

## Lesson 25: The Science of Jurisprudence

The totality of man's actions, which is his relationship with God and fellow men, is in need of rules that embrace the science of jurisprudence. The laws of Islam have a divine origin emanating from the will of God. Of course, the will of God is never dependent upon contract and consent. It is rather based on intrinsic and true felicity and adversity. The Noble Messenger (S) is the messenger of God and his decree is the decree of God:

﴿ وَ مَا يَنْطِقُ عَنِ الْهَوَىٰ ۖ إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ ﴾

***“Nor doth he speak of (his own) desire. It is naught save an inspiration that is inspired.”***<sup>1</sup>

And it is based on the verse, ***“Obey Allah and obey the Apostle and those vested with authority among you”***<sup>2</sup> that obedience to ‘those vested with authority’ {*uli'l-amr*}—the true successors of the Prophet (S)—has been placed along with obedience to God and the Messenger (S). The statements of the infallible Imams (‘a) are nothing but an inspiration from God, and like the statements of the Prophet (S), obedience to them is obligatory.

### **The State of Jurisprudence during the Period of the Companions and the Followers {*tabi'un*}**

But after the demise of the Prophet (S) when the true path of Islam was changed and people were kept away from the rightful successors of the Prophet (S), they refer to the companions {*sahabah*} of the Prophet (S) concerning religious issues and problems. Of course, a number of the *sahabah* were forerunners in this matter. As Ibn Sa'd says, during the caliphate of Abu Bakr, 'Umar, 'Uthman, 'Ali, 'Abd ar-Rahman ibn 'Awf, Mu'adh ibn Jabal, Ubayy ibn Ka'b, and Zayd ibn Thabit issued religious edicts {*fatawa*}.<sup>3</sup>

The pure Imams (‘a) and a number of the Shi‘ah among the *sahabah* such as ‘Abd Allah ibn al-‘Abbas and Abu Sa‘id al-Khudri were also recognized generally by the Ahl as-Sunnah as jurists and well-informed of the laws of Islam, and were referred by them.<sup>4</sup>

Of course, during that period, the Shi‘ah used to refer to the infallible Imams (‘a) and leaders of the *Ahl al-Bayt* (‘a) in matters of jurisprudence and Islamic teachings in general. So, jurisprudence and *ijtihad*<sup>5</sup>, as they are applied today, were not existent then. But after the end of the period of the *sahabah*, on account of the emergence of new issues in jurisprudence, a number of the Followers {*tabi‘un*} (the generation succeeding the *sahabah*) had engaged in matters of jurisprudence {*fiqh*} and the term *faqih* {jurist or jurisprudent} was applied to them. Among them were the “seven jurists” of Medina.<sup>6</sup>

## The State of Jurisprudence among the Shi‘ah

The state of jurisprudence among the Shi‘ah was different owing to the presence of the infallible Imams (‘a) and *ijtihad*, then discussed among the Ahl as-Sunnah, was not developed among the Shi‘ah.

It can be said in general that the Shi‘ah jurisprudence during the periods of the presence of the infallible Imams (‘a) up to the end of the minor occultation {*ghaybah as-sughra*} has been at the period of settlement and preparation for *ijtihad*.<sup>7</sup> With the presence of the infallible Imams (‘a), keeping open the door of knowledge and accessibility of the textual sources, the need for *ijtihad*, which largely depends on intellectual bases, had not been much felt then.

Shi‘ah jurisprudence on the basis of *ijtihad* was first founded by Ibn Abi ‘Aqil ‘Ummani (died in the first part of the fourth century AH), a contemporary of al-Kulayni. After him, Muhammad ibn Junayd Askafi (died mid-fourth century AH) continued his way and fortified the edifices of *ijtihad* and juristic deduction {*istinbat*}.

They are known as the “*Qadimayn*” {the two seniors}. Shaykh al-Mufid (died 413 AH) and Sayyid Murtadha ‘Alam al-Huda (died 436 AH) also followed the path of *ijtihad* until it was the turn of Shaykh at-Tusi (460 AH). The Shi‘ah jurisprudence attained a glorious stage through this great man. Apart from writing reliable books on *hadith*, *At-Tahdhib* and *Al-Istibsar*, he also strived to collect books on jurisprudence and *ijtihad*, authoring such books on jurisprudence as *An-Nihayah*, *Mabsut* and *Khilaf*.

Of course, it does not mean that *ijtihad* and jurisprudence had never been discussed during the presence of the pure Imams (‘a). As a matter of fact, some people had no direct access to the pure Imams (‘a) due to location and peculiar conditions.

So, in this regard, the pure Imams (‘a) presented to the people the criteria by which to identify the jurists to whom they could refer in case of necessity, dealing in a sense with the preliminary *ijtihad* as well as answering the inquiries of people. For example, it is stated in the *Maqbulah* of ‘Umar ibn Hanzalah that he asked Imam as-Sadiq (‘a) about two persons from among the Shi‘ah who were in conflict over

religious issues such as liability and debt {*dayn*} and inheritance {*mirath*}.

The Imam said, “They have to look for a person who could narrate our *hadiths*, give opinion about what we declared lawful {*halal*} and unlawful {*haram*}, and know our decrees {*ahkam*} for I declare such a person as the judge and arbiter for you.”<sup>8</sup>

Sometimes also the pure Imams (‘a) would appoint certain persons to whom the Shi‘ah refer in matters of jurisprudence and religious laws. For instance, according to Shaykh at-Tusi, ‘Ali ibn Musayyab said to Imam ar-Ridha (‘a): “There is a long way and I cannot come to you whenever I want. From whom should I ask about your religious decrees?”

The Imam replied: “{You may ask} from Zakariyya ibn Adam as he is trustworthy in {matters of} religion and the world.”<sup>9</sup> Similarly, Imam al-Baqir (‘a) commanded Aban ibn Taghlib to sit in the mosque and issue religious edicts {*fatawa*} for the people.<sup>10</sup>

## The Beginning of Ijtihad

During the period of the pure Imams (‘a), they used to teach their students the principles of jurisprudence {*usul al-fiqh*} and the rules of deducing them. For this reason, books attributed to the infallible Imams (‘a) have been written by Shi‘ah scholars; for example, the book *Usul Al ar-Rasul* written by Hashim Khwansari; *Usul Asliyyah* authored by Sayyid ‘Abd Allah ibn Muhammad-Ridha Husayn; and the book *Fusul al-Muhimmah* on the principles of the Imams (‘a) penned by Muhammad ibn al-Hasan Hurr al-‘Amili.<sup>11</sup>

In the books on *rijal*, some of the great companions of the pure Imams (‘a) have been described as jurists {*fuqaha*}. For example, Najashi thus says about Fadhl ibn Shadhan: “...He was one of our reliable companions among the jurists {*fuqaha*} and scholastic theologians {*mutakallimun*}.”<sup>12</sup>

## The Jurists among the Companions of the Imams (‘a)

Shaykh at-Tusi has introduced eighteen persons from among the companions of Imam al-Baqir, Imam as-Sadiq, Imam al-Kazim, and Imam ar-Ridha (‘a) as the Imams’ jurist-companions, describing them as “jurists among the companions of Abu Ja‘far (‘a),” “jurists among the companions of Abu ‘Abd Allah (‘a),” ),” and “jurists among the companions of Abu Ibrahim and Abu’l-Hasan ar-Ridha (‘a).”

In continuation, Shaykh at-Tusi has added that the Shi‘ah have consensus of opinion regarding the authenticity of their narrations and acknowledge their expertise in jurisprudence among the companions of the pure Imams (‘a). He then introduced them in three categories.

**First category:** The jurists among the companions of Imam al-Baqir (‘a) such as Zurarah known as Kharbud, Barid, Abu Basir Asadi, Fadhil ibn Yasar, and Muhammad ibn Muslim at-Ta’ifi, among whom Zurarah was the most learned. The six were also considered among the companions of Imam as-Sadiq

(‘a).

**Second category:** The jurists among the companions of Imam as-Sadiq (‘a) such as Jamil ibn Darraj, ‘Abd Allah ibn Maskan, ‘Abd Allah ibn Bakir, Hammad ibn ‘Isa, and Hammad ibn ‘Uthman.

**Third category:** The jurists among the companions of Imam al-Kazim and Imam ar-Ridha (‘a) such as Yunus ibn ‘Abd ar-Rahman, Safwan ibn Yahya, Biya‘ as-Sabiri Muhammad ibn Abi ‘Umayr, ‘Abd Allah ibn al-Mughayrah, Hasan ibn Mahbub, and Ahmad ibn Muhammad ibn Abi Nasr. 13

In the section about the reports {*akhbar*} of the Shi‘ah jurists and their written books, Ibn Nadim has also mentioned a number of the jurists among the companions of the pure Imams (‘a), saying: “They are sheikhs who have narrated *fiqh* from the Imams.” He has then mentioned them, viz. Salih ibn Abu’l-Aswad, ‘Ali ibn Ghurrab, Abu Yahya Layth Muradi, Zurayq ibn Zubayr, Abu Salmah al-Basri, Isma‘il ibn Ziyad, Abu Ahmad ‘Umar ibn ar-Radhi‘, Dawud ibn Farqad, ‘Ali ibn Ri‘ab,

‘Ali ibn Ibrahim Mu‘alli, Hisham ibn Salim, Muhammad ibn Hasan al-‘Attar, ‘Abd al-Mu‘min ibn Qasim al-Ansari, Sayf ibn ‘Umayrah Nakha‘i, Ibrahim ibn ‘Umar San‘ani, ‘Abd Allah ibn Maymun, Qadah, Rabi‘ ibn Madrak, ‘Umar ibn Abi Ziyad Abzari, Zaykar ibn Yahya Wasiti, Abu Khalid ibn ‘Amru ibn Khalid Wasiti,

Hariz ibn ‘Abd Allah Azadi Sijistani, ‘Abd Allah Halabi, Zakariyya Mu‘min, Thabit ʿarari, Mathna ibn Asad Khayyat, ‘Umar ibn Adhinah, ‘Ammar ibn Mu‘awiyah Dahni ‘Abdi Kufi, Mu‘awiyah ibn ‘Ammar Dahani, and Hasan ibn Mahbub Sarad, for each of whom one book has been mentioned. 14

## Lesson 25: Summary

The totality of actions of man is in need of rules which embrace the science of jurisprudence.

After the Holy Prophet (S) when the people were kept away from the rightful successors, they referred to the companions {*sahabah*} of the Prophet (S).

By the end of the period of the *sahabah*, a number of jurists {*fuqaha*} emerged from among the Ahl as-Sunnah.

But the condition of jurisprudence {*fiqh*} among the Shi‘ah was different because the Infallibles (‘a) were present and the need for *ijtihad* was not so much felt. Jurisprudence during these periods was at the stage of preparation for *ijtihad*. In fact, jurisprudence base on *ijtihad* was first discussed at the time of Ibn Abi ‘Aqil ‘Ummani during the fourth century AH.

Of course, during the periods of the Imams (‘a) a sort of *ijtihad* was also discussed. At times, the pure Imams (‘a) would teach the way and method of *ijtihad* to their companions. For this reason, books on the principles of jurisprudence {*usul al-fiqh*} attributed to those personages were written.

Shaykh at-Tusi has introduced eighteen persons from among the companions of Imam al-Baqir, Imam

as-Sadiq, Imam al-Kazim, and Imam ar-Ridha ('a) as "jurists among the companions of the Imams ('a)".

## Lesson 25: Questions

1. What was the condition of jurisprudence during the period of the *sahabah*, and who did the Shi'ah refer to in matters of jurisprudence?
2. What was the condition of jurisprudence among the Shi'ah during the presence of the Infallible Imams ('a)?
3. How has the initiation of jurisprudence taken place among the Shi'ah?
4. How many were the jurists {*fuqaha*} among the companions of the pure Imams ('a)?

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1. Surah al-Najm 53:3-4.

2. Surah an-Nisa' 4:59.

3. Muhammad ibn Sa'd, *At-Tabaqat al-Kubra* (Beirut: Dar Ihya' at-Turath al-'Arabi, 1410 AH), vol. 2, p. 267.

4. *Ibid.*, pp. 279, 285.

5. Ijtihad: juristic derivation of laws applicable to new conditions on the basis of the general principles laid down in the Qur'an and the Sunnah. {Trans.}

6. Ibn Sa'd has said: "Those who were referred to by the people in Medina and whose statements were trusted by the people were Sa'id ibn Musayyab, Abu Bakr ibn 'Abd ar-Rahman, 'Urwah ibn Zubayr, 'Abd Allah ibn 'Abd Allah ibn 'Utbah, Qasim ibn Muhammad, Kharijah ibn Zayd, and Sulayman ibn Sayyar. *Ibid.*, p. 23.

7. Ayatullah Ibrahim Jannati believes that the Shi'ah jurisprudence from the advent of Islam up to the present has passed through eight periods:

First period: the period of the emergence of the elements of ijtiḥad starting from the migration {*hijrah*} of the Prophet (S) to Medina up to 11 AH.

Second period: the period of contrivance and preparation for the application of ijtiḥad starting from the demise of the Prophet (S) up to the end of the minor occultation {*ghaybah as-sughra*}.

Third period: the period of conceiving the fundamental rules and common elements of ijtiḥad beginning with the time of Ibn Abi 'Aqil (died 329 AH) up to the time of Shaykh at-Tusi (died 460 AH).

Fourth period: the period of application of the common elements of ijtiḥad in the textual sources commencing from the time of Shaykh at-Tusi up to the time of Nawadah Aw Ibn Idris (died 598 AH).

Fifth period: The period of expansion of the argument concerning issues on ijtiḥad starting from the time of Ibn Idris up to the time of Wahid Behbahani (died 1205 AH).

Sixth period: The evolutionary period of ijtiḥad beginning with the time of Wahid Bahbahani up to the time of Shaykh al-Ansari (died 1281 AH).

Seventh period: The period of profound thinking in matters of ijtiḥad commencing from the time of Shaykh al-Ansari up to the time of Imam Khomeini.

Eight period: The period of general application of ijthad with modern methodology started by Imam Khomeini. Ayatullah Ibrahim Jannati, *Idwar-e Ijthad*, 1st edition (Tehran: Sazman-e Intisharat-e Kayhan, 1372 AHS), starting from chapter 2.

8. Muhammad ibn al-Hasan al-Hurr al-'Amili, *Wasa'il ash-Shi'ah*, 6th edition (Tehran: Maktabah al-Islamiyyah, 1403 AH), vol. 18, p. 99, kitab al-qadha', abwab sifat al-qadhi, bab 11, hadith 1.

9. Shaykh at-Tusi, *Ikhtiyar Ma'rifah ar-Rijal* (Rijal Kashi), researched by Sayyid Mahdi Raja'i (Qum: Mu'assasah Al al-Bayt at-Turath, 1404 AH), vol. 2, p. 857.

10. Abu'l-'Abbas Ahmad ibn 'Ali ibn Ahmad ibn al-'Abbas Najashi, *Fihrist Asma' Musanfa ash-Shi'ah* (Rijal Najashi) (Qum: Islamic Publications Office affiliated to the Society of Teachers of the Islamic Seminary in Qum, 1407 AH), p. 10.

11. Sayyid Hasan Sadr, *Ta'sis ash-Shi'ah Li 'Ulum al-Islam* (Tehran: Manshurat al-A'lami, n.d.), p. 310.

12. *Fihrist Asma' Musanfa ash-Shi'ah* (Rijal Najashi), p. 307.

13. *Ikhtiyar Ma'rifah ar-Rijal* (Rijal Kashi), vol. 2, pp. 376, 507, 830.

14. Ibn Nadim, *Al-Fihrist* (Beirut: Dar al-Ma'rifah Li't-Taba'ah wa'n-Nashr, n.d.), p. 308.

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