4:105)

كَذَلِكَ نَفْصِلُ الْآيَاتِ لِقَوْمٍ يَتَفَكَّرُونَ *

2. Thus We explain the signs for people who think. (10:24)

كَذَلِكَ نَفْصِلُ الْآيَاتِ لِقَوْمٍ يَعْقِلُونَ *

3.Thus We explain the signs for people who ratiocinate. (30:28)

Basing any argument upon these verses for proving the validity of the practice under discussion does not appear to be proper. As the first verse is particularly addressed to the Holy Prophet (S), it does not include anyone else. Moreover, the phrase *بِمَا أَرَاكَ اللَّهُ* (*by that which God showeth thee*) indicates that the Prophet (S) adjudicated among the people of his Ummah according to that which was revealed to him by God in the Holy Quran and not according to his own personal judgement and *ray*. In fact this verse conveys something contrary to the aims of the believers in the practice of *ray*, as it acknowledges the presence of definite laws revealed to the Prophet (S) as the only criterion and standard. This issue has no relevance whatsoever to the validity of the practice of *ray* in *ijtihad*. As to the second and the third verses, they also are not concerned with the subject of the practice of *ray*. They specify the significance and value of thinking and reflecting about the Divine verses and the signs of God in creation, for such thought and reflection leads man to the knowledge of God, strengthens faith, and guides him to the cognition of the most fundamental of religious doctrines, which is the knowledge of God.

2. Arguments Based on the Tradition

(A) It is reported in the *Musnad* of Ahmad ibn Hanbal al-Shaybani (vol.1.5,p.230) that the Prophet (S) while sending Mu'adh as a judge to Yaman asked him: "On what shall you base your judgements?" Mu'adh replied: "On the Book of God". The Prophet (S) asked: "But what if you don't find it there?" Mu'adh said: "(Then I will act) according to the Sunnah of the Apostle of Allah". The Prophet (S) again asked: "What if you don't find it there[too]?" Mu'adh said: *أَجْتَهِدُ رَأْيِي* (I will exert my own *ray*). The Prophet (S) said: "Thanks to God who gave success to, His Messenger".

This tradition sounds to be explicit in confirming the view that the Prophet (S) gave approval to *ijtihad* by means of exerting personal judgement and ray.

(b) `Umar in his letter to Abu Musa al-'Ash'ari, wrote:

الْفَهْمَ الْفَهْمَ فَمَا يَتَلَخَّجُ فِي صَدْرِكَ ثُمَّ قِسْ الْأُمُورَ بَعْضَهَا بِبَعْضٍ.

Concentrate your understanding on that which goes on in your mind (i.e. something which is not to be found in the Book and the Sunnah of the Prophet) and draw an analogy between similar matters.

Ibn Qayyim al-Jawzi has expounded this *Riwayah* in his book *A'lam al-muqi'tn* (vol:1, pp. 373-385).

(c) In the *Sahih* of al-Bukhari (*Bab ajr al-hakim*, vol. 4, p. 178) it has been reported from `Amr ibn al-`As that the Prophet said that whenever a judge gives a verdict according to his *ijtihad*, he will be given two rewards if his judgement is right, and if it is not, he will be given one reward.

Muhammad ibn Muslim also has recorded this *Riwayah* in his *Sahih* (*Kitab al-Aqdiyah*, hadith No.150). Ibn Majah has recorded it in his *Sunan* (*Bab al-hakim*, hadith No.2314) and Ahmad ibn Hanbal alShaybani in his *Musnad* (vol.2,p.187).

(d) Dr. Mahmasani, in his book on the philosophy of legislation in Islam, quotes a tradition in which the Prophet (S) is reported to have said to Ibn Mas'ud:

إِفْضِ بِالْكِتَابِ وَالسُّنَّةِ إِذَا وَجَدْتَهَا فَإِنْ لَمْ تَجِدِ الْحُكْمَ فِيهَا اجْتَهِدْ رَأْيَكَ.

Judge according to the Book and the Sunnah if you find (the judgement) in the two, but if you don't find it there exert your own ray.

• **Critique of the Tradition Narrated about Mu'adh**

The tradition about Mu'adh is not acceptable for several reasons:

1. From the point of view of *sanad* (chain of transmission), as it is narrated on the authority of al-Harith ibn `Amr alone. There is no other line of transmission besides this. Moreover, al-Harith ibn `Amr is an unknown narrator (*majhul al-hal*) whose character is not known. This objection was also raised by Abu Muhammad `Ali ibn Hazm al-Andalusi al-Zahiri (d.456/1064) in his *al-'Ilham li usul al-'ahkam* (vol.5, pp.373-375). Al-Bukhari has also, in *al-Ta'rikh al-'awsat*, stated that there is no mention of the name of al-Harith in any text of tradition or book of *rijal* except this sole *Riwayah*. Moreover, his character is also obscure. Therefore, it is not proper to consider the *Riwayah* reported from him to be reliable.

2. From the point of view of meaning (*dalalah*), also, the recourse to this tradition for arguing in favour of ray is unjustified. Because, *ijtihad* in the sense of legislation

of laws and determination of *ahkam* for the new and emergent issues by means of *ray* and personal judgement was not in vogue during the lifetime of the Prophet (S), as the Prophet (S) himself was alive and there was no need for it. Why would an individual like Mu'adh in spite of having access to the Prophet (S) practise *ra'y* or exercise his personal opinion, when the *ahkam* and the precepts regarding the religious duties, in detail and in every aspect, could have been understood very easily and simply by referring to the Prophet (S)? The Prophet's contemporaries could also refer to individuals trained under the guidance of the Prophet (S) who had acquired firsthand learning of the Divine teachings and the *wahy*, regarding any problem of scientific, religious, ethical; social, economic, penal, commercial, agricultural or some other nature, and get a satisfactory and complete answer to it. In such conditions, there were no grounds for practising *ra'y* and personal opinion. Moreover, during the course of a long journey when it was not possible to contact the Prophet (S) immediately or anyone trained in Islamic teachings, there was still the possibility for Mu'adh to find out the Divine commandment in a certain case by sending a messenger. Hence distance could not be a justification for exercising *ray* and personal judgement.

The term *ijtihad*, however, was in vogue during the time of the Prophet (S) and even during the time of the *Sahabah* and *Tabi'un*-in its literal sense, i.e. striving and making effort in doing something. We find many instances of its use in this sense (some of which were mentioned in our article entitled: "A Study of the Sources of *Ijtihad*").

The need for *ijtihad* in the sense of exercising *ray* and personal opinion given to it by the Ahl al-Sunnah was felt after the Prophet's demise. This matter will be elaborated under the heading "*The Emergence of ijtihad bi al-ray*" later in this article.

3. There appears to be no connection between the lexical meaning of *ijtihad* and the sense of the practice of *ray* and reliance upon personal opinion. If the lexical meaning of the term *ijtihad* as defined by lexicographers is taken into account, the application of the word to the process of extracting a *hukm* by means of *ray* and personal opinion gives it another sense, for there is no similarity between the two. The lexicographers define *ijtihad* as an activity accompanied by endeavour and hard effort. Thus, if any individual formulates his personal judgement and presents it to society as a Divine law merely on account of not finding any dictum in the Quran and the Sunnah, this exercise of his would not be regarded as an *ijtihad*.

4. The deduction of a law in a legal issue through exercise of *ray* and subjective judgement, if it is not supported by the principles of the Shari'ah and its general laws, cannot be acknowledged as a *hukm* of the Shari'ah and a Divine law. Because a *hukm* of the Shari'ah is a Divine commandment revealed to the Holy Prophet (S) through the agency of Jibrail (A), not a rule that is the product of *ray* and subjective opinion of a *mujtahid*. For the personal judgement of an individual cannot be called a Divine injunction and a *hukm* of the Shari'ah.

5. Approving of the tradition concerning Mu'adh and accepting *ijtihad* in the sense given to it by the tradition results in such disastrous consequences as no lawgiver would allow.

- **Consequences of the Tradition About Mu'adh**

The repercussions and evil effects of this tradition are as follows:

a) If a *hukm* formulated by a *mujtahid* by exercising *ray* and subjective opinion is regarded a *hukm* of the Shari'ah and a Divine injunction, it means that all the individuals who exercise *ijtihad by ray*, each of them occupies the high station of a Divine legislator and lawgiver, whereas it is neither possible nor proper to accept this. Because, the source of legislation and *ahkam*, in the light of definite *shar'i* dicta, is God alone, and no other being. No *hukm* or law except that which is legislated by Him can be given the status of a *shar'i hukm*. Even the Prophet (S) cannot be considered as a source of legislation of the *ahkam* of the Shari'ah. The belief cherished by the majority of scholars of the Sunni community that the Prophet (S) himself sometimes exercised *ijtihad* and himself legislated laws according to his own *ray* and subjective opinion in some issues and problems, and the traditions narrated in this regard, have no validity whatsoever (an elaborate refutation of this view will be given in the article "The Prophet (S) and *Ijtihad*").

Accordingly, when the Prophet (S) cannot be considered as the source of the *tashri`* of *ahkam*, is it possible that subjective views and opinions of human individuals with no links with *wahy*, and whose character, behaviour and speech are not considered a norm and model for others, be considered laws of God and they themselves as legislators of the *ahkam* of the Shari'ah?

No doubt, it is possible that occasionally *ijtihad* might have figuratively been referred to as *tashri`* and legislation. For instance, the renowned scholar Abu Ishaq Ibrahim al-Shatibi al-Gharnati al-Maliki (d.790/1388), the author of *al-Muwafiqat*, has also named the task of a *mujtahid* as *tashri`* and legislation. No doubt, his usage carries only a figurative sense; for naming the activity of a *mujtahid* as legislation was for the reason that *ijtihad* (i.e. application of the *usul* of the *ahkam* and the general principles for deriving other *ahkam* regarding emergent issues and new problems) is an effort to discover a *shar'i hukm*, thereby discovering the intent of the Lawgiver and obtaining the *hukm* of God. Then, in reality, it amounts to calling 'legislator', in a figurative sense, one who discovers a law. Since in Islamic fiqh there is in fact no provision for anybody except God to lay down laws. Therefore, the Shari'ah is made up of the injunctions and commandments that were revealed to the Prophet (S) by God Almighty through the agency of Jibrail. There are verses in the Quran which confirm this fact; they will be discussed in the article entitled "The Prophet (S) and *Ijtihad*".

b) Reliance on *ijtihad by ray* and subjective judgement is a kind of admission of the shortcoming of the Shari'ah, and is an implicit declaration that the Islamic Shari'ah is incapable of answering emergent issues and new problems, whereas anyone acquainted with the spirit of Islam and its comprehensiveness cannot concede this. Because, the process of legislation concerning all the necessary spheres of human life, either in particular detail or in the form of general laws, was completed during the lifetime of the Prophet (S). The following verses of the Quran clearly declare this fact:

...وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِّكُلِّ شَيْءٍ...

...And We revealed the Book unto thee as an exposition of all things.(16:89)

...مَا قَرَرْنَا فِي الْكِتَابِ مِنْ شَيْءٍ...

We have neglected nothing in the Book (of Our decrees). (6:38)

وَمَا اخْتَلَفْتُمْ فِيهِ مِنْ شَيْءٍ فَحُكْمُهُ إِلَى اللَّهِ...

And in whatsoever ye differ, the verdict therein belongeth to God.(42:10)

...الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتَمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيتُ لَكُمُ الْإِسْلَامَ دِينًا...

This day We have perfected your religion for you and completed Our favour unto you and have chosen for you as religion al-islam...(5:3)

With the revelation of the last verse, the *Din* of God attained its perfect form in all aspects: political, ritual, social, economic and ethical. Following that, the process of *wahy* concluded. As such, it does not seem possible that the Prophet (S) of God should have said to Mu'adh: "By what rule will you act, if you find no direction in the Book of God and the Sunnah?" The verse affirming the perfecting of the *Din* was revealed approximately three months prior to the demise of the Prophet (S), during the journey of the Last Pilgrimage. After that no other verses concerning *ahkam* were revealed to him.

During the span of the ten years that the Prophet (S) resided in Madinah, all the *ahkam* of God were revealed by means of approximately 500 verses-the *ayat al-'ahkam* (the verses containing the rules and laws of the Shari'ah) which make approximately one-third of the Quran (as to their volume) and were already communicated and expounded by the Prophet (S). Not a single issue, small or big, was left without a *hukm* in any of the diverse spheres of human life, not even the *hukm* regarding the *diyah* of a scratch on the skin.

During his journey of the Last Pilgrimage, the Prophet (S) had declared:

أَيُّهَا النَّاسُ مَا مِنْ شَيْءٍ يُقَرِّبُكُمْ إِلَى الْجَنَّةِ وَيُبَاعِدُكُمْ عَنِ النَّارِ إِلَّا وَقَدْ أَمَرْتُكُمْ بِهِ، وَمَا مِنْ شَيْءٍ يُقَرِّبُكُمْ إِلَى النَّارِ وَيُبَاعِدُكُمْ عَنِ الْجَنَّةِ إِلَّا وَقَدْ نَهَيْتُكُمْ عَنْهُ.

O people, whatsoever takes you nearer to Paradise and away from Hellfire, I enjoined upon you. And whatever brings you nearer to Hellfire and removes you away from Paradise, I forbade you to do.

The following tradition has been reported in *Usul al-Kafi* (Ilmiyyah Islamiyyah, Tehran, vol:1, p:80) from Sama'ah:

عِدَّةٌ مِنْ أَصْحَابِنَا، عَنْ أَحْمَدَ بْنِ مُحَمَّدٍ بْنِ خَالِدٍ، عَنْ إِسْمَاعِيلَ بْنِ مِهْرَانَ، عَنْ سَيْفِ بْنِ عَمِيرَةَ، عَنْ أَبِي الْمَغْرَاءِ، عَنْ سَمَاعَةَ، عَنْ أَبِي الْحَسَنِ مُوسَى (ع) قَالَ: قُلْتُ لَهُ: أَكُلُّ شَيْءٍ فِي كِتَابِ اللَّهِ وَسُنَّةِ نَبِيِّهِ (ص) أَوْتَقُولُونَ فِيهِ؟ قَالَ: بَلْ كُلُّ شَيْءٍ فِي كِتَابِ اللَّهِ وَسُنَّةِ نَبِيِّهِ (ص).

(Al-Kulayni says): From a number of our companions, from Ahmad ibn Muhammad ibn Khalid, from Isma'il ibn Mihran, from Sayf ibn `Amirah, from Abu al-Maghra, from Sama'ah from (al-Imam al-Kazim), Abu al-Hasan Musa (A); (Sama'ah) said: "I said to him: `Is everything in the Book of God and the Sunnah of His Apostle (S), or you have something to say (in addition)?' He said: `(No); rather, everything is in the Book of God and the Sunnah of His Apostle (S)'."

Also in *Usul al-Kafi* (op. cit. vol:1,p:77), the following tradition is reported on the authority of Sulayman ibn Harun from al-Imam al Sadiq (A). There, the Imam (A) states:

مَا خَلَقَ اللَّهُ حَلَالًا وَلَا حَرَامًا إِلَّا وَلَهُ حَدٌّ كَحَدِّ الدَّارِ، فَمَا كَانَ مِنَ الْقَرِيقِ فَهُوَ مِنَ الْقَرِيقِ، وَمَا كَانَ مِنَ الدَّارِ فَهُوَ مِنَ الدَّارِ حَتَّى أُزِيحَ الْحَدُّ فَمَا سِوَاهُ وَالْجِلْدَةُ وَبِضْفِ الْجِلْدَةِ.

God has not created any *halal* (that which is permissible) or any *haram* (that which is forbidden) except that He has determined a boundary for it like the limits and boundaries of a house. That which belongs to the limits of the road is reckoned as the road, and whatever that comes within the boundaries of the house is considered as a part of the house. [This is true] even of a scratch on the skin, a full lash or half a lash.

The following tradition is reported in *Basa'ir al-darajat* (Qumm, 1404 H., p. 143) on the authority of Muhammad ibn Muslim:

حَدَّثَنَا أَحْمَدُ بْنُ مُحَمَّدٍ عَنِ الْحُسَيْنِ بْنِ سَعِيدٍ عَنْ قُضَالَةَ بْنِ أَيُّوبَ عَنِ الْقَاسِمِ عَنْ بَرْزَنْدِ بْنِ مُعَاوِيَةَ الْعِجْلِيِّ عَنْ مُحَمَّدِ بْنِ مُسْلِمٍ قَالَ: قَالَ أَبُو جَعْفَرٍ (ع): إِنَّ عِنْدَنَا صَحِيفَةً مِنْ كُتُبِ ظَوْلِهَا سَبْعُونَ ذِرَاعًا فَتُخَنُّ تَتَّبِعُ مَا فِيهَا لَا تَعْدُوهَا. وَسَأَلْنَاهُ عَنْ مِيرَابِ الْعِلْمِ مَا بَلَغَ أَجْوَامِعُ هُوَ مِنَ الْعِلْمِ أَمْ يُفَسِّرُ كُلَّ شَيْءٍ مِنْ هَذِهِ الْأُمُورِ الَّتِي تَتَكَلَّمُ فِيهَا النَّاسُ مِنَ الظَّلَاقِ وَالْفَرَايِضِ؟ فَقَالَ (ع): إِنَّ عَلَيَّ عَلَيْهِ السَّلَامُ كَتَبَ الْعِلْمَ كُلَّهُ الْقَطْءَ وَالْفَرَايِضَ فَلَوْ ظَهَرَ أَمْرُنَا لَمْ يَكُنْ شَيْءٌ إِلَّا فِيهِ تَمْضِيهَا.

(Muhammad ibn al-Hasan ibn Farrukh al-Saffar al-Qummi says): Narrated to us Ahmad ibn Muhammad (al-Barqi), from al-Husayn ibn Said (al-Ahwazi), from Fadalab ibn Ayyub, from al-Qasim, from Burayd ibn Mu'awiyah al`Ijli, from Muhammad ibn Muslim, who said: "Abu Ja'far (the Fifth Imam) (A) said: `We have

the *Sahifah* written by `Ali (A), whose length is seventy cubits. We study its contents, not going beyond them'. I asked him about the inheritance of knowledge that had been transferred (to the Imams), whether it consisted of generalities or of detailed exposition of such things as the people talk about, such as divorce and religious duties. He said: `Ali (A) wrote down all knowledge, including all judicial laws (*al-qada'*) and duties (*al-fara'id*). When our sovereignty is established, we will act according to it in regard to every matter.' "

In *Furu' al-Kafi* (Dar al-Kutub al-Islamiyyah, Tehran, vol:7, *Kitab al-hudud*, Bab 1, hadith 12) a *Riwayah* is reported on the authority of Dawud ibn Farqad from al-Imam al-Sadiq (A). In it, the Prophet (S) is reported as having said to Sa'd ibn `Ubadah:

... إِنَّ اللَّهَ عَزَّ وَجَلَّ قَدْ جَعَلَ لِكُلِّ شَيْءٍ حَدًّا، وَجَعَلَ لِمَنْ تَعَدَّى ذَلِكَ الْحَدَّ حَذًّا.

Verily, God Almighty has determined a *hadd* (limit, punishment) for every thing, and for whomsoever that crosses that *hadd* He has prescribed a certain *hadd*.

In another tradition of the same volume (Bab 1, hadith 6), it is reported on the authority of a reliable narrator, Sama'ah, that he heard this statement from al-Imam al-Sadiq (A):

إِنَّ لِكُلِّ شَيْءٍ حَدًّا وَمَنْ تَعَدَّى ذَلِكَ الْحَدَّ كَانَ لَهُ حَذٌّ.

Indeed there is a *hadd* for every thing, and whoever transgresses it will be subjected to a certain *hadd*. And the Quran declares:

... وَمَنْ يَتَعَدَّ حُدُودَ اللَّهِ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ *

And whosoever transgresses the bounds of God--those are the evildoers. (2:229)

Therefore, Islamic law prescribes punishment for those who violate the limits prescribed by God.

Accordingly, all the *ahkam* have been described in the Book and the Sunnah of the Prophet (S); the period of legislation closed with the demise of the Prophet of God and nothing was omitted. Thus, we need not rely upon practices like *ijtihad* by ray and other conjectural instruments (such as *qiyas*, *istihsan*, *masalih mursalah*, *madhhab Sahabi*, etc.) for deriving the *ahkam* for emergent issues (we have discussed this matter in elaborate detail in another article).

It is true that the *ahkam* have not been laid down in a uniform way in the Book and the Sunnah of the Prophet (S). Some of them have been set forth as special cases, while some others have been stated in a general way, in such a manner that by applying the general laws to particular cases all the *ahkam* of the Shari'ah regarding emergent issues and events can be derived. Therefore, those who imagine that there are no *ahkam* in the Shari'ah for modern issues and contemporary problems indeed

commit a great mistake; such a notion is contrary to the express statements of the Quran and conclusive dicta. The conclusiveness of these proofs is so certain that if a tradition attributed to the Prophet (S) counters their import, it should be discarded in accordance with the criteria and standards of the science of hadith and *dirayah*. This, because a statement whose origin from the Prophet (S) is not certain can never contest express texts of the Book, or reliable traditions of the *Ma'qumun* (A) whose authenticity of origin as well as import are definite. This, undoubtedly, holds true in the case of the present tradition which is of doubtful authenticity and is opposed to the express text of the Quran.

c) Above all, this tradition implies a confession on the part of the Prophet (S) of the insufficiency of law regarding the religious and nonreligious needs of mankind. How can we accept such a thing when the verse stating the perfection of the religion was revealed to him?

6. This tradition also implies that Mu'adh possessed the knowledge of all the *ahkam* present in the Book of God and the Sunnah of the Prophet (S), whereas neither the Shi'ah nor the Sunnis believe this. Nobody among the Prophet's Companions was known to possess such a merit except Imam `Ali (A); he was the only person who had perfect knowledge of the Divine Law. It was for this reason that the Holy Prophet (S) enjoined upon the Ummah to follow him and to take their knowledge from the Ahl al-Bayt (A). The Prophet instructed them to consider the traditions of the Ahl al-Bayt (A) as their guide and to follow them as a model of practice and behaviour in all the modes of life. No doubt, Amir al-Mu'minin's source of knowledge and information was no other than the *wahy* revealed to the Prophet (S) and taught to `Ali (A) by himself. The leading and profound thinkers among Sunni scholars acknowledge this distinction of Imam `Ali (A).

7. This tradition implies that at the time when Mu'adh was being sent to Yemen, the process of *tashri`* was already complete and all the Divine *ahkam* had been set forth. However, the verse pronouncing the perfection of the *Din* counters this presumption and indicates that the perfection of the *Din* was declared three months prior to the demise of the Prophet (S), on the occasion of *Hajjat al-Wada`*.

8. If it is said that *ijtihad* (in the sense of exercising *ra'y* and personal judgement) was permissible for Mu'adh alone and others should not follow him, it is evident that nobody has held such an opinion.

And if it is presumed that this style of *ijtihad* was permissible for everyone, it means that every *mujtahid* has a right to legislate laws by means of *ray* and personal judgement whenever he fails to find a *hukm* in the text of the Book and the Sunnah. Moreover, laws thus legislated should be accepted and acknowledged as the real (*waqi't*) Divine laws in accordance with the doctrine of *taswib*. This means that whenever *mujtahidun* express a number of contradictory and conflicting opinions in a case, all of them should be recognized and given the status of the real *hukm*. Evidently, no one would be ready to accept this, as it will necessitate that the real *hukm* be identified simultaneously with a number of contradictory views and opinions, reducing Islamic law to a mass of contradictions.

Here, it will be appropriate to cite a tradition reported from Amir al-Mu'minin in *Bihar al-Anwar* (vol.2, chapter 34, p.284; also see *Nahj al-balaghah*, *Khutbah* No.18):

تَرَدُّ عَلَى أَحَدِهِمُ الْقَضِيَّةُ فِي حُكْمٍ مِنَ الْأَحْكَامِ فَيَحْكُمُ فِيهَا بِرَأْيِهِ، ثُمَّ تَرَدُّ نَظَرُ الْقَضِيَّةِ بَعَثِيهَا عَلَى غَيْرِهِ فَيَحْكُمُ فِيهَا بِخِلَافِ قَوْلِهِ، ثُمَّ يَجْتَمِعُ الْقَضَاءُ بِذَلِكَ عِنْدَ الْإِمَامِ الَّذِي اسْتَفْصَاهُمْ، فَيَصُوبُ آرَاءُهُمْ جَمِيعًا - وَاللَّهُمَّ وَاحِدًا! وَرُكْنَانَهُمْ وَاحِدًا! أَقَامَرَهُمُ اللَّهُ - سُبْحَانَهُ - بِالْإِخْتِلَافِ فَطَاعُوهُ! أَمْ نَهَاَهُمْ عَنْهُ فَعَصَوْهُ! أَمْ أَنْزَلَ اللَّهُ سُبْحَانَهُ دِينًا نَاقِصًا فَاسْتَعَانَ بِهِمْ عَلَى إِمَامِيهِ! أَمْ كَانُوا شُرَكَاءَ لَهُ، فَلَهُمْ أَنْ يَقُولُوا، وَعَلَيْهِ أَنْ يَرْضَى!؟ أَمْ أَنْزَلَ اللَّهُ سُبْحَانَهُ دِينًا نَاقِمًا فَقَصَّرَ الرَّسُولُ (ص) عَنْ تَبْلِيغِهِ وَأَدَائِهِ، وَاللَّهُ سُبْحَانَهُ يَقُولُ: «مَا قَرَرْنَا فِي الْكِتَابِ مِنْ شَيْءٍ» وَفِيهِ تَبَيَانٌ لِكُلِّ شَيْءٍ، وَذَكَرَ أَنَّ الْكِتَابَ يُصَدِّقُ بَعْضُهُ بَعْضًا، وَأَنَّهُ لَا إِخْتِلَافَ فِيهِ فَقَالَ سُبْحَانَهُ «وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ إِخْتِلَافًا كَبِيرًا».

When a case relating to one of the *ahkam* is put before any one of them he passes judgement on it according to his ray. Afterwards, when the same problem is placed before another of them, he passes an opposite verdict. Then these judges go to the chief who had appointed them and he confirms all the verdicts, although their God is One, their prophet is one and the same and their scripture is one and the same. Was it *God-subhanahu*-who enjoined them to differ (while laying down the *ahkam*), and they obeyed Him? Or He forbade them from it and they disobeyed Him? Or, did God Almighty send His *Din* in a defective and imperfect form and asked for their help and assistance in order to make it perfect? Or, were they His partners and assistants (in performing legislation) so that He has to concede to whatever judgement they pronounce? Or is it that God Almighty made His *Din* perfect, but the Prophet (S) fell short of communicating it (to the people)? The fact is that God states in the Quran (We have not neglected anything in the Book, 6:38) *وَمَا قَرَرْنَا فِي الْكِتَابِ مِنْ شَيْءٍ* (and that in it is all things, 16:89) and that one part of the Quran verifies another part and that there is no contradiction in it. And the Almighty has said: *وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ إِخْتِلَافًا كَبِيرًا* (if it had been from other than God they would have found therein much incongruity, 4:82).

Abu Muhammad `Ali ibn Hazm al-Andalusi al-Zahiri (d.456/1064) in his book *al-Ihkam li usul al-ahkam* (vol:5, p.775) writes: "Some ignorant people believe that Mu'adh had the right to make a thing *halal* or *haram* by exercising his *ray* or to make something *wajib* or otherwise according to his own judgement and taste. Such a notion is preposterous, and no Muslim would believe it."

9. If it is said that by *ijtihad bi al-ray* Mu'adh meant to say that whenever he could not find a *hukm* in the express texts of the Book and the Sunnah of the Prophet (S), he would use his effort in deriving it from the sources of the Shari`ah and its general principles, if we interpret the tradition in this way, the term *ijtihad* conveys the same lexical meaning described earlier (in another article), not a new sense of legislation and *tashri`*. When interpreted in this sense, there will be no problem with it, and it would be acceptable to the Shi`ah.

But the problem is that the fuqaha' of the Ahl al-Sunnah have not interpreted this tradition in this manner. The character of their arguments shows that they conceive the term *ijtihad* in the sense of relying upon *ray* and subjective opinion; not in the sense of deducing the laws from the principles and basic sources of the Shari'ah.

10. Apart from all the objections raised above, this significant problem still remains that the tradition is about judgement and adjudication; it has nothing to do with the problem at hand, since what we are concerned with is the matter whether a *mujtahid* has a right to legislate laws and *ahkam* concerning emergent issues by exercising his *ray* and employing any of the instruments for deriving legal conjectures. It is evident that there is a clear difference between these two things.

- **Critique of the Second Riwayah**

The second *riwayah* is also infirm with respect to its chain of transmission. As Abu Muhammad `Ali ibn Hazm al-Zahiri points out in his book *al-Ihkam li usul al-ahkam* (vol. 5, p.1003), there are two chains of transmission through which this *Riwayah* has been reported; none of them is trustworthy. In one *sanad*, one of the narrators is `Abd al-Malik ibn al-Walid ibn Ma'dan. He has not been considered as trustworthy by the experts of the science of rijal, and no hadith narrated by him has been acted upon. And as for the second *sanad*, it contains names of persons of unknown identity, thus technically making the *riwayah* whose chain of transmission is broken (*maqtu` al-sanad*).

- **Critique of the Third Riwayah**

This *riwayah* has no relation with the issue under discussion, as it is about judgement and adjudication, and not concerned with the privilege and right of a jurisprudent to legislate *ahkam* of the Shari'ah by means of *ray* and by employing conjectural instruments.

- **Critique of the Fourth Riwayah**

Firstly the fourth *Riwayah* is *mursal* (one whose first narrator (S) is not mentioned in the chain of transmission), which deprives it of the requirements for being legally relevant.

Secondly, apart from its being *mursal*, such a *riwayah* has no strength to resist the force of the arguments based on definite proofs (*adillah*) of the Book and the Sunnah, which do not permit *tashri`* and legislation by means of *ray* and through instruments for deriving conjectures.

Thus, we reach the conclusion that these ahadith are not adequate for vindicating the practice of *ijtihad* by means of *ray* and subjective opinion; they lack the requirements of validity and the probability of their being fabricated is strong.

- **The Emergence of *Ijtihad bi al-Ray***

The beginnings of the emergence of *ijtihad* and its general outlines can be traced back to the migration of the Prophet (S) from Makkah to Madinah.

But the emergence of *ijtihad* in the sense of exercising *ray* was after the conclusion of the era of *tashri`* with the demise of the Prophet (S). For, as long as the Prophet (S) was alive, with the continuity of the revelation of the Quran and *wahy*, there was no ground for exercising *ra'y*; as mentioned earlier, the *ahkam* could be understood and known easily by referring to the Prophet (S). But after his demise and the termination of *wahy*, during the reign of the Caliphs, and subsequently during the Umayyad rule and in the early years of the `Abbasids, the fuqaha' were confronted with new issues and subjects for which they had to find answers. If they could not find the solution by referring to the Book and the Sunnah of the Prophet (S), they had to determine a *hukm* by consulting other fuqaha'. As a result of this they either reached a consensus or each one of them arrived at a separate *hukm* by exercising *ijtihad* and his own individual judgement.

The View of al-Dawalibi

Al-Dawalibi, in his book *al-Madkhal ila `ilm usul al-fiqh*, states in this connection: "Whenever the Companions of the Prophet (S) faced an impediment in such situations or issues for which they could not find an express decree in the Book and the Sunnah, they resorted to *ijtihad* (identifying in this manner the *ahkam* for new situations). They named this practice *ray*. Abu Bakr and `Umar were among those who used this method".

Later on al-Dawalibi cites a *Riwayah* in which `Umar ibn al-Khattab is reported as having written to Shurayh and Abu Musa al-'Ash'ari: "Companions of the Prophet (S) did not rely in their *ijtihad* upon fixed laws and established criteria; rather, they relied upon something which they considered as the spirit of the Law".

This statement has also been quoted in different words from `Umar ibn al-Khattab, such as: "Identify similar and analogous cases and use *qiyas* (analogical method) in matters." (We will elaborate on this topic in the discussion about the historical development of *qiyas*, which is the fifth source of Sunni *ijtihad*.)

In any case, it was after the demise of the Prophet (S) that some of the *Sahabah* raised the issue of *ray* and opened its doors. In this way, they deduced a certain *hukm* for every issue and problem for which there was no specific *nass*. The *Tabi'un* and a majority of Sunni jurisprudents followed their example. Besides the practice of *ray*, other instruments for deriving legal presumption (such as *qiyas*, *istihsan*, *masalih mursalah*, etc.) also entered the realm of *ijtihad* and the Sunni fuqaha' relied upon those sources, although they were not uniform in their reliance on such instruments (this will be elaborated further while discussing the sources of *ijtihad*).

It was the result of the difference of opinions between the fuqaha' of the Ahl al-Sunnah regarding the trustworthiness of these sources that diverse legal schools came into being. Among perhaps more than twenty of such schools that emerged,

four of them became more popular: the Hanafi school, under the leadership of Abu Hanifah; the Maliki school, under the leadership of Malik ibn Anas al-'Asbahi; the Shafi'i school, under the leadership of Muhammad ibn Idris al-Shafi'i; and the Hanbali school, under the leadership of Ahmad ibn Hanbal al-Shaybani. These schools emerged during the reign of the `Abbasids (132-656/750-1258) (an elaborate discussion about these schools will be done while discussing the various periods in the history of *ijtihad*). The practice of *ra'y* was called "*ta'wil*" during the era of the *Sahabah* and not "*ijtihad bi al-ray*". This was true of the early days of the era of the *Tabi'un* as well.

The term *ta'wil* was used by Khalid ibn al-Walid, who killed Malik ibn Nuwayrah, and also by Abu Bakr. In order to examine this usage, we will have to go into the details of the episode involving Khalid. [2]

After the Prophet's demise, a group of people gathered in Saqifat Bani Sa'idah and chose Abu Bakr for the caliphate. Khalid ibn al-Walid was one who had played an active role in the affair. After the event, he was dispatched with a force to collect *zakat* from the dissidents. During the course of his assignment, he went to a tribe inhabiting the region of Batch and demanded *zakat*. They declined to pay, stating that they did not acknowledge anybody except `Ali ibn Abi Talib as the Prophet's successor, as the Prophet (S) had nominated `Ali (A) to succeed him at Ghadir Khum while returning from the Last Pilgrimage. They stated that on this ground they would not pay *zakat* to anybody except someone appointed by `Ali (A). Khalid ibn al-Walid responded to the position taken by the people of that tribe by committing a horrible crime. He ordered Dirar ibn Azwar al-'Asadi to behead Malik ibn Nuwayrah, the chief of the tribe. Khalid did not stop at this; he slept with the wife of Malik the same night. To celebrate the occasion, he slaughtered a sheep and ordered Malik's head to be put in the fire under the cooking pot.

After his return, in order to justify his inhuman act and to make it appear something legitimate, he said: "Since this tribe had apostatized, I had to treat them in this manner." But within a short time, facts of the case came out. Abu Qatadah and `Abd Allah ibn `Umar gave witnesses in favour of Malik ibn Nuwayrah. Khalid had no alternative except to confess. While apologizing, he said to Abu Bakr: *إِنِّي تَأَوَّلْتُ وَآخِطَأْتُ* (I exercised *ta'wil* and made a mistake). `Umar ibn al-Khattab and some of the Companions were of the view that Khalid should be stoned to death for *zina* (adultery). However, since Khalid had played a significant role in the episode of Saqifah, efforts were made to exonerate him and justify his deed Accordingly. Abu Bakr said: *مَا كُنْتُ أَزْجِمُهُ فَإِنَّهُ تَأَوَّلَ فَآخِطَأَ* (I would not stone him, for he exercised *ta'wil* and committed an error). After this incident the term *ta'wil* was used in such cases by others.

• **The Term Ta'wil During the Days of Tabi'un**

In the era of the *Tabi'un*, also, the word *ta'wil* was used in the sense of the practice of *ra'y*. Al-Zuhri is reported in *al-Sahih* of al-Bukhari (vol.1, p.134, *Bab taqdir al-salat*) as saying that he asked `Urwah ibn al-Zubayr as to why `A'ishah says full prayers

during journey(while *qasr* is specified in *riwayat*). He replied "She makes *ta'wil* of the *Riwayah*, in the same manner as `Uthman used to do."

The Usage of Ta'wil by Tabi `un

The history of the term *taw'il* indicates that it started by the *Sahabah* and continued to be in use until the middle of the 5th/11th century, as can be seen from the writings of some Sunni scholars. But after this date the term *taw'il* was gradually replaced by other terms.

Abu Muhammad `Ali ibn Ahmad, known as Ibn Hazm al-Zahiri (384-456/994-1064), in his book *al-Fasl fi al milal wa al-'ahwa' wa al-nihal* (vol.4, p.161), has this to say about Abu al-`Adiyah, the killer of `Ammar ibn Yasir:

بِأَنَّهُ مُتَأَوِّلٌ مُّجْتَهِدٌ مُّخْطِئٌ بَاغٍ عَلَيْهِ مَا تُجَوِّزُ أَجْرًا وَاحِدًا.

He was an errant *muta'awwil* (one who exercises *ta'wil*) and *mujtahid*, and committed a wrong against `Ammar ibn Yasir (because of the *hukm* that he derived and the *ijtihad* that he made). He deserves reward, but only one.

In another place, he writes in his book that the killer of `Ammar was not similar to the killer of `Uthman, as the latter's killer did not have any ground for *ijtihad*. He further says that Mu'awiyah and those who were with him were men of *ijtihad*, although in error, and they deserved one reward.

Taqi al-Din Ahmad ibn `Abd al-Hakim ibn `Abd al-Salam (661-728/ 1263-1328) known as Ibn Taymiyyah, while justifying the acts of Mu'awiyah, writes that he was a *mujtahid*.

Ibn Kathir, in his history (Vol. 7, p.297), writes that Mu'awiyah was a *mujtahid* and deserved reward. In the same volume of the book (p:283) he writes that *ijtihad* sometimes leads to error and sometimes to the truth and:

لِلْمُجْتَهِدِ الْمُصِيبِ أَجْرَانِ وَلِلْمُجْتَهِدِ الْمُخْطِئِ أَجْرٌ وَاحِدٌ.

For the *mujtahid* who is right, there are two rewards, and for the *mujtahid* who errs, one reward.

Ibn Hazm in *al-Muhalla* (vol.1,p.484), Shaykh `Ala' al-Din 'Ali ibn `Uthman al-Hanafi, known as Ibn al-Turkumani (d.750/1349),in his *al-Jawhar al-naqi*, as stated in footnotes of al-Bayhaqi's *Sunan* (vo1.8, pp.58-59), describe the assassin of Ali ibn Abi Talib (إِنَّهُ كَانَ مُتَأَوِّلًا مُّجْتَهِدًا) (To be sure, he was a *mujtahid* and a *muta'awwil*)!

Ahmad ibn Ali al-Shafi'i, famous as Ibn Hajar al-`Asqalani, while describing the *Sahabah*, says that they exercised *ta'wil* and that in cases that the *mujtahid* errs he is not only not liable to any censure and punishment but deserves one reward.

What is more interesting is that some who claim to be Muslims consider even such a vicious character like Yazid with his irremediable crime, which has no parallel in history, as a *khalifah* of the Prophet (S). Moreover, they justify his heinous crime and say that he exercised *ijtihad* and erred in his *ta'wil*; therefore, he cannot be blamed!

In Ibn Kathir's history (vol.13,p.9), Abu al-Khayr Ahmad ibn Isma'il ibn Yusuf al-Shafi'i al-'Ash'ari is reported as having made this statement about Yazid: *ذَلِكَ إِمَامٌ مُجْتَهِدٌ* (He was an *imam* and *mujtahid*). Ibn Kathir himself writes (Vol .8, p.223) that some people justify the evil and heinous deeds of Yazid and state that he erred in exercising *ta'wil* and *ijtihad*. In another place (vol.6, p.323) he says: "Khalid continued to hold his office with the approval of Abu Bakr (and therefore his assignment was legitimate), though he took part in the killing of Malik ibn Nuwayrah. But since he exercised *ijtihad* and erred, he cannot be blamed."

In the above-mentioned cases, the exercise of *ray* is referred to with the name of *ta'wil*, and this usage continued until the Sunni community gave it the name of *ijtihad*, developing special rules and terms for it and opening new chapters in the realm of '*ilm al-'usul*. Consequently, the act of deriving a *hukm* by this means was called "*ijtihad*", and its practitioner "*mujtahid*".

As stated, the practice of *ray* emerged after the demise of the Prophet (S) and the term continued to be in use for *ijtihad* in the writings of the Sunni fuqaha' until the early years of the 6th/12th century. Abu Hanifah al-Nu'man ibn Thabit (80-150/699-767) and his followers used the term *ijtihad* in the same sense. Their approach met with the outright rejection of the Shi'i Imams (A) and fuqaha; who denounced it in the strongest terms (details will come in the discussion about the sources of *ijtihad*). The use of this term however continued through centuries, till the time when it underwent a change.

• **The Use of "Ijtihad" in Another Sense**

From the 6th/12th century till the beginning of the 7th/13th, the term *ijtihad* underwent a change in the writings and statements of Sunni scholars; they now gave it a wider and more comprehensive meaning. It will be proper to quote here some of them.

Abu Hamid Muhammad al-Ghazzali al-Shafi'i (450-505/1058-1111) has defined the term *ijtihad* in his book, *al-Mustasfa fi usul al-fiqh* (vol.2,p.350): "*Ijtihad* means the effort and endeavour on the part of the *mujtahid* in acquiring the knowledge of the *ahkam* of the Shari'ah."

Muhammad Khidri Bek has defined *ijtihad* in his history of Islamic legislation (p.87) as: "The endeavour and effort undertaken for deducing a *hukm* of the Shari'ah through means and sources (*adillah*) which the *Shari`* (Lawgiver) considers as valid proofs."

Ahmad Mustafa Zarqa' al-Suri, the author of *al-Madkhal al-fiqhi al'amm*, defines the term *ijtihad* in these words: "*Ijtihad* means deduction of *ahkam* of the Shari'ah by means of their elaborate *adillah* from the Shari'ah."

There were other fuqaha' at that time who used the term *ijtihad* in the aforementioned sense. Though the term *ijtihad* acquired a wider and more comprehensive denotation, nevertheless, the Shi'i fuqaha' still did not approve of the kind of *ijtihad* practised by the Ahl al-Sunnah as a reliable source from which *ahkam* of the Shari'ah could be derived. They rejected it and considered it invalid. As in the previous ages, to them the term *ijtihad* denoted an undesirable and forbidden practice; they discussed it in their writings and expressly rejected it as invalid.

This antagonism continued until the 7th/13th century, and the writings of the original researcher and *mujtahid* Muhammad ibn Ahmad ibn Idris al-Hilli (555 or 558-598/1160 or 1163-1201) bear evidence to this. He writes in his precious book *al-Sara'ir* that "*qiyas, istihsan* and *ijtihad* are from our viewpoint invalid practices". These words of Ibn Idris indicate that the word *ijtihad* was still current at the time in the sense of the practice of subjective opinion and *ra'y* as a source of law, like the Book and the Sunnah.

- **The New Denotation of Ijtihad**

In the 7th/13th century the term *ijtihad* was used in a new sense by Imamiyyah fuqaha' which afterwards, with a little amendment, assumed its genuine and desirable form: the sense of referring new *furu'* to the fundamental principles, the *usul*. In this way, the term *ijtihad* came to be accepted by the Shi'ah.

The oldest texts which throw light on this matter are the writings of the great al-Muhaqqiq al-Hilli (d.676 or 680/1277 or 1281) and his *Ma'arij al-'usul* (p.117). In it, while defining *ijtihad*, he states: "In the vocabulary of the fuqaha', *ijtihad* means making effort and endeavour in order to deduce *ahkam* of the Shari'ah from its valid (*shar'i*) sources (*adillah*)."

He continues to say that since the deduction of *ahkam* and their determination is conceptually a theoretical activity, and in most of the cases they cannot be derived from the apparent meaning of the texts, there was drawn no line of demarcation in the definition between *qiyas* and other *adillah*. Therefore, on this basis, *qiyas* can also be considered to be one of the types of *ijtihad*. He further says that it is possible that some may say that it means that the Shi'ah also practise *ijtihad*. The answer is in the affirmative, with the qualification that *ijtihad* to them has never meant, nor does it mean, the practice of *qiyas*.

A study of the views expressed by al-Muhaqqiq al-Hilli in *Ma'arij al-usul* reveals that in those days the term *ijtihad* was not yet fully accepted by the Shi'ah due to its former connotations. The writings of al-Muhaqqiq al-Hilli show that there were still certain individuals in those days who could not digest the term. They were not inclined to assign the appellation '*mujtahid*' to any of the Shi'i fuqaha'. Accordingly, al-Muhaqqiq al-Hilli decided to draw a line between the two concepts of *qiyas* and *ijtihad* and declared that *ijtihad* as a new term adopted by the Shi'ah possessed a

meaning acceptable to them, that its use did not have any harm-for the term *ijtihad* meant to making an effort for deriving a *hukm* from *shar'i* sources (i.e. the Book, the Sunnah, *ijma`* and *`aql*)-and that it does not have any connection with the *ijtihad* practised by the Ahl al-Sunnah.

- **Difference between the Two Conceptions and its Consequences**

There is an obvious difference between the two conceptions of *ijtihad*, because the first sense implies that whenever there is no express statement in the text of the Quran and the Sunnah the *mujtahid* can innovate and legislate a law according to his own *ray* and subjective opinion, and if he is asked as to the source on which he has based this *hukm*, he will answer: "On my own personal *ray*". But in the second sense (accepted by the Imamiyyah), *ijtihad* is an endeavour and effort on the part of the *mujtahid* in deriving a *hukm* of God from the sources of the Shari'ah. When asked as to the sources from which the *hukm* is derived, he answers: "The sources whose validity and reliability is posited by the Lawgiver."

Accordingly, the role of the *mujtahid* in deducing the *ahkam* regarding new issues and *furu`* involves reverting the new *furu`* to the basic principles of the Shari'ah and applying its general laws to corresponding particular cases. There is an essential and real difference between these two meanings of the term, since *ijtihad* in the Sunni sense of practising *ray* means invention (*ibda`*) of *ahkam* and legislation. And the Shi'i *ijtihad* is a means of discovering the Divine *ahkam* through the valid sources of the Shari'ah (the Book, the Sunnah, *ijma`* and *`aql*).

- **Delimitation of the Meaning of Ijtihad by al-Muhaqqiq al-Hilli**

As mentioned earlier, al-Muhaqqiq al-Hilli delimited the new sense of the term *ijtihad* to research effort in deducing *ahkam* from the sources, so that the *hukm* derived is not based on the literal meanings (*zawahir*) of the texts of the Quran and the Sunnah. Accordingly the deduction of a *hukm* from *zawahir* of the Book and the Sunnah was not a part of *ijtihad* to him. Perhaps this restriction in the meaning of *ijtihad* had to do with its original lexical background, which carried the sense of hard effort and labour. Thus, the derivation of a *hukm* from *zawahir* of the Book and the Sunnah, which did not involve any great effort, was not counted by him as part of *ijtihad*.

However, after his era, the meaning of *ijtihad* grew in scope and came to include deduction of *ahkam* from *zawahir* of the *nusus* (texts) of the Quran and the Sunnah. This was because the scholars of *`ilm al-usul* came to recognize that even deduction from the *zawahir* required a lot of scholarly effort; that it could not be done without the knowledge of the principle of *hujjiyyat al-zawahir* (the legal validity of literal meanings) and the mode of its application and the related problems.

The meaning of *ijtihad* did not remain within these limits; it underwent a further development until it came to include all the forms of legal deduction and every kind of endeavour and effort on the part of the *mujtahid* to determine and define practical obligations vis a vis the Shari'ah on the basis of valid proofs. Accordingly, in latter times, some scholars have defined *ijtihad* as effort and endeavour for establishing the

legal basis of real *ahkam* or attainment of legal evidence for determining the apparent obligation in a case, or something to that effect. Other definitions have also been advanced, but since they are close in meaning and content to the one mentioned above, we shall refrain from citing them in order not to prolong this discussion any further. [3]

Notes:

[1]. Of course, it doesn't mean that *ijtihad* was not practised during this era, for in its authentic and legitimate form *ijtihad* existed even during the Prophet's lifetime, as discussed by us in another article.

[2]. For further information regarding the incident relating to Khalid ibn al-Walid, see: *al-Isabah*, III, 337; *Tarikh al-Ya`qubi*, II, 110; *Kanz al-`ummal*, III, 132; *Wafayat al-'a`yan*, V, 66; *Fawat al-wafayat*, II, 627; Abu al-Fida', *Ta'rikh*, 158.

[3]. *Editor's Note*: This is a translation of "*Ra'y gera'i dar ijtihad*", published in the Persian bimonthly journal *Kayhan-e Andisheh* No. 9, Adhar & Day) and is second of a series of articles by the author.

Section 4

The Beginnings of Shi'i Ijtihad

• **The Beginnings of Shi'i Ijtihad**

After the demise of the Prophet (S) in the year 11/632, the need for *ijtihad* was felt acutely by the Sunnis, for they thought that the continuity of Divine guidance in the form of authoritative texts (*nass*) had ceased with his (S) demise and the only means of determining the Divine laws that remained was to search for them in the Book of God and the statements and acts of the Prophet (S). The Shi'ah, on the other hand, believed in the continuity of religious authority and *nass* after the Prophet (S), and they considered the Infallible Imams of the Ahl al-Bayt (A) as embodying the Prophet's authority. Their statements (*qawl*), acts (*fi'l*) and approvals (*taqr'ir*) were considered by them authoritative like those of the Holy Prophet (S), and hence as part of the Sunnah. Accordingly, the Shi'ah did not feel the need for *ijtihad* contemporaneously with the Sunnis; it was only after the Greater Occultation (*al ghaybat al-kubra*) of the Twelfth Imam (A) that the Shi'ah came to feel the need to practise *ijtihad* on an extensive scale.

Moreover, the Ahl al-Sunnah came to face various constrictions in the way of deducing laws of Shari'ah for contingent issues on account of distancing themselves from the Imams of the Ahl al-Bayt (A) after the Prophet's demise. This was because, on the one hand, about two thirds of Quranic verses were seen to deal with doctrines, social principles, higher ethical values, historical events relating to past messengers and their peoples, and accounts of their struggle against the oppressors and *taghuts* of their times; on the other hand, though the remaining one-third of them relate to legal matters (such as: *salat*, *sawm*, *khums*, *zakatt*, *Hajj*, *jihad*, *al-'amr bi al-maruf wa al-nahy 'an al-munkar*, *tawalli*, *tabari*; legal contracts and economic deals, such as matters relating to marriage, divorce, will and inheritance, sale, lease and mortgage; penal matters, such as those relating to *hudud*, *diyat* and *qisas*; matters relating to government, judiciary, judgement, testimony, qualifications for judgeship; matters relating to the rights of parents, debts, etc.) they deal mostly with general principles, leaving the details and particulars to the Sunnah in accordance with the verse:

وَمَا يَأْتِيَكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا ...

Take whatever the Apostle brings you, and abstain from whatever he forbids you from. (59:7)

• **The Quran as the Source of Law**

It may be argued that the Quran and some traditions expressly state that the Quran contains everything and that there can be no shortage while we possess the Quran. Accordingly, it may be said, there is no reason why the Ahl al-Sunnah should have faced any difficulty in deducing *ahkam* after the Prophet's demise.

In reply to this, we should say that it is undoubtedly true that: **وَلَا رَيْبَ وَلَا يَابِسَ إِلَّا فِي كِتَابٍ مُبِينٍ** (not a thing, fresh or withered, but it is in a Book Manifest), but the belief that everything has been mentioned in the Quran and that nothing has been omitted by it, in accordance with the verse: **مَا قَرَأْنَاهُ إِلَّا الْكِتَابَ مِنْ شَيْءٍ** (We have not omitted anything in the Book) does not imply that everyone, regardless of his qualifications, is capable of obtaining the pearls lying in the depths of its shoreless oceans. The belief that the Quran contains all the *ahkam* and is capable of answering every question that can be raised by man does not conflict with the view that an extraordinary level of knowledge, effort and learning is essential for obtaining all the *ahkam* of the Shari'ah from the Quran' and for finding the answer to any question. Thus we find that some traditions that expressly declare that there is everything in the Quran also add that it is not possible to understand part of Quranic meanings without reference to someone who is infallible (*Masum*). *Usul al-Kafi* (vol. I, p. 62) records the following statement of Amir al-Mu'minin (A) in this regard:.

ذَلِكَ الْقُرْآنُ فَاسْتَطِيقُوهُ وَلَنْ يَطِيقَ لَكُمْ الْخَبْرُ عَنْهُ إِنَّ فِيهِ عِلْمٌ مَا مَضَى وَعِلْمٌ مَا يَأْتِي إِلَى يَوْمِ الْقِيَامَةِ وَحُكْمٌ مَا يَبْتَغِيكُمْ وَيَبَيِّنُ مَا أَصْبَحْتُمْ فِيهِ تَخْتَلِفُونَ فَلَوْ سَأَلْتُمُونِي عَنْهُ لَعَلَّمْتُكُمْ.

There is the Quran: ask it to speak, but it will never speak to you (because its profound speech is audible only to the *Ma'sum* and it is he who can make it speak unreservedly), yet I will inform you about it; verily, in it is the knowledge of the past and the future up to the Day of Resurrection. In it is the judgment touching whatever passes between you and the explanations of your differences. If you ask me about it, I will inform you.

- **Difficulty of Utilizing the Sunnah**

Some, while admitting that it has been a difficult task for Islamic scholars to deduce the *ahkam* from the Quran - i.e. to make the Quran weak, in Imam 'Ali's words, the task lying basically beyond the Power: of ordinary persons - may argue that the Ahl al-Sunnah did have access to the Prophet's traditions on legal issues and that such traditions were sufficient to meet their needs. In reply to this conjecture it must be said that unfortunately these traditions were very few in comparison to the number of contingent issues that arose, and therefore they were not sufficient to answer all the questions that arose.

It was exactly for this reason that terrible gaps appeared in the Sunni fiqh of this period, and the inadequacy of the existing sources and foundations led to the invention of instruments for drawing legal conjectures (such as *ijtihad bi al-ra'y* and other instruments as *qiyas*, *istihsan*, *masalih mursalah*, *istislah*, *madhhab al-sahabi*, *sadd al-dhara'i* ; *fath al-dhara'i* ; *shari'at al-salaf*, *'urf*, *istidlal*, etc.)

- **The Need for Ijtihad amongst the Shi'ah**

As said above, the Shi'ah did not face any constriction in respect of legal source for finding answers to emergent issues after the Prophet's era. They did not face any

vacuum in Islamic law after the prophet's demise because of their belief that `Ali (A) and his descendants had been invested by the Prophet (S) with Imamate, the authority to expound the Prophet's Sunnah and to perpetuate it, which to them was an inexhaustible treasure that had been left by the Prophet (S) for the Ummah. As a result of this belief the Shi'ah referred to the living Imam for the solution of new problems and obtained the solution in the form of an exposition of a verse of the Quran or through a tradition of the Prophet (S). They never felt any need to turn to *ijtihad bi al-ra'y* or to resort to conjectural methods.

The only time the Shi'ah met with any difficulty in this regard with the beginning of the Minor Occultation of the Twelfth Imam (A), a period of 69 years from 260/874 to 328/940. During this period the Shi'ah could obtain replies to their queries through the deputies (*nuwwab*) of the hidden Imam (A) who served as intermediaries. These deputies, one after another, were four: Abu `Amr `Uthman ibn Sa`id, Abu Ja'far Muhammad ibn `Uthman (d. 304 or 5/916 or 7), Abu al-Qasim Husayn ibn Ruh al-Nawbakhti (d. 326/938), and Abu al-Hasan `Ali ibn Muhammad al-Samari (d. 329/941). With the end of the Minor Occultation and the beginning of the Major Occultation in the year 329/941, in the absence of access to the Imam (A) or his deputies, the Shi'ah were confronted with greater difficulty in regard to obtaining *ahkam* for new issues, which increased with the passage of time and the growing distance from the era of nass, together with the growing variety of the emergent issues and problems created by new conditions of life. Moreover, with the passage of time, increasing number of doubts took the place of the previous certainty about the meaning and import of the texts which served as the bases of legal deductions. It was at this time that the Shi'ah began to search for ways to solve this problem by deducing the *ahkam* for new issues from the available legal sources.

This new path was that of "*ijtihad* " whose pioneer was the treat *mujtahid* and creative jurisprudent al-Hasan ibn Abi `Aqil al Umani. After him, we can name al-Shaykh al-Tusi, the great scholar and highly original mujtahid who employed the foundations built by Ibn Abi `Aqil for extensive deduction of *ahkam* of the Shari'ah. In this way the difficulties living in the way of Shi'i jurisprudence were removed and it overcame its hurdles.

- **The Difference between Shi'i and Sunni Ijtihad**

'*Ijtihad*' is a familiar term both in Shi'i and Sunni fiqh, but its meaning and characteristics are different in the contexts of the two. Whereas *ijtihad* in the Shi'i sense means deduction of *ahkam* from the sources and through the principles of the Shari'ah, the same term in Sunni fiqh means deduction of *ahkam* through such means as *ray*, *qiyas*, *istihsan*, *masalih mursalah*, etc. Therefore, it has been said that Shi'i *ijtihad* does not involve legislation (*tashr'i*) of new laws as Divine commands regarding emergent issues and events; it confines itself to applying the unchanging general principles to emergent, changing particulars (*tafri`*). The Shi'ah do not look upon *ijtihad* as an independent source of *ahkam* but as the meant of their identification through a study of the sources of the Shari'ah. The Ahl al-Sunnah, on the contrary, consider *ijtihad* as an independent source of legislation.

- **Ijtihad during the Era of the Imams (A)**

Though, it would appear that the Shi'ah had no need of *ijtihad* during the era of accessibility to the Infallible Imams (A), the fact is that some Shi'i jurists did confront the need to perform *ijtihad* occasionally under some special circumstances, and the path of deducing secondary *ahkam* from the basic sources was open to them. The evidence of it is as follows:

1. There are traditions in which mention is made of certain common elements pertaining to the general principles of legal deduction. In these traditions, the Imams -- particularly- al-'Imam al-Sadiq (A) -- are reported to have been questioned about such principles (*usul*) and roles (*qawa'id*), and they gave replies to such questions. These traditions by themselves indicate that issues related to *ijtihad* were relevant for the Shi'ah during that period. The Imams (A) propounded such *usul* as that of *Bara'ah*, *Ihtiyat*, *Istishab*, and *Takhyir*, and such *aqaid* as that of *taharah*, *yad*, *ibadah*, *hilliyah*, *sihhah*, *tajawuz*, *faragh*, *la darar*, *la haraj*, etc. These *usul* and *qawaid* provide effective assistance- to the faqih in his effort to deduce the *hukm* of the Shari'ah about any contingent issue.

Historical accounts reveal that whenever the companions of the Imams (A) came across the texts of their ahadith - which differed from one another in respect to '*amm* and *khass*, *mutlaq* and *muqayyad*, *mujmal* and *mubin*, *zahir* and *azhar*, *zahir* and *nass* - they would try, to reconcile them according to the rules of objective reconciliation (*jam mawdu'i*) so far as it was possible (such as between '*amm* and *khass*, *mutlaq* and *muqayyad*, *mujmal* and *mubin*). But if objective reconciliation was not possible (such as between *zahir* and *azhar*, *zahir* and *nass*) they would reconcile the tradition in accordance with the rule of *jam hukmi* and remove their apparent conflict. When none of these two methods of reconciliation worked (such as when there were totally divergent narrations regarding a certain issue), the narrators would ask the Imams (A) to suggest some criterion for distinguishing between reliable and unreliable traditions. In this relation numerous traditions have been reported from the Imams (A) which are termed in '*ilm al 'usul* as *akhbar 'ilajiyyah* (remedial traditions). In *Usul al-Kafi*(vol. I), '*Awali al-la'ali*, and other works, there are chapters related to this topic and here we shall cite one tradition as an example.

In '*Awali al-la'ali* (vol. IV, p. 133) a tradition is recorded from Zurarah ibn A'yan:

Zurarah says: "I said to Abu Ja'far, 'May I be your ransom, if two conflicting traditions are narrated from you which one of them are we to accept?' The Imam (A) said, 'Take the one which is well-known among your companions (i.e. the Shi'is) and leave the one which is unfamiliar: I said, 'What should we do if both of the traditions are equally well-known?' The Imam (A) replied, 'Take the one which seems more balanced (*a'dal*)and more reliable (*awthaq*)to you.' I said, 'What if both of them are equally balanced, acceptable and reliable?' The Imam (A) said, 'See which of them is in accordance with the standpoint of the '*Ammah* (i.e. non-Shi'i Muslims); leave it, and take the opposite of what the '*Amman* hold, for the truth lies in that which contradicts them.' I said, 'Sometimes we come across two traditions both of which are in agreement with the '*Amman* or both of them contradict with their standpoint; what are we to do in such cases?' The Imam-(A) replied, 'Select the

tradition which is nearer to caution and leave the other one.' I said, 'What is our duty if both the traditions are in accordance with caution or if both of them are opposed to it?' The Imam (A) replied, 'In such a case, take anyone of the two and leave the other.'"

The traditions which deal with the resolution of conflict between traditions are great many and there is no need to cite them here. The aim of quoting the above tradition was to show that the principles of jurisprudence were often discussed during the era of the Imams (A) and that these principles were generally employed for the practice of *ijtihad*. On this basis, the practice of *ijtihad* was not limited to the period of inaccessibility to the Imams (A).

2. The presence of books dealing with some issues of *'ilm al-'usul* among the writings of the contemporaries of the Imams (A) is indicative of the fact that the practice of *ijtihad* was current and the principles of jurisprudence were relevant during the era of accessibility. We shall discuss this matter in detail while studying the various periods in the history of *ijtihad*; here we shall cite few instances of it for the sake of example:

(a) Hisham ibn al-Hakam, a pupil of al-'Imam al-Sadiq (A), compiled a treatise on word usage (*alfad*).

(b) Yunus ibn 'Abd al-Rahman, a pupil of al-'Imam al-Rida (A), wrote a short treatise on *usul al-fiqh*.

(c) Al-Fadl ibn Shadhan al-'Azdi al-Nishaburi, a pupil of al-'Imam al-Hadi (A), was the author of a number of *fatawa* issued on the basis of jurisprudential principles. For instance, he gave a *fatwa* upholding the validity of prayers offered in an usurped place, in accordance with his belief in the permissibility of the concurrence of *amr* and *nahy*. Apparently he was the first to believe in the permissibility of the concurrence of *amr* and *nahy* in matters of primary significance.

3. During the era of accessibility to the Imams (A), the Shi'is who lived in distant lands, such as Khurasan and Ray, could not easily contact the Imam (A) and question him about the problems they came across. Although historical accounts show that the Shi'is sent their queries to the Imams (A) through travellers and pilgrims, who brought them the Imam's answers on returning, it should be noted that this method was not followed in respect to all the problems encountered. Secondly, the replies in such cases arrived after the passage of considerable time during which we cannot say that they remained without any obligation to fulfill. Thirdly, the travellers and the messengers sent were not always successful in getting access to the Imams (A), because most of the time the Imams (A) were either under surveillance or in the prisons of tyrannical caliphs, so that the Shi'is could not contact their Imam. For instance, al-'Imam al-Sadiq (A) was under such strict and oppressive surveillance of the 'Abbasid caliph al-Mansur that no one could easily approach the Imam (A). The Shi'is had to resort to various kinds of tactics to approach the Imam's house in the garb of peddlers or tradesmen to ask questions while observing intense caution.

عَنْ كِتَابِ أَحْمَدَ بْنِ مُحَمَّدٍ بْنِ مُحَمَّدٍ بْنِ أَبِي نَصْرِ بْنِ الْبِرْزَنْطِيِّ عَنِ الرُّضَا عَلَيْهِ السَّلَامُ: عَلَيْنَا إلقاءُ
الْأَصُولِ وَعَلَيْكُمْ التَّفَرُّعُ.

قَالَ الصَّادِقُ (ع): إِنَّا عَلَيْنَا أَنْ نُلْقِيَ الْأَصُولَ وَعَلَيْكُمْ أَنْ تُفَرِّغُوا.

5. Another evidence of the existence of *ijtihad* during the era of accessibility to the Imam are the *fatwas* issued by the legists among the Imams' contemporaries, and the Imams' approval of their verdicts. The following tradition narrated by Mu'adh ibn Muslim is recorded in *Wasa'il al-Shi'ah* (vol. 18, 11th of the chapters on *sifat al-qadi*, hadith 37):

أَقْبِ الْمُسْتَفْنَى وَعَلِّمِ الْجَاهِلَ.

Give *fatwa* to the initiated and teach the ignorant.

Al-'Imam al-Sadiq (A) is reported to have said to Aban ibn Taghlib (*Jami' al-ruwat*, vol. I, p.9):

اجلس في مسجد المدينة وأفت الناس فإنني أحب أن يرى في شيعتي مثلك

Sit in the Mosque of Madinah and give *fatwas* to the people, for I love the like of you to be seen amongst my Shi'ah.

7. Some traditions indicate that the Imams (A) referred some of their followers to some of their outstanding pupils in matters relating to hadith and fatwa.

عَنْ عَبْدِ الْعَزِيزِ بْنِ مُهْتَدِي، قَالَ: سَأَلْتُ أَبَا الْحَسَنِ الرِّضَا (ع)، فَقُلْتُ: إِنِّي لَا أَقْدِرُ عَلَى لِقَائِكَ كُلَّ وَقْتٍ فَيَمَنْ أَخَذُ مَعَالِمَ دِينِي؟ فَقَالَ عَلَيْهِ السَّلَامُ: خُذْ عَنْ يُونُسَ بْنِ عَبْدِ الرَّحْمَنِ.

'Abd al-'Aziz ibn Muhtadi said: "I asked Aba al-Hasan al-Rida (A), 'I am unable to meet you every time, so from whom should I take my religious instruction?' "Take if from Yunus ibn 'Abd al-Rahman,' said the Imam (A)." (*Wasa'il al-Shi'ah*, vol. 18, eleventh of the chapters on *sifatal-qadi*, hadith 34)

عَنْ شُعَيْبِ الْمَقْرُوفِي، قَالَ: قُلْتُ لِأَبِي عَبْدِ اللَّهِ عَلَيْهِ السَّلَامُ: رُبَّمَا اخْتَجَجْنَا أَنْ نَسْأَلَ عَنِ الشَّيْءِ فَمَنْ نَسْأَلُ؟ قَالَ: عَلَيْكَ بِالْأَسَدِيِّ.

Shu'ayb says: "I said to al-'Imam al-Sadiq (A), 'Often we have to ask about something; whom should we ask?' The Imam said, 'Ask al-'Asadi (Abu Basir).'" (*Ibid.*)

عَنْ عَلِيِّ بْنِ مُسَيَّبِ الْهَمْدَانِيِّ، قَالَ: قُلْتُ لِلرِّضَا (ع): شَقْنِي بَعِيدُهُ وَلَسْتُ أَصِلُ إِلَيْكَ فِي كُلِّ وَقْتٍ، فَمَنْ أَخَذُ عَنْهُ مَعَالِمَ دِينِي؟ قَالَ عَلَيْهِ السَّلَامُ: زَكْرِيَّا بْنُ آدَمَ الْقُمِّيَّ التَّائِمُونَ عَلَى الدِّينِ وَالْأُذُنَا. قَالَ عَلِيُّ بْنُ مُسَيَّبٍ: فَلَمَّا انْصَرَفْتُ قَدِمْنَا عَلَى زَكْرِيَّا بْنِ آدَمَ فَسَأَلْنَاهُ عَمَّا اخْتَجَجْتُ إِلَيْهِ.

'Ali ibn Musayyab al-Hamadani says, "I said to al-Rida (A), 'I have to come a long distance and I cannot reach you every time (when I have to ask you something). From whom should I take the teachings of my faith?' The Imam (A) said, 'From Zakariyya ibn Adam; he is my trustee in regard to religious and secular matters.'" 'Ali ibn Musayyab adds, "On returning I went to Zakariyya ibn Adam and asked him whatever I needed to ask." (*Usul al-Kafi*, vol: 1, p.67)

قَالَ الصَّادِقُ (ع): يَنْظُرَانِ إِلَى مَنْ كَانَ مِنْكُمْ قَدْ رَوَى حَدِيثَنَا وَنَظَرَ فِي حَلَالِنَا وَحَرَامِنَا وَعَرَفَ أَحْكَامَنَا فَلْيَرْضَوْهُ حَكَمًا.

Al-'Imam al-Sadiq (A) said: "The two (Shi'i disputants) should look for one who narrates our traditions and has in view our *halal* and *haram* and who as well understands our *ahkam*. Then (having found such a person) they should accept him as a judge." (Ibid.)

قَالَ أَبُو مُحَمَّدٍ الْحَسَنُ الْعَسْكَرِيُّ (ع): ... فَأَمَّا مَنْ كَانَ مِنَ الْفُقَهَاءِ صَائِبًا لِنَفْسِهِ حَافِظًا لِدِينِهِ
مُخَالَفًا لِهَوَاهُ مُطِيعًا لِأَمْرِ مَوْلَاهُ فَلِلْعَوَامِّ أَنْ يُقْلَدُوهُ.

Al-'Imam al-'Askari (A) said:..."As to the faqih who preserves the integrity of his self, defends his faith, opposes his lust and obeys the command of his Master (*mawla*), then it is for the laymen ('*awamm*) to imitate him." (al-Tabarsi, *al- Ihtijaj*)

8. The traditions quoted above expressly indicate the permissibility of giving *fatwa* in accordance with the principles of Shi'i jurisprudence. There are other traditions which, though they do not expressly state such a sanction, are relevant in that we can infer such a permissibility from them.

Al-'Imam al-Baqir (A) said: "Anyone who gives *fatwa* without knowledge or guidance is cursed by the angels of Divine wrath and mercy. The sins of those who act upon his *fatwas* also lie upon him." (*Wasa'il al-Shi'ah*, vol. 18, fourth of the chapters of *sifat al-qadi*, a *sahih* tradition narrated on the authority of Abu 'Ubaydah)

Al 'Imam al-Sadiq (A) said: "Anyone who acts upon *qiyas* destroys himself and others who act upon his verdict. Whoever gives *fatwa* without knowledge and without knowing *nasikh* and *mansukh* or *muhkam* and *mutashabih*, brings perdition upon himself and others." (*Usul al-Kafi*, vol. 1, *bab al-nahy 'an al-qawl bi ghayr al-'ilm*, hadith 9)

The Prophet (S) said: "Whoever gives *fatwa* without knowledge or learning, his abode shall be hellfire." (*Tuhaf al-'uqul*, the *riwayah* of al-Hasan ibn 'Ali ibn Shu'bah)

9. In regard to the books of certain Shi'i groups (such as Banu Faddall and individuals (such as al-Shalamghani), the Imams (A) are reported to have said: **تُخَذُّوا مَا رَوَوْا وَتَذَرُّوا مَا دَرَوْا** 'Take their narrations and leave their conclusions.' It can be inferred from this tradition that *ijtihad* was practised by the Shi'is of that era. Banu Faddal and al-Shalamghani had diverted from the right path, and, therefore, the Imams (A) forbade the Shi'is from acting upon their verdicts, judgements and opinions.

Conclusion

From the nine reasons given above it can be concluded that the practice of *ijtihad*, in the sense of derivation of *ahkam* from Shar'i sources, existed during the era of the eleven Imams (S).? The companions of the Imams (A) derived secondary *ahkam*

from the legal sources, for issues for which there existed no *nass* either in the Book or in the Sunnah of the Prophet (S) or in *riwadydt* of the *Ma'sumun* (A), and this practice enjoyed the approval of the Imams (A).

- **Ijtihad, a Perennial Spring**

The essential sources of Islamic law are the Quran, the Prophet's Sunnah, and the traditions of the Infallible Imams (A), which are the most vital source of man's spiritual life. This is because the life and continuity of human societies depends on the existence of proper laws and regulations. These fundamental sources of law are like precious deposits in which the higher, transcendental teachings are kept in the form of general, universal - principles. In order to extract this vital material from the core of general and universal principles and to use it for the fulfilment of multifarious needs of man's spiritual and corporeal existence, there is the need of some instrument and means. Such an instrument is provided by *ijtihad*.

Ijtihad, on the one hand, gives vigour and viability to legal thought and, on the other, does not allow the *ahkam* to remain in the outdated moulds of obsolete expressions and terms, by expounding them in the language of every age and in accordance with its needs.

Although the Divine laws are fixed and unchangeable, the mode of their expression and exposition is subject to variation. A part of the function of *ijtihad* is to recognize the consequences arising from this fact. Hence it has been said that *ijtihad* is an agent of renovation in fiqh, and that it is a force that operates in history by developing the scope of fiqh with the expansion of its applications. At the same time, *ijtihad* safeguards the stability of legislation through time. Since the Sacred Lawgiver knew that various aspects of human life are subject to change its multifarious needs are open to variation, He recognized the role of *ijtihad* as a force which should emerge with the emergence of fiqh and remain in its service throughout the course of history in order to enable fiqh to fulfil the human need for law. The *ijtihad* which the lawgiver has sanctioned and which is to be employed in the service of fiqh, represents a specific meaning of the term '*ijtihad*'. In this particular sense it embodies one of the most outstanding characteristics of the spirit of Islam as reflected in Islamic legal studies, and it is in this sense that the Shi'ah have adopted the term.

If the practice of *ijtihad* is carried on in a correct manner, Islamic fiqh cannot remain static or face any kind of stagnation, nor will there appear any kind of deficiency or vacuum in any of its various branch.

The innate dynamism of Islamic fiqh became apparent when the great Shi'i *mujtahid* al-Hasan ibn Abi 'Aqil al-'Umani, a contemporary of al-Kulayni, gave a scientific structure to fiqh. The practical impact of his work became evident when the great Shi'i legist Shaykh al-Ta'ifah Muhammad ibn al-Hasan al Tusi employed the groundwork prepared by him for deriving *ahkam* from Shar'i sources for new issues and problems. Thus it was by these two great minds that fiqh was set upon a course upon which it progressed with time and developed with historical change.

- **The Source of the Inadequacies**

That which is sometimes referred to as the inadequacy of fiqh is in fact a result of inadequate research effort undertaken in some of the branches of Islamic legal studies. In other words, the main cause of these inadequacies is the failure to study the general and particular elements relating to some branches of fiqh. The reason for this neglect was the absence of any practical background during the past ages.

Accordingly, these inadequacies do not relate to the essence of Islamic law as such. It is we who have not worked hard enough to explore its hidden treasures. Undoubtedly, had we explored them, there would not have remained any unanswered question in this domain. On this account, the inadequacy pertains to our performance, not to Islamic law.

For instance, some issues of fiqh either totally lacked practical relevance in the past before the establishment of the Islamic Republic, or their relevance was very limited. This was true of matters relating to land, limits of private ownership, *anfal*, *jihad*, penal laws, judiciary, *qisas*, *ta'zirat*, etc., or issues pertaining to civil, economic and social legislation. As a result of the past irrelevance of these issues, due to the absence of any background necessary for implementation, sufficient work was not done on these topics and whenever some work was done it was sketchy and perfunctory.

On the other hand, other kinds of legal issues, such as matters pertaining to wudu ; ghusl, *tayammum*, *salat*, *sawm* and so on, were studied in extremely meticulous detail due to the existence of a practical background, and now we don't face any kind of inadequacy with regard to the problems pertaining to these topics.

Today, with Divine succour, the background required for the implementation of all the Divine *ahkam* in society has emerged with the victory of the Islamic Revolution and the realization of the sovereignty of the Islamic Republic. Now the theological centres should continue their endeavour by giving more attention to those branches of fiqh that were neglected in the past. This author believes that should a one-third of the research effort put formerly into such topics as *taharah* (ritual purification) and *salat* be devoted to other branches of fiqh, all the inadequacies would disappear and we would obtain clear and unambiguous *ahkam* in all the spheres.

- **The Qualifications Required for Ijtihad**

There are certain requirements which must be met in order to exercise *ijtihad* in economic, political, social, cultural, ethical and legal spheres. These are as follows:

1. The *mujtahid* should have sufficient knowledge and expertise in the field of *ijtihad* and must be thoroughly familiar with the statements of the Prophet ('a) and the Imams (A). Otherwise he cannot be called a *mujtahid* or a *faqih*:

لَا يَكُونُ الْفَقِيهُ فَفِيهِ حَتَّى يَتَعَرَّفَ مَعَارِضَ كَلَامِنَا.

One is not a faqih unless he understands the meaning of our statements.

In a tradition recorded in *Misbah al-Shari'ah* (p. 355, bab 63), al-'Imam al-Sadiq (A) is reported to have said:

وَالْمُفْتِي يَخْتِجُ إِلَى مَعْرِفَةِ مَعَانِي الْقُرْآنِ وَحَقَائِقِ السُّنَنِ وَتَوَاطُنِ الْإِشَارَاتِ وَالْآدَابِ
وَالْإِجْمَاعِ وَالْإِخْتِلَافِ وَالْإِظْلَاجِ عَلَى أَصُولٍ مَا أَجْمَعُوا عَلَيْهِ وَمَا اخْتَلَفُوا فِيهِ ثُمَّ إِلَى حُسْنِ
الْأَخْتِيَارِ ثُمَّ الْعَمَلِ الصَّالِحِ ثُمَّ الْحِكْمَةِ ثُمَّ التَّقْوَى ثُمَّ حَيْثُ إِنَّ قَدَرَ.

The mufti (one who gives fatwa) stands in need of knowledge of the meanings of the Quran, understanding of the real meaning of ahadith and the inward meaning of signs and indications, and familiarity with matters relating to etiquette and conduct. He should have thorough knowledge of the points of consensus and disagreement and be well-informed about the essentials of what they have agreed or disagreed about. Then he should possess the capacity to make a proper choice. Then he needs to be righteous in his actions, wise and pious. After possessing all these qualities, he may give fatwa if he has the capacity to do so.

Fiqh is like an ocean which does not yield its pearls and treasures to those divers who lack discrimination, knowledge, experience and expertise. Those who try to fathom it without possessing these qualities are drowned and destroyed.

2. The exercise of *ijtihad* should be in accordance with the criteria and principles of 'ilm al-'usul; otherwise any claims to *ijtihad* cannot be recognized.

3. Perpetual research about the factors that relate to the process of ramification (*tafr'i*) of the principles and their application to particular cases. These elements are as follows:

(a) The usul (fundamental principles) of *ahkam*, in whose light the *ahkam* for new *furū'* are obtained.

(b) The general rules of *ahkam*, which are applicable to individual instances in external reality.

4. Perpetual research about the elements relevant to derivation of *ahkam*, such as:

(a) The common (*mushtarak*) *usuli* elements of derivation.

(b) The specific elements (traditions) related to derivation that do not contain the causes ('*ilal*) behind the *ahkam*.

(c) The specific elements that do contain the cause underlying a *hukm* and which can be used for extending it to other cases. This extension of a law to similar cases is called *qiya mansus al-illah*, extension of the jurisdiction of a law in cases where the cause underlying it has been stated by the Lawgiver), However, the *qiyas* based on

analogy and similarity, which is considered valid by Ahl al-Sunnah with the exception of Hanbalis and *Zahiris*, is rejected by the Shi'ah.

(d) Extraction of definite criteria of *ahkam* from tradition through reason, as a result of which a *hukm* can be extended beyond the application mentioned in hadith.

In the terminology of fiqh this is called *tanqih al-manat al-qat'i* (isolation of the definite cause) and is considered valid by the Shi'ah. That which is considered invalid by the Shi'ah is deducing of the presumed cause of a *hukm* by rational means, which is termed *tanqih ul manat al-zanni* (isolation of the presumed cause).

(e) The isolation (*tanqih*) of general subjects (*mawdu'ay*) through the triple means of the *Shar'* (canon), *'aql* (reason) and *'urf* (custom).

This *tanqih* is directed towards two things: (1) content (*muhtawa*), (2) the legal application of the subject isolated to other general heads (*anawin kulliyah*)-- such as the application of the subject of cooperation (*taa'awun*) to the matter of *ithm* and *'udwan* as a primary consideration and its secondary legal application to the use of tobacco (as during the Tobacco Movement), for instance. This kind of application is one of the special functions of the *mujtahid* (that is why we said 'isolation of general subjects', for isolation of particular subjects is not the *mujtahid's* duty).

(f) The primary laws (*al-'ahkam al-'awwaliyyah*).

(g) The secondary laws (*al-'ahkam al-thanawiyyah*).

(h) The provision of legislative assistance to the ruler or *al-wali al-faqih* within the framework of the sources.

If *ijtihad* is exercised in various branches of law in the light of these conditions, no law pertaining to any subject will remain unidentified nor there will remain any kind of legal inadequacy. Now it is up to the committed *mujtahids* and scholars to exercise *ijtihad* in these fields of law, wherein the way has been prepared for implementation through the establishment of the Islamic Republic, and thus satisfy the needs of Muslim communities.

Some persons, on account of their ignorance, think that in order to meet the diverse needs of changed conditions of life we should either turn to the use of conjectural instruments (such as *qiyas*, *istihsan* and *masalih mursalah*) or to the legal systems of other countries of the east and the west. The above discussion shows the baselessness of such a suggestion.

Unfortunately, there is a group which on its first encounter with an inadequacy in some branch of law goes to the extreme and proposes such methods of legal deduction' as are neither sanctioned by the Shari'ah nor agree with the rational criteria, and compromise the reputation of Islam in the eyes of non-Muslims.

The Closure of the Gates of Ijtihad, a Conspiracy

The issue of closing the gates of *ijtihad* emerged during the reign of the `Abbasids, and undoubtedly the enemies of Islam played an effective part in raising it. This was because the giving up of *ijtihad* meant blocking the source of dynamism and perpetual vitality of Islam and its law, which in turn implied the expulsion of Islam from the arena of temporal affairs and, following it, its elimination from the intellectual and spiritual spheres. Evidently, this was what the enemies of Islam aimed at.

The cause of the present inadequacies of Sunni fiqh in most of the branches of law, as well as the issuance of incorrect *fatwas*, is the Sunni belief in the end of *ijtihad*. However, the committed and aware scholars among the Ahl al-Sunnah should endeavour to reopen the gates of '*ijtihad* and bring Islam out of its current state of isolation and decadence, so that a spirit of vitality and dynamism is infused into Muslim communities. This is because so long as the *taqlid* of the four Imams is considered binding, and new research, study and expression of views is regarded as impermissible, there appears to be little hope of any effective change.

• Difference of Viewpoints, a Bounty

There is no doubt that disagreement in the sense of quarrel and hostility is an undesirable thing which has been prohibited by the sacred Shari`ah. But disagreement in the sense of difference of opinion is, in many cases, good and valuable, because the conflict of ideas leads to greater research and deeper investigation. Some have interpreted the following statement of the Prophet (S) in this sense:

اِخْتِلَافُ أُمَّتِي رَحْمَةٌ.

The difference of my Ummah is a mercy. [1]

In any case, *ijtihad* and undertaking of investigation for identification of Divine laws is considered a desirable thing by the Lawgiver. The tradition:

لِلْمُصِيبِ أَجْرَانِ وَلِلْمُخْطِئِ أَجْرٌ وَاحِدٌ.

The *mujtahid* who succeeds (in identifying the true law) gets two rewards and the one who errs gets one,

aims to encourage *ijtihad* as it leads to the development of thought and taps the resources of the intellect. This admirable practice has been in vogue in Shi'i academies for ages, and throughout the seven epochs of the history of *ijtihad*, *mujtahidun* welcomed the expression of diverse viewpoints regarding various issues. This is the reason why Shi'i fiqh has achieved its remarkable development in various fields and preserved the capacity to answer the problems and satisfy the diverse

wants of man in every age. Farid alWajdi, writing in *Da'irat al-ma'arif*, III, 197, under *j-h-d*, says:

The Islamic Shari'ah contains sufficient amount of primary principles suitable for legal deduction and which can meet the emergent wants and solve the problems of life. Therefore, in every age there should be *mujtahids* capable of making legal deductions. From the beginning of the Islamic era to the third/ninth century there did exit *mujtahids* who deduced the *hukm* for every event and eventuality through *ijtihad* from the primary principles of the Shari'ah. They were not afraid of divergence of viewpoints, which to them was not only something ordinary and natural but a mercy of God, because diversity is one of the laws of nature and there is no community without divergence in some matters of religion, with the followers on every side defending their own viewpoint. But when the Muslims became rigid with regard to the understanding of the secrets and subtleties of their law, inadequacy and neglect became their lot. As a result they did not permit themselves to think about new realities. They would say that it was on account of the closure of the gates of *ijtihad*. But the fact is that according to the express texts of the Book and the Sunnah, the gates of *ijtihad* are open for all until the Judgement's Day.

In brief, social stagnation and intellectual decadence cast their shadow on Islamic communities when the road of *ijtihad* and thought was blocked and Muslims did not permit themselves to reflect. about new realities and problems. As a consequence, their legal studies remained at the same point that they had reached twelve centuries ago.

- **Traditional Fiqh or Progressive Fiqh?**

Nowadays some persons want to draw a distinction between 'traditional fiqh' and 'progressive fiqh'. However, if we set aside the specific views and objectives of some groups and see things as they really are, we will see that there can be no distinction between 'traditional fiqh' and 'progressive fiqh' in Shi'i context.

This is so because traditional fiqh, when dealt. with on the basis of *ijtihad* with all its conditions and criteria, has the capacity to solve all emergent problems and to march in step with all the manifestations of progress. However, if by 'progressive fiqh' be meant recognition of the right to violate Shar'i norms and requirements of *ijtihad* and the nonspecialist's right to interfere in this discipline, and the exercise of *ijtihad* through the use of *qiyas*, *istihsan* and *masalih mursalah*, it cannot be called Islamic firth. for say nothing of its being 'progressive'. This is so because 'fiqh' means the commands revealed by God to His Apostle, not laws determined by human thought and speculation. So also if traditional fiqh is taken to mean rigid adherence to the literal meanings of the texts (*zawahir al-nusus*) and the fatwas of predecessors and indifference to contemporary realities, such a static '*ijtihad* cannot answer the diverse problems of life in every age and keep pace with changing times.

- **Ijtihad, Legislation and Tajdid**

Ijtihad from the Shi-i view point is not a kind of legislation or something based solely on human thought, subjective judgement or provincial social, economic,

cultural or political perceptions. *Ijtihad* is also not a kind of *taqlid* in the sense of a passive acceptance of *ahkam*, in whose determination the *mujtahid* has no role. *Ijtihad* in Shi'i view means intellectual effort based on the recognition of certain canonical sources and juristic principles and aimed at understanding and discovering the laws of God. Although a dynamic force in fiqh, *ijtihad* does not diminish the sanctity and stability of the legal content of the Shari'ah. Rather, throughout the seven epochs of its development *ijtihad* has always guarded the principal content of the *ahkam* while at the same time extending its scope and application to the most distant horizons of human life on the basis of its general laws and principles. *Ijtihad*, it may be said, is making intelligent use of God's general grace whereby He has placed the laws of the Shari'ah in the bounteous domain of the intellect.

The first Shi'i faqih to open the gates of *ijtihad* as a comprehensive scientific discipline was Abu Muhammad al-Hasan ibn 'Ali al-'Umiini, known as Ibn Abi 'Aqil. He wrote a book on this subject entitled *al-ustamsik bi habl Al al-Rasul* which is mentioned by al-Najashi as being one of the most famous and well-known Shi'i works. In this book Ibn Abi 'Aqil examined all the various aspects of the principles of *ahkam* and the rules of *ijtihad* as well as the common elements related to the process of legal deduction. Although he wrote many books, in almost all the fields of Islamic sciences, his fame rests mostly on his studies of *ijtihad*. He wrote his above-mentioned book during the era of the Minor Occultation of the Twelfth Imam (A). He is considered the pioneer in the field because no one before him had written such a work that treated Shi'i fiqh in such a comprehensive manner with an approach based on *ijtihad*.

We do not know of any legist to have undertaken such a task before Ibn Abi 'Aqil. Before him Shi'i fiqh did not have the ability of entering the phase of *tafri'* (i.e. the application of *usul* for deriving answers to new *furu'* or secondary issues) on account of the absence of an elaborate and scientific method, without which *ijtihad* as a technique was not possible. This great legist filled this vacuum through his indefatigable efforts.

After Ibn Abi 'Aqil, the next person to set forth fiqh in a scientific perspective based on *ijtihad* was Abu 'Ali Muhammad ibn Ahmad al. Katib al-'Iskafi (d.381=991), known as Ibn Junayd. In his endeavour to establish legal studies on the principles and rules of *ijtihad*, he wrote a number of books on the subject. Two of them are: *Tahdhib al-Shi'ah li ahkam al-Shari'ah* and *al-Mukhtasar al-Ahmadi li al-fiqh al-Muhammadi*. Abu Ja'far ibn Ma'd al-Musawi, who claims to have seen Ibn Junayd's work, says that he had not seen a better-written book among Shi'i works. He adds that *al-Mukhtasar al-Ahmadi* was popular as a textbook during the days of the late 'Allamah.

A Clarification

Here it is essential to clarify two points. It appears from the statements of some scholars that Ibn Abi 'Aqil was the first to open the gate of practical *ijtihad* and to lay the foundations of *tafri'*. This is not correct, because he was the founder of *ijtihad* as theory and not as practice.

Secondly, some scholars are of the opinion that Ibn Junayd was the pioneer of the theory and practice of *ijtihad* and Ibn Abi `Aqil continued his work. This is opposite of what we believe to be the case, because Ibn Abi `Aqil was a contemporary of al-Kulayni (d.328 or 329/ 940 or 941) and lived during the era of the Minor Occultation. Although we don't know the exact date of Ibn Abi `Aqil's death, some indications lead us to believe that he died before or about the same time as al-Kulayni. Ibn Junayd al-Isksfi died in the year 381/991, about 52 (lunar) years after Ibn Abi `Aqil's death.

- **The Practice of Ijtihad**

The first legist to open the gate of practical *ijtihad* was the great legist and the unique scholar of his era Shaykh al-Ta'ifah Muhammad ibn al-Hasan al-Tusi (385-460/995-1068), who applied the general principles of jurisprudence to new and emergent *furu'*. We don't know of any Shi'i *mujtahid* before him to have practically applied *ijtihad* in his manner to answer the multiplying needs of the Shi'i world of the time. With his work he extended the scope of Islamic fiqh in a remarkable manner, for he fully utilized the theoretical foundations which had been laid by his predecessors in the field, such as Ibn Abi `Aqil and Ibn Junayd.

Al-Tusi commenced this project in his precious work *al-Mabsut*. In the preface to this work, while explaining his motives for writing it, he says. "Our opponents believe that the Imamiyyah do not have the capacity to refer the *furu'* to *usul*, and they confine themselves to the texts (*nusus*) related by their traditionists". Such a view stimulated the Shaykh al-Ta'ifah to rise to prove the Shi'i prowess in the field of *ijtihad* and to fill the existing vacuum. Juristic thought and the theory of *ijtihad* made great advancement during his era, breathing a new life into the body of fiqh. *Al-Mabsut* emancipated the studies of fiqh from their restricted confines - wherein their sole reliance was on the direct, literal interpretation of traditions - and brought them into a wide and open field. Al-Tusi's *al-Mabsut* represents the point of departure in the expansion of Shi'i fiqh and *usul* which was made possible by the preliminary work done by Ibn Abi `Aqil and Ibn Junayd.

- **The Development of the Theory of Ijtihad**

Shi'i *ijtihad* at the outset of the Minor Occultation did not come across the kind of difficulty faced during later eras with regard to the deduction of *ahkam* regarding new issues and problems. This was because, firstly, the Muslims of that time did not face the problems which emerged later. Secondly, due to the proximity with the era of *nass*, the availability of the Four Hundred *Usul* (which contained the records of the statements of al-Imam al-Baqir (A), al-Imam al-Sadiq (A) and the other Imams made, made by their pupils), and the understanding of the actual context in which those statements were made, the need for *ijtihad* was not felt as acutely as during the later times. *Ijtihad* and legal deduction was a simpler affair, free of the later technical complexities, because the legists of that period did not face any great difficulty with regard to the identification of trustworthy traditions, the literal and legal meanings and significance of words used in traditions, and the specific features relating to them. However, the passage of time and the emergence of new issues with the advancement of civilization, on the one hand, and the obliteration of signs and

indications which were instrumental in understanding the import and purpose of traditions as well as the complications arising from changes in general and legal usage of words, on the other - all these together made the task of deduction more difficult for the later *mujtahids* and jurists. To these must be added the difficulty arising from the forgeries and fabrications made by interested persons, which had affected the trustworthiness of many traditions.

Due to these causes, the practice of *ijtihad* for the deduction and discovery of the real *ahkam* was not so simple a matter as before, and it was necessary to study various sciences for the purposes of (1) determining the meanings of words, (2) understanding of the literal meanings of the Book and the Sunnah, (3) determining the reliability of narrators by studying their biographies for evaluating the *asnad* of traditions as *sahih*, *da'if*, *muwaththaq*, *mursal* etc., and (4) determining the traditional and rational criteria for giving precedence to a tradition and the rules for reconciling conflicting traditions (on the basis of *'amm* and *khass*, *mutlaq* and *muqayyad*, *mujmal* and *mubin*, *zahir* and *azhar*, *zahir* and *nass*).

The causes behind the conflict between traditions of legal significance were the following:

1. The loss of certain indications accompanying the texts of hadith, caused at times due to the dismemberment (*taqti'*) of traditions and *asnad*, and at times due to the negligence of narrators.
2. The narration of traditions in reworded form by the narrator, in words different from that of the Imam.
3. The making of statements contrary to the real Shi'i position on account of *taqiyyah*, which the Shi'is were forced to practise as a safety measure to protect the Shari'ah and their lives, property and honour.
4. The graded approach of the Imams in the exposition and communication of the *ahkam* to the people, for the sake of the consideration of specific conditions of a certain inquirer or certain special circumstances.
5. The treacherous interference of some anti-Islamic elements and mercenaries, against whose fabrications the Imams (A) warned their Shi'ah.

Accordingly, anyone who engages in the deduction of Divine *ahkam* from the traditions should have the capacity to reconcile various kinds of contradictions arising from the above-mentioned causes.

Notes:

[1]. This interpretation of the tradition is correct if *'ikhtilaf* is taken to mean 'difference of opinion'. However, in some traditions a different meaning is given to the word.

One of these traditions is the following from al-Shaykh al-Saduq's *Ma'ani al-'akhbar*, *Qumm*, 1361 H.Sh., p.157:

خَدَّثَنَا عَلِيُّ بْنُ أَحْمَدَ بْنِ مُحَمَّدٍ — رَحِمَهُ اللَّهُ — قَالَ: خَدَّثَنَا مُحَمَّدُ بْنُ أَبِي عَبْدِ اللَّهِ الْكُوفِيُّ عَنْ أَبِي الْحَبْرِ صَالِحِ بْنِ أَبِي خَتَّابٍ قَالَ: خَدَّثَنِي أَحْمَدُ بْنُ حَبَلٍ، عَنْ مُحَمَّدِ بْنِ أَبِي عُثَيْبٍ، عَنْ عَبْدِ الْمَوَدِّ الْأَنْصَارِيِّ، قَالَ: قُلْتُ لِأَبِي عَبْدِ اللَّهِ عَلَيْهِ السَّلَامُ: إِنْ قُومًا زَوُّوا أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ قَالَ: «إِنَّ اخْتِلَافَ أُمَّي رَحْمَةٌ»، فَقَالَ: صَدَقُوا. فَلَبْتُ: إِنْ كَانَ اخْتِلَافُهُمْ رَحْمَةً فَأَخْبِئْهَا عَنْهُمْ عَدَابٌ؟ قَالَ: لَيْسَ حَتَّى دَهَشْتُ وَدَهَشُوا. إِنْ أَرَادَ قَوْلُ اللَّهِ عَزَّ وَجَلَّ: «فَلْيُولُوا تَفَرُّقًا مِنْ كُلِّ فَتْرَةٍ مِنْهُمْ» فَانْفِرُوا يَتَفَقَّهُوا فِي الدِّينِ وَيُسَلِّمُوا قُلُوبَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ (٤) «فَأَمَرَهُمْ أَنْ يَنْفِرُوا إِلَى رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَيُخَسِّلُوا إِلَيْهِ قُلُوبَهُمْ لَعَلَّ لِقَاءَهُمْ تَرْجِعُوا إِلَيْهِ قُلُوبَهُمْ فَيَعْلَمُونَهُمْ. إِنْ أَرَادَ اخْتِلَافُهُمْ مِنْ التَّلَايِ لَا اخْتِلَافًا فِي دِينِ اللَّهِ. أَمِ الدِّينُ وَاحِدٌ.

...`Abd al -Mu'min al-'Ansari says: "I said to Abu 'Abd Allah: `The people narrate the Prophet (S) to have said: "The *ikhtilaf of my ummah* is mercy". (Is that true?)" He replied: `What they say is true.' I said, If their difference is mercy, then their consensus should be a scourge?!" He said, `it is not as you or they understand it. Indeed, what the Prophet (S) meant is the import of this utterance of *God Almighty*: "***...But why should not a party of every section of them go forth, to become learned in the Din, and to warn their people when they return to them, that haply they may beware?***"(9:122) (In this verse) God has commanded them to go forth (*yanfiru*) towards the Messenger of Allah (S) and to frequent (*yukhtalifu*)him so that they may learn and then return to their people to teach them. Indeed he (S) meant their departure from their places, not their divergence in the Din of Allah, For, verily, the *Din is one*."