

[SECTION ONE]

THE RENEWAL AND IJTIHAD MOVEMENT
IN CONTEMPORARY ISLAMIC THOUGHT:
PIVOTAL TERMS AND CONCEPTS

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I

On the Meaning of Ijtihad and its Relationship to Opinion (*al-Ra'y*)

[ONE]

*Ijtihad – Its Etymology, its Meaning in the Context
of Islamic Law, and its Use as a Technical Term*

THE TRILATERAL ROOT *j-h-d*, vocalized either as *jahada* or *jahuda*, denotes the action of expending effort. Most lexicons, among them *Lisān al-ʿArab*, distinguish between *jahada* and *jahuda*, with *jahada* referring simply to the expenditure of effort, and *jahuda* denoting the same process, but with an added element of hardship and difficulty. Commonly used words derived from the *j-h-d* root include the verbal nouns *jihad* and *mujāhadah*, which denote the process of extreme exertion and effort on the level of speech or action; and the nouns *majhūd* and *tajāhud*, which convey the same sense as *ijtihad*, that is, the process of expending diligent effort, or the effort thus spent. Al-Jurjānī defined *ijtihad* as “the expenditure of effort toward the achievement of a desired end via induction from facts and evidence.”

The *j-h-d* root is found in numerous derivations in the Qur’an, including *jāhada* (*jāhadāk*, *tujāhidūn*, *jāhidhum*) and *jihad*, whether the process referred to has to do with effort exerted in armed conflict, the expenditure of wealth, or the act of calling others to embrace the message of truth. In *Sūrah al-Tawbah*, 9:79, the phrase *juhdahum* or *jahdahum* is understood by al-Zamakhsharī to mean “their energy, or strength,” while Muhammad Asad translates it as “[the meager fruits of] their toil.”

Ijtihad and Renewal

The term *ijtihad* itself occurs nowhere in the Qur'an. However, the sense conveyed by this word, that is, the effort made by a morally accountable individual to adhere to Islamic teachings and to build up and prosper the Earth, is found in numerous places throughout the Qur'an. As for the Hadith literature, it points to specific legal aspects of *ijtihad*. When speaking of the circumstances surrounding the beginning of the Prophet's (ṢAAS)* reception of revelation, for example, ʿĀ'ishah is reported to have quoted him as saying, "So he [Gabriel] took me and pressed me until all my energy was spent." Another example is found in a statement attributed to ʿAmrū ibn al-ʿĀṣ, who said, "If a ruler issues a judgment based on an effort to arrive at the truth, and if his judgment is correct, he will receive two rewards. If, on the other hand, his judgment is incorrect, he will receive one reward." Commenting on this statement in *Maʿālim al-Sunan*, al-Khaṭṭābī wrote, "The ruler whose judgment is mistaken is still rewarded, because his effort to arrive at truth is a form of worship. He is not rewarded for the mistake, but neither does he incur any guilt on account of it."

If someone pronounces a judgment concerning something about which he is not qualified to speak, he will receive no reward whether his judgment was mistaken or correct. In fact, he will incur guilt for so doing. If, by contrast, a learned individual who is qualified to speak on a given topic pronounces a judgment on said topic, he will receive a reward even if his judgment is mistaken, since the interpretative effort he expended – his *ijtihad* – in a search for truth is viewed as a kind of worship. Ignorance and a lack of competence are most likely to lead an individual into error, whereas knowledge and competence are most likely to lead to a correct judgment. Needless to say, scholars are in agreement that judgment should be entrusted to those most likely to rule correctly, not to those who would judge correctly only in rare or exceptional situations.

Al-Tirmidhī recorded an account in which, when the Prophet sent Muʿādh ibn Jabal to Yemen to serve as a judge there, he asked Muʿādh

* ṢAAS – *Ṣalla Allāhu ʿAlayhi wa Sallam*: May the peace and blessings of Allah be upon him; said whenever the name of Prophet Muhammad is mentioned or whenever he is referred to as the Prophet of Allah.

how he would rule on situations brought before him. Mu‘adh replied, “I will rule based on what is written in the Book of God.” The Prophet then asked Mu‘adh how he would rule if the situation in question was not dealt with in the Book of God. To this Mu‘adh replied, “Then I will base it on the sunnah (example) of the Messenger of God.” How, then, would he rule if the situation in question was not addressed by the example of the Prophet? Here Mu‘adh responded, “I will endeavor to form my own opinion (*ajtahidu ra’yī*).” Upon hearing this, the Prophet exclaimed, “Praise be to God, who has granted success to the messenger of the Messenger of God!” In a discussion of this hadith, Ibn Ḥazm quoted Sufyān ibn ‘Uyaynah in *Al-Aḥkām* as saying, “What Mu‘adh meant by saying *ajtahidu ra’yī* was that he would consult those more knowledgeable than he was. He did not mean simply that he would voice his own opinion.” Ibn Ḥazm’s purpose in citing this statement by Sufyān ibn ‘Uyaynah may have been to discredit the practice of ijtihad involving the expression of one’s personal point of view. This would of course have been consistent with Ibn Ḥazm’s commitment to the Zahirite school of thought, which rejects reliance on personal opinion and the principle of analogy, and which restricts admissible evidence in the formation of legal rulings to three sources: (1) the Qur’an, (2) the Sunnah, and (3) Consensus (*ijmā‘*), authoritative consensus being that of the Prophet’s Companions.

Once the leading schools of Islamic jurisprudence had been established and Islamic juristic principles (*uṣūl al-fiqh*) had been clearly defined, ijtihad came to be directed toward regulation and standardization. At this point most of the differences among scholars’ definitions of *uṣūl al-fiqh* were traceable to the conditions they insisted on with respect to the *mujtahid* (the person engaging in ijtihad), the questions being considered, and/or the types of rulings involved – legal, speculative, practical, rational, or otherwise.

Ibn Ḥazm wrote in *Al-Aḥkām*, “In the context of Islamic law, the term ijtihad refers to the attempt to arrive at a ruling on a case based on all relevant evidence.” Al-Ghazālī (d. 505 AH/1111 CE) noted that “scholars have come to use the term ijtihad to refer specifically to the endeavor to educate oneself on rulings based on Islamic law.” As a matter of fact, the precise stipulation that derivation of legal rulings be

Ijtihad and Renewal

part of the *mujtahid*'s task was a critical aspect of the technical definition of *ijtihād* that evolved over the years, and that set *ijtihād* apart from other types of juristic endeavor. Other actions undertaken by a jurist, although they may share some elements in common with *ijtihād*, nevertheless remain distinct from it, and the term *ijtihād* does not apply properly to them. Al-Shāfi'ī (d. 201 AH/820 CE) in his day had attempted to define the term *qiyās*, or analogical reasoning, in a similarly precise and stringent manner. However, al-Ghazālī objected to this attempt on al-Shāfi'ī's part. And in fact, the tasks involved in legal inference are broader than those involved in analogical reasoning.

Scholars also disagreed over whether or not to classify discussions of matters relating to reason and logic as a type of *ijtihād*. Some held that such discussions fell outside the realm of *ijtihād*, while others maintained that rational analyses of relevance to legal rulings and matters of faith and belief are themselves a kind of *ijtihād*.

According to Imam al-Ghazālī, a theory is either speculative (*ẓanniyyah*) or definitive (*qat'iyyah*). When declaring a ruling on speculative matters, there is no 'right' or 'wrong'. In relation to definitive matters, however, a scholar will be deemed guilty of wrongdoing if he issues a mistaken ruling. Definitive matters are further divided into three categories: (1) *kalāmiyyah* (scholastic), (2) *uṣūliyyah*, that is, pertaining to Islamic legal principles (*uṣūl*), and (3) juristic (*fiqhiyyah*). By 'scholastic', al-Ghazālī meant matters belonging to the realm of pure reason and intellect. Truth in this realm is viewed as being singular. Hence, whoever issues a ruling that conflicts with this truth is guilty of wrongdoing. In relation to juristic principles, al-Ghazālī held that the consensus (*ijmā'*) of the Islamic scholarly community could be a valid basis for argumentation, as could analogical reasoning (*qiyās*) and single-narrator hadiths. As for juristic matters they include for example questions relating to the obligatory nature of the five daily prayers or other actions.

In the aforementioned areas, *ijtihād* is evaluated in terms of two criteria: (1) whether it deals with speculative or definitive matters, and (2) whether it is correct or incorrect. The second criterion is related to the first in all questions of religious knowledge, and not only in relation to juristic matters.

Moreover, each of the aforementioned areas (theology, Islamic legal principles, and juristic issues) is associated with a particular method of investigation, induction, and use of evidence. If, however, the question at hand is not religious in nature, such as the composition of material bodies, then the scholar who reaches a mistaken conclusion in relation to it is not guilty of any wrongdoing, nor does the scholar who reaches a correct conclusion merit any particular reward.

The difficulty that remains has to do with the Muslim community's failure to keep pace with the intellectual and rational development witnessed by other civilizations. One principle reason for this difficulty is that the concept of *ijtihād*, which at one time was applied in a variety of social spheres within the framework of clear religious principles, came to be restricted to the sphere of juristic deliberation. Jurisprudence had once been the prime motive force behind Muslim society's intellectual vigor. However, when Islamic jurisprudence underwent a period of stagnation and retraction, the role of reason in Muslim society was dealt a severe blow, *ijtihād* was relegated to the past, and the Muslim community began to relinquish the position of leading world civilization it had once enjoyed.

In order to reclaim its former prominence and development, the Muslim community thus needs to revive the widespread practice of *ijtihād*, bearing in mind that each particular sphere of life, be it politics, economics, Islamic jurisprudence, the hadith sciences, linguistics and its subdisciplines, or some other, is associated with specific methods of reasoning.

In his book entitled, *Al-Ijtihād wa al-Ijmāʿ* (Ijtihad and Consensus), the late Ismaʿīl R. al-Faruqi expressed the view that early Muslim scholars' declining use of *ijtihād* when deriving rulings from Islamic legal texts or juristic sources was due to a decline in Islamic consciousness itself. Evidence of this decline can be clearly seen, he commented, in the fact that after a long hibernation, Muslim societies have wakened to find that everything from their furniture, to their clothes, to their means of entertainment, to their modern academic disciplines, to their architecture is European. In fact, even their languages are smattered with European terms.

Ijtihad and Renewal

[TWO]

Ijtihad and Opinion (Al-Ra'y)

Ibn 'Abd al-Barr (d. 463 AH/1071 CE) was one of the first scholars to discuss this issue. He entitled one section of his book *Jāmi' Bayān al-ʿIlm wa Faḍlihi*, “Arriving at an Opinion (*Ijtihād al-Ra'y*) in Keeping with Sound Principles When There is No Explicit Text Addressing the Case in Question.” In this chapter, Ibn 'Abd al-Barr cited numerous traditions and hadiths passed down from the Companions of the Prophet on the topic of *ijtihād al-ra'y*. He followed this with another section entitled, “Scholarly Criticisms of Opinion (*al-ra'y*), Surmise (*al-ẓann*), Groundless Analogical Reasoning (*al-qiyās ʿalā ghayri aṣl*), and the Wrongness of Raising Too Many Questions,” (*ʿayb al-ikthār min al-Masā'il dūn i'tibār*) in which he cited hadiths and traditions that take issue with reliance on opinion, or *ra'y*.

In his book *I'lām al-Muwaqqi'im*, Ibn al-Qayyim (d. 751 AH/1350 CE) divided opinions into three categories: (1) blatantly invalid, (2) valid, and (3) doubtful. He then provided a lengthy, detailed description of these categories and the differences among them.

Muslim scholars' views on opinion may be distilled into the following two positions: (1) that opinion is praiseworthy, being based on the guidance found in the Qur'an, the Sunnah, and the consensus of the Muslim scholarly community, and (2) that opinion is blameworthy. Imam al-Shāfi'ī equated *qiyās* with *ijtihād*, and thus used the two terms interchangeably. In so doing, al-Shāfi'ī sought to avoid confusion between *ijtihād* and juristic preference (*istiḥsān*) – which involves basing one's ruling on human interests rather than strictly on similarities between one case and other, as in *qiyās*. The reason for this is that, as Abū al-Walīd al-Bājī observes, predecessors of al-Shāfi'ī such as Abū Ḥanīfah (d. 150 AH/772 CE) and Mālik ibn Anas (d. 179 AH/795 CE), both of whom engaged in *istiḥsān*, viewed this practice as acceptable and even praiseworthy.

According to Mustafa Abd al-Razzaq, modern Islamic scholarship views the practice of *ijtihād al-ra'y* in the formulation of legal rulings as one of the earliest outcomes of the rational perspective that had begun to develop among Muslim thinkers. The rational perspective, which

developed and matured with Qur'anic support, gave rise to the Islamic juristic schools, and to the discipline that came to be known as *uṣūl al-fiqh*, or the principles of jurisprudence.

According to Fathi al-Durayni (1923-2013), *al-ra'y* or *ijtihād al-ra'y* is not a manifestation of purely abstract thought. After all abstract thought is not a source of legislation in Islam. In fact, it is a usurpation of the divine right to legislate for human beings. When a scholar engages in *ijtihād al-ra'y*, the opinion he forms is not based solely on the logic of language or the apparent meanings conveyed by the words of a text. Rather, when engaged in *ijtihād al-ra'y*, the connection between the text and the scholar's intellectual acumen is governed by recognized rules and principles lest he or she fall into logical errors or be swayed by emotion, personal desires, or bias. Hence, the approach associated with *ijtihād al-ra'y* differs from that associated with the Zahirite, or literalist school of thought; it likewise differs from the approach adhered to by the philosopher, who appeals to nothing but human logic and abstract reason. Neither the purely linguistic approach nor the purely rational approach is fully consistent with the nature of Islamic law-making, which is founded upon sacred texts (the Qur'an and the Sunnah), the meanings derived from them, the human will and spirit, and these texts' underlying aims and intents.

The term *ijtihād* has been employed in contrast to other terms, such as *tafsīr* (explanation or exegesis), *ta'wīl* (interpretation), and others. Adib al-Salih (born 1926) has defined *tafsīr* as, "clarification of the meanings of the words and the manner in which they point to [religious] precepts and rulings in order to apply the text based on a sound understanding thereof." Given this definition of *tafsīr*, the purpose of *ijtihād* in the *tafsīr* process is to clarify both the meaning of the text and its juristic implications and applications. As such, the *ijtihād* of which we speak belongs to the first category mentioned above, namely, a praiseworthy understanding that remains faithful to Islamic law as based upon the Qur'an and the Sunnah. As for the term *ra'y*, we are using it here interchangeably with *ijtihād*. In the words of Husayn al-Dhahabi (1915-1977), *tafsīr* based on *ra'y* (*al-tafsīr bi al-ra'y*) is a way of explaining the Qur'an via *ijtihād* given a thorough familiarity with the tools one needs in order to engage in this process.

Ijtihad and Renewal

As for *ta'wīl*, or interpretation, al-Durayni defined it as:

a vital outgrowth of *ijtihād al-ra'y* based on methods informed by Islamic juristic principles. *Ta'wīl* entails a shift away from the superficial, intuitive understanding of the words to some other meaning based on textual evidence, a general rule, or a wise purpose underlying Islamic law. Such an understanding is thus valid and well-founded.