

Ijtihad

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Professor M. Ramyar

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Ijtihad, literally, means the exerting of oneself to the utmost degree to attain a matter; and according to Shi'ite belief, it is employing all power to reach a presumptive conclusion in a case or in a rule of Divine Law¹. Therefore, in order to understand the Book and tradition, it is necessary to employ all power, not just a part of it. In such a case an additional term becomes necessary: *Istinbat*, meaning inference or deduction. The original usage of *Istinbat* in Arabic is to mean the drawing of water from underground.

The *mujtahid* is a person who is qualified in terms of moral behaviour and skill in religious principles so that he can exert independent judgement based on the principles of the *Shari'a* or give fresh opinions on matters of the *Shari'a*; in other words, a leading authority in the Divine Law is called in *Shi'ism* a *mujtahid*. Thus, one who exerts *ijtihad* must be qualified and strive with all his energy to discover the meaning of a passage from its words through inference and deduction.

In Islamic law there is a difference between a jurist (*faqih*) and a transmitter (*muhaddith*). The jurist must discover the commandment from tradition, but the transmitter only quotes. The following story will aptly illustrate the point. In the second century (A.H.) there was a transmitter who asked a jurist for a decision in a certain case. The jurist answered him, but the transmitter asked, "What is your proof for that?" The

jurist said: "Because of that tradition which you, yourself quoted earlier". The transmitter after thinking accepted that and said: "That is true, and it is possible to infer this result from that *hadith*".

On another occasion the transmitter asked the same jurist another question and received an answer. The transmitter again asked about the proof and received the same reply that he had been given on the previous occasion. The transmitter thought for a while and said: "That is right. It is logical to take this result from that *hadith*. Do you know? You jurists are just like physicians and we are like pharmacists".²

Whereas, the right of *ijtihad* has ceased in Sunni Islam, as even the most learned jurist since the 3rd/9th century has had to base his decisions on the opinions of earlier jurists... and the Sunnite position has been expressed by saying that "the gate of *ijtihad* was closed";³ on the contrary, "the gate of *ijtihad*" has always been open in Shi'ite Islam.

The Shi'ite Ijtihad

Traces of Shi'ite *ijtihad* go back to the period of the Imams. They tried to train some persons and encourage them to pronounce and reply to the cases of people. As Imam Baqir said to Aban Ibn Taghlib: "Sit down at the door of the mosque and pronounce *fatwa* (judgement) to the people. I would like to see many persons like you amongst my people".⁴

Ibn Idris quotes from Imam Sadiq that he said: "It is our duty to pronounce the principles, but you must detail them"⁵. Another time, Imam Sadiq sent Shu'ayb to Abu Basir al-Asadi to ask him some religious questions that Shu'ayb had and also, Imam 'Ali ar-Rida sent 'Ali Ibn Musayyab to Zakariyya Ibn Adam for the same purpose. There is another *hadith* in *al-Kafi* and *Wasa'il* which is related by 'Umar Ibn Hanzala and the Shi'ite *ulema* accepted it. In this *hadith*, Imam Sadiq said:

"Look to the person who relates our *hadith*, knows what is forbidden or permitted, and recognizes our rules, then accept him as a jurist, because I made him your jurist."

Tabarsi quotes from Imam Hasan al-'Askari in his *Ihtijaj* that the Imam said:

"It is obligatory upon the common people to follow the jurist who could prevent himself (from doing wrong), support his religion, oppose carnal desire, and obey his master (*mawla*)."

Replying to Ishaq Ibn Ya'qub, the twelfth Imam wrote in a command (*tawqi'*):

"In every event, refer to our relaters. They are my proof of God."⁶

In this manner, the traces of Shi'ite *ijtihad* date to the time of Imams, and it is clear that the Shi'ites were spread all over the Islamic cities, and being under government pressure, or long distances, made access to the Imams very difficult or impossible. But, from day to day, there were some new cases which needed new replies. There must be, necessarily, someone to reply to these new questions.

As among the companions of the Imams there were some well-known persons such as Zurara, a companion of Imam Baqir, Jumayl Ibn Darraj, a companion of Imam as-Sadiq, Yunus Ibn 'Abd ar-Rahman and Safwan Ibn Yahya, companions of Imam 'Ali ar-Rida⁷ who replied to the questions. Also, Imam as-Sadiq referred someone to al-Asadi to reply to his questions and Imam 'Ali ar-Rida did the same to Zakariyya Ibn Adam.

After the Greater Occultation, there were two Shi'ite jurists who were well known:

The first one was Ibn 'Aqil al-'Umani (Hasan Ibn 'Ali, in the first half of the 4th century), who refined Shi'ite jurisprudence, used some new opinions, and separated the discussions about principles from subordinates. He was the teacher of Ibn Qulawayh al-Qummi and wrote *at-Tamassuk bi Habl Al ar-Rasul*, and *al-Karr wa-l-Farr*. He was the first one who resorted to the root of jurisprudence and had intellectual reasoning.⁸ Afterwards, Ibn Iskafi (Abu 'Ali Muhammad Ibn Ahmad Ibn Junayd, d. 381/991) continued this method. He wrote some books, among them are: *Mukhtasar al-Ahmadi*, *Tahdhib ash-Shi'a*, *al-Asfar*. But his books were abandoned, since he used *qiyas* in his deduction.⁹ These two jurists are called the two ancients (*Qadimayn*).¹⁰

In spite of that, their method was not popular and had no adherents until Tusi gave a definite shape to the Shi'ite *ijtihad*.

The movements and qualitative changes of Shi'ite jurisprudence, since jurists ('*fuqaha*') have undertaken *ijtihad*, should be considered in three stages:

First of all, the positive statement of Shi'ite *ijtihad* by Tusi.

Secondly, the root of the Shi'ite jurisprudence took definite shape at the hands of Muhaqqiq Hilli (676/1277) and 'Allama Hilli (726/1325), and the weak *hadith* became separated from the sound. The book of Muhaqqiq (*Shara'i*) is still a textbook. At the end of this period Muhammad Amin al-Astarabadi (1034/1624):

"Is held to be the leader of the attack on the *mujtahids* and those who believed in *ijtihad*, and the founder of a subdivision of the Imamites known as Akhbarites ("*traditionists*"). Their view was that legal opinions should be based on traditions (*akhbar*) only, and not derived from general principles (*usul*) by analogical reasoning or otherwise."¹¹

This discussion went on until the period of Wahid Bihbahani (1117–1205/1705–1790) who attacked the Akhbarites in his debates and books (like *al-Ijtihad wa-l-Akhbar*, and *Fawa'id al-Ha'iriyya*), and, finally, the method of the Akhbarites was abandoned by the Shi'ites.

In the third stage, the Shi'ite *ijtihad* reached its climax through Shaykh Murtada al-Ansari (1281/1864).

The Main Differences

Tusi, like other ulema, founded his *ijtihād* on four bases: the Book, the tradition, consensus, and reason. Mention should be made here of two main differences in *ijtihād* between the Shi'ites and Sunnites.

1. Qiyas (Analogy)

Literally, it means “to measure”, “to compare” and “to weigh up”. It might have been derived from the word *qaws* (bow) used for measurement in Arabia. *Qiyas* in the root of jurisprudence is a *tamthil* in the *Organum*.

It must be noted that *qiyas* in the Aristotelian *Organum* was syllogism. It is comprised of the major and minor premiss, the middle terms, and the result. But *tamthil* is to carry a matter out in analogous cases¹², and *qiyas* in jurisprudence is the same. It means, while there is a rule on a subject, it could occur in similar cases.

For example, wine is forbidden in the Qur'an, because it causes drunkenness. Beer is intoxicating and makes one drunk. Drunkenness is a common factor between these two similar matters. Thus, beer must be forbidden. In this case, the *ratio legis* (*'illa*) (drunkenness) is explicated, and the majority of Shi'ites are inclined to accept it.

But the *ratio legis* (*'illa*) (the common factor between two similar matters), is not always clear, and the most difficult question is to distinguish this *'illa*. *Qiyas*, among the Sunnites, came into being as a systematizing legal principle of individual reasoning because the use of arbitrary personal opinion (*ra'y*) resulted in divergence and chaos. But *qiyas* itself fell a victim to capricious theorization on the part of the common run of jurists.

In any case, this kind of *qiyas* (or, as it is called, deduced *qiyas*, *mustanbit al-'illa*), was opposed by the Shi'ites and some other sects and, as we know, logicians do not view *tamthil* as a definite proof nor does it necessitate knowledge.

Mention should be, also, made that Ibn Shubruma relates a meeting between Imam as-Sadiq and Abu Hanifa, and a debate about *qiyas*:

“I and Abu Hanifa once visited Ja'far ibn Muhammad as-Sadiq; I introduced my companion as a jurist from Iraq. Then Ja'far said: ‘Would it be he who in religious matters produced *qiyas* (analogies) based on his own *ra'y* (*yaqis ad-din bi ra'yih*)? Would it be an-Nu'man Ibn Thabit? I myself, adds the informant, learned his name only from this question. ‘Yes’, replied Abu Hanifa, ‘that is I, may God grant me success!’ Then Ja'far said: ‘Fear God and apply no analogy in religious matters based on your arbitrary opinion, for it was Satan (*Iblis*) who established analogical reasoning first’.”

Now, remarks follow that purport to show the inadequacy of speculation in jurisprudico-religious matters.

“Just tell me which, in the eyes of God, is the more serious crime, homicide or adultery?”

“No doubt, homicide is a greater crime”, replied Abu Hanifa.

“Yet homicide is judged on the basis of two witnesses' evidence while adultery is proven only by statements from four witnesses. How does your analogy apply in this case? And what is more meritorious before God: fasting or praying?”

“Prayer is definitely more meritorious”, replied Abu Hanifa.

“Nevertheless, a woman must make up the fast which she misses through menstruation although she does not have to make up the praying which she missed in this state. Fear God, O servant of God, and do not produce arbitrary analogies in religious matters, for we and our opponents may be summoned before God's tribunal tomorrow. Then we on our part shall say: ‘Allah said: the Prophet of Allah had said. You and your companions, however, shall say: ‘We have heard such; we have guessed such’.’ But Allah shall treat us and you as He wills.”

Tusi quotes in *at-Tahdhib* from Aban who asked Imam as-Sadiq about the compensation for a woman whose fingers were cut off. He said:

“The compensation is fixed at ten camels for one finger, twenty for two, and thirty for three, but twenty for four. It is the command of the Prophet, and you must not make *qiyas*, because *qiyas* destroys the religion.”

It should be noted here, that this opposition is not fanaticism or rejecting the right of reason for mere devoutness, because, the Shi'ites accepted reason, instead of *qiyas*, as a basis of *ijtihad*.

The Shi'ite opposition, originally, was founded on two bases: *Qiyas* (like *tamthil* in logic) does not necessitate knowledge and is not really a reliable and trusty method.

It served as a precedent in *fiqh* that exerting *qiyas* resulted in exaggeration and chaos. Without opposition to it, Islamic jurisprudence would be entirely changed.

Besides, *qiyas* does not originally accord to the Islamic attitude of mind. The Islamic principles, like worship, morals and social attitudes are described in the Book and tradition. These principles are adaptable to all details. It is *ijtihad* which must draw the subordinate cases from the principles and deduce rules from Islamic principles in association with events. In any case, the Imams, following the Qur'an, knew reason as an esoteric proof and inner prophet.

For example, these *hadiths* are in *Usul al-Kafi*, *Kitab al-'aql*:

Imam 'Ali Ibn Abi Talib, the first Imam, said: “Gabriel came to Adam, and informed him: “O Adam, I have been ordered to let you choose one out of three things. Therefore, choose it and leave the other two.”

Adam asked: "What are the three things, Gabriel?" He replied: "Reason, modesty and religion (*din*)."

Then Adam said: "I choose reason." So, Gabriel ordered modesty and faith to withdraw and leave reason, but they said: "O Gabriel, we both have been instructed (by God) to remain with reason wherever it may be." Gabriel answered: "Then that is your situation." And then he ascended towards the heaven."

Imam Abu Ja'far Muhammad al-Baqir, the fifth Imam, said: "When almighty God created reason, He tested it. Then he ordered it to come forward and it came forward. Then God ordered it to go back and it went back. On this Almighty said: "I swear by My power and majesty that no creation of Mine is dearer to Me than you are, and I have only made you perfect in those whom I love. Lo! to you, are My orders and prohibitions addressed. And for you, are My rewards and retributions reserved.""

Imam Ja'far as-Sadiq, the sixth Imam, was asked: "What is reason?" The Imam replied: "Reason is that by which God is worshipped and a place in Paradise earned." The Imam was then asked: "What did Mu'awiya have?" The Imam replied: "That was just wickedness and cunning; it seemed like reason, but it was not reason."

At another time he added: "One who has reason has religion. He who has religion will have a place in heaven." And he quoted, also, from the Prophet that he said: "Whenever you hear about the good nature (*hal*) of a man, you should consider the goodness of his reason, since the divine rewards are based upon his reason,"

Imam Musa al-Kazim, the seventh Imam, said: "God has two proofs: evident proof and interior proof. The evident proof is the prophet and Imam, but the interior proof is the reason."

Imam 'Ali ar-Rida, the eighth Imam, confirmed: "Man's reason is his friend, and his ignorance is his foe."

Imam Baqir, finally said: "On the Day of Judgement, Almighty God will exact a detailed account from his servants, in exact proportion to the reason with which He had endowed them in the worldly life."

As is known, while there was a warm debate on *qiyas* between the Sunnites, and there were some sympathizers and some antagonists to it, there was also another very well-known dispute.

Some Sunnites held that the virtue or evil in everything must be ascertained only by revealed law (*Shar'*), and the opponents of exerting *qiyas* in *fiqh*, accepted this idea. Whereas, some other Sunnites, believing in intellectual reasoning and holding the ascertainment of goodness and evil through reason (*'aql*) accepted *qiyas* in *fiqh* as well.

The Shi'ites, however, rejected exerting *qiyas* in *fiqh*, but accepted the ascertainment of goodness and evil through reason, and this throws light upon the fact that opposition to *qiyas* was not to deny the right of reason (*'aql*).

Shaykh Tusi never believed in *qiyas* [13](#). For him, the Book on the whole gave certainty if there was an

explicit text. If there was not an explicit text, *qiyas* might perhaps have been allowed. The report of Mu'adh Ibn Jabal also shows that *qiyas* may be exerted when there was not an explicit text. [14](#)

In any case, although the majority of later Shi'ites accept *qiyas* in which the *ratio legis* (*'illa*) is explicit (*qiyas mansus al-'illa*), Tusi following his predecessor al-Murtada, does not accept it either. [15](#)

2. Ijma' (Consensus)

The third base of Islamic law is *ijma'* or consensus and it is the unanimous opinion of the *mujtahids* on a religious precept (*hukm*). But there is a difference between the Shi'ites and Sunnites on its source of validity. The Sunnites accept it through transmission and quote many *hadith* about it. The Shi'ites, however, recognize it as a means of discovering the speech of an infallible imam, and it must be clear that the speech of an imam is among them.

Thus, it will be related to the period of the imams. But, as an infallible imam exists in every era, and because of the grace of God, who never leaves His servants without guidance, if the *mujtahids* are unanimous on a religious precept and there are no objections, it would be proof that an infallible (imam) is satisfied. [16](#)

According to Tusi's belief, since consensus is a proof, because it includes the speech of an imam who is infallible, and this is an intellectual reasoning, then, the method for proving it should be through intellectual reasoning, not transmission. [17](#) He resorts often to consensus, even on the principal subjects like prophecy and imamate, against opponents who believed in consensus, too.

However, in the subordinate cases, he sometimes quotes consensus and at other times rejects it. Ash-Shahid ath-Thani (Shaykh Zayn al-Din al-Jubali al'Amili) collected thirty-four cases in which he had been contradictory, sometimes he had accepted consensus and at other times refuted it [18](#).

Tusi's Ijtihad

There were formerly some *mujtahids* like Ibn 'Aqil al-Umani and Ibn Junayd al-Iskafi. But this was really a primitive stage and because of some exaggerations and deficiencies, their method was abandoned and nobody followed them, until Tusi, who is really the founder of the Shi'ite *ijtihad*, established the bases of reasoning in Shi'ite religious law (*fiqh*).

Shaykh Tusi was one of the people who knew that a primitive view and vulgar comprehension are not sufficient to understand the spirit of Islamic instruction, but rather that good understanding of Islamic teaching needs a deep comprehension.

He never refrained from declaring free and independent opinions which caused Subki and Hajji Khalifa to call him a Shafi'ite and say: He was such a qualified lawyer (*mujtahid*) who did not lean on anything but the Book, the tradition, and his understanding. But he was really, the one who deduced many

subordinate cases from *hadiths* and gave many *fatawa*; and his views were undoubtedly absolutely sovereign in Shi'ite opinion for one hundred years. Afterwards, Ibn Idris started to criticize him, but Tusi's basis of *ijtihad* is still confirmed.

Although he is a man of principle and has a great respect for Islamic principles, he gives utterance to the right of reason (*'aql*). In spite of the fact that he is a great traditionist (*muhaddith*), his books *Istibsar* and *Tahdhib* are evidence that he knows the religious principles within the terms of reason. It means that he is not a fanatic and does not recognize the religious principles as imitative obedience.

He mentions in '*Uddat al-Usul*' some Shi'ite persons who are not enlightened and criticizes them: "If you ask them about the unity or justice of God, prophecy, or succession of the Prophet, they will only quote some *hadiths*." (instead of resorting to intellectual reasoning). He knows very well that the main beliefs should be understood directly and clearly by everyone through reason, and the transmitted works must only have a guiding role. He was involved with some fanatics who did not accept anything, but the *hadith* word for word, and he was obliged for a long time to shape his idea in the form of the words of *hadiths*. He complains in the introduction of *al-Mabsut*:

"I heard constantly that the Sunnite jurists despised Shi'ite religious law... and I wanted to compile a book including subordinate cases, but I was involved, and among the other things, which decreased my intention, was that our companions had less liking for this kind of compilation, because they had got used to the text of *hadith* word for word, and did not want to change any word, if one word were used instead of another, they could not understand it..."

In any case, Tusi compiled a book in this field and established Shi'ite *ijtihad* *Al-Mabsut* is a book of *ijtihad*, and it is the first Shi'ite law book in which the subordinate cases are drawn from principles. There are certainly many differences between the *Mabsut* and the *Nihaya* which was attacked by Ibn Idris.

In *Nihaya*, Tusi has noted legal cases using the *hadith* words, being no more than the interpretation of *hadiths*. It is a summary of decisions without references and rational outlines of law, but Tusi's method of *Mabsut* was obtained by reasoning and deduction (*ijtihad*) where necessary. Tusi felt in his time a need to change the method, but the solution was not easy and needed bravery and enormous skill.

Tusi managed it conscientiously and caused Shi'ite religious law to enter a new period, and besides, proved that Shi'ite *ijtihad* existed (without *qiyas*) and it is enough to draw new cases from the Islamic principles. The main point is that he recognized the needs of the community and at the same time preserved the principles. He solved the problem very well.

His judgement and *fatwa* are still acceptable, although sometimes he goes so far that it is difficult to reach him, even nowadays.

There are many patterns in his *fatwas*, but as his book *Mabsut* is full of detailed cases about worship, morals, and social behaviour, here, mention will be made of only a few of his other special opinions.

Tusi sometimes had ideas which those who came after him lacked the courage to hold. One of them in his opinion on painting and statues. In the commentary on the Qur'an which is about as-Samiri who produced for the Jews a calf-statue to worship, and consequently they became oppressors¹⁹, Tusi says that they were oppressors because of idolatry and not the making of a calf-statue.

Of course, it (statuary) is disapproved of but is not absolutely unlawful. What is quoted from the Prophet that he cursed portraitists, means that the anthropomorphist's and those who liken God to a man are the subjects of this curse.²⁰ Among the Shi'ite scholars, it is only Tabarsi who quotes this opinion in his *tafsir*,²¹ but others rejected it entirely.²²

Another specific opinion is about the single *hadith*, which, although his teachers al-Mufid and al-Murtada rejected it, he sometimes confirmed.

In the fifth/eleventh century, he defended the spherical nature of the earth. Jubba'i, like Balkhi and some other astronomers, in the commentary of the Aya that says: ***"Who had spread the earth as a bed for you" (Baqara, 2:22)***, say: "The earth is flat like a bed not spherical. A globe cannot be flat, and reason confirms that. There are so many seas and oceans, and water cannot be fixed without two parallel walls... if there is a side shorter than another one, of course, water will have a current..."

But Tusi refuted him and said: "These are not the proofs. Belief in the globularity of the earth means believing in its globularity in the whole, not in the part of the earth."²³

Another piece of evidence for his sound judgement is that Tusi accepts that the clouds are produced by vapour, as he says:

"If it is said that clouds are produced by vapours which rise from the earth, it might be true and there is no intellectual reason against it."²⁴

He refutes, also, that the sky is something different from firmament. Rummani says that these are two different things because the firmament moves and rotates, but the sky does not. Tusi refutes him saying: "There is no difficulty in the sky and firmament being the same, although, moving and rotating."²⁵

Tusi has other interesting ideas about suffering, commanding the right and forbidding the wrong, the faith and other theological subjects which will be mentioned another time.

^{1.} Akhund Khurasani; Kafaya, Chap, Ijtihad.

^{2.} 'Uyun Akhbar ar-Rida, p. 239, ed. Tehran.

^{3.} Watt; Islamic Philosophy, p. 170.

^{4.} Astarabadi; al-Fawa'id al-Madaniyya, p. 152, Safinat al-Bihar, s.v. Aban.

^{5.} Ibn Idris, as-Sara'ir, Bab al-Mustatraf.

^{6.} Saduq; Kamal ad-Din, p.484. Tabarsi, al-Ihtijaj.

- [7.](#) Kashshi, pp.155, 344. Mir Damad; Rawshih, p. 48. Abu 'Ali; Rijal, p. 9.
- [8.](#) Ibn Dawud; Rijal, p.110. Tusi; Fihrist, no. 200, p.96 and no. 806, p. 368.
- [9.](#) Tusi, Fihrist, no. 592, p.268.
- [10.](#) Rawdat al-Jannat, pp. 168, 560, 590.
- [11.](#) Watt; Islamic Philosophy, p. 170.
- [12.](#) Ibn Sina; Danish nama, p. 94.
- [13.](#) 'Uddat al-Usul, p. 3.
- [14.](#) 'Uddat al-Usul, pp. 136–139.
- [15.](#) 'Uddat al-Usul, p.144.
- [16.](#) Mughniyya, 'Aqidat ash-Shi'a, pp. 205–208.
- [17.](#) 'Uddat al-Usul, p. 3.
- [18.](#) This treatise has been published twice:
 - 1) At the end of Alfiyya, which is written by Shahid Awwal, 1308/1890 and
 - 2) In adh-Dhikr al-Alfiyya, p.790, Mashhad, 1391.
- [19.](#) Refer to Holy Qur'an, Surah al-Baqara, 2:51.
- [20.](#) Tibyan, Vol.1, p. 85, ed. Tehran, also Vol. 1, p.236, ed. Najaf.
- [21.](#) Tabarsi, Majma' al-Bayan, Surah al-Baqara, 2:51.
- [22.](#) For example, Shaykh Murtada, al-Makasib, p. 203.
- [23.](#) Tibyan, Vol.1, pp.102–103.
- [24.](#) Tibyan, Vol.2, p. 58.
- [25.](#) Tibyan, Vol.1, p. 125.

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