

## Chapter Two

### What is Ijtihad and who is a Mujtahid?

Ijtihad is the process of extracting laws from the four basic sources of Shari'ah; the Qur'an, Sunnah, Ijma (consensus of opinion) and Qiyas (analogy based on explicit ruling of the Qur'an and Sunnah). A Mujtahid is thus a scholar who qualifies to employ the tool of Ijtihad.

#### How does a scholar qualify as a Mujtahid?

*To be a Mujtahid requires two magnitudes in a scholar:*

1. A magnitude of breadth. Possess the substantive knowledge of all the texts;
2. A magnitude of depth. Possess the methodological tools needed to join between all the Qur'anic verses and hadiths, even those that apparently contradict one another.

#### Knowledge of Primary Texts

As for the breadth of a mujtahid's knowledge, it is recorded that Imam Ahmad ibn Hanbal's student Muhammad ibn 'Ubaydullah ibn al-Munadi heard a man ask Imam Ahmad: "When a man has memorized 100,000 hadiths, is he a scholar of Sacred Law, a faqih?" And he said, "No." The man asked, "200,000 then?" And he said, "No." The man asked, "Then 300,000?" And he said, "No." The man asked, "400,000?" And Imam Ahmad gestured with his hand to signify "about that many." <sup>1</sup> *Allahu Akbar!*

By the term "hadith" here Imam Ahmad meant the hadiths of the Prophet (may Allah bless him and grant him peace) in all their various chains of narration, counting each chain of narration as a separate hadith, and

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<sup>1</sup> Ibn al-Qayyim: I'lam al-muwaqqi'in, 4.205

perhaps also counting the statements of the Sahaba. But the larger point here is that even if we eliminate the different chains, and speak only about the hadiths from the Prophet (may Allah bless him and grant him peace) that are plainly acceptable as evidence, whether Sahih, “rigorously authenticated” or hasan “well authenticated” (which for purposes of ijtiḥad, may be understood as Sahih), we are still speaking of well over 10,000 hadiths. Yet whoever wants to give a fatwa or “formal legal opinion” and judge for people whether something is lawful or unlawful, obligatory or Sunnah, must know all the primary texts that relate to it.

### **What does a Mujtahid do?**

Let’s look at some examples. There are hadiths about fasting on the Day of ‘Arafah for the non-pilgrim, that “it expiates [the sins of] the year before and the year after.”<sup>2</sup> But another rigorously authenticated hadith prohibits fasting on Friday alone,<sup>3</sup> and a well authenticated hadith prohibits fasting on Saturday alone,<sup>4</sup> of which Imam Tirmidhi explains, “The meaning of the ‘offensiveness’ in this is when a man singles out Saturday to fast on, since the Jews worship Saturdays.”<sup>5</sup> Some scholars hold Sunday’s offensive to fast on for the same reason, that they are sacred days by non-Muslims. (Other hadiths permit fasting on one of these days together with the day before or the day after it, perhaps because no religion worshiped two of the days in a row.)

The question arises: What does one do when ‘Arafah falls on a Friday, a Saturday, or a Sunday? The general demand for fasting on the Day of ‘Arafah might well be qualified by the specific prohibition of fasting on just one of these days. But a Mujtahid aware of the whole hadith texts would certainly know a third hadith related by Imam Muslim that is even more specific and says: “Do not single out Friday from among other days to fast on, unless it coincides with a fast one of you performs.”<sup>6</sup>

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2 Muslim, 2.819

3 Bukhari, 3.54

4 Tirmidhi, 3.120

5 ibid.

6 Muslim, 2.801

The latter hadith establishes for the Mujtahid the general principle that the ruling for fasting on a day normally prohibited to fast on changes when it “coincides with a fast one of you performs” and so there is no problem with fasting whether the Day of ‘Arafah falls on a Friday, Saturday, or Sunday.

Whoever wants to understand the ruling of anything in Islam must know all the texts connected with it. As ordinary Muslims, you and I are not only responsible for obeying the Qur’anic verses and hadiths we are familiar with. We are responsible for obeying all of them, the whole Shari’ah. And if we are not personally qualified to join between all of its texts—we have already heard Imam Ahmad ibn Hanbal discuss how much knowledge this takes—we must follow someone who can, which is why Allah tells us, *“O people! Ask the men of knowledge if you know not.”*<sup>7</sup>

When one does not have substantive knowledge of the Qur’an and hadith texts and lacks the Fiqh methodology at length to join between it, the hadiths one has read are not enough.

To take another example, there is a well authenticated (hasan) hadith that “the Prophet (may Allah bless him and grant him peace) cursed women who visit graves.”<sup>8</sup> But scholars say that the prohibition of women visiting graves was abrogated (mansukh) by the rigorously authenticated (Sahih) hadith “I had forbidden you to visit graves, but now visit them.”<sup>9</sup>

Or consider the Qur’anic text in Surah al-Ma’ida: “The food of the people of the book is lawful for you, and your food is lawful for them.”<sup>10</sup>

This is a general ruling seemingly pertaining to all their food. Yet this ruling is subject to takhsis, or “restriction” by more specific rulings that prove that certain foods of Ahl al-Kitab, “those who have been given the Book,” such as pork, or animals not properly slaughtered, are not lawful for us.

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7 Surah Nahl, Surah No: 16. Verse: 43

8 Tirmidhi, 3.371

9 Muslim, 2.672

10 Surah Ma’ida, Surah No: 5. Verse: 5

## **Knowledge needed to be a Mujtahid**

1. The 'Aam, a text of general applicability to many legal rulings, and its opposite:
2. The Khass, that which is applicable to only one ruling or type of ruling.
3. The Mujmal (Mutashbihaat/Muawwal), that which requires other texts to be fully understood, and its opposite:
4. The Mubayyan (Muhkam), that which is plain without other texts.
5. The Mutlaq, that which is applicable without restriction, and its opposite:
6. The Muqayyad, that which has restrictions given in other texts.
7. The Nasikh, that which supersedes previous revealed rulings, and its opposite:
8. The Mansukh: that which is superseded.
9. The Nass: that which clearly decides a particular legal question, and its opposite:
10. The Dhahir: that which can bear more than one interpretation.

## **Following the Qur'aan and Hadith**

So, the question: "Why can't we take our Islamic practice from the word of Allah and His messenger, which are divinely protected, instead of taking it from mujtahid Imams, who are not?" The answer, we have seen, is that revelation cannot be acted upon without understanding, and understanding requires firstly that one has the breadth of mastery of the whole, and secondly, the knowledge of how the parts relate to each other. Whoever joins between these two dimensions of the revelation is taking his Islamic practice from the word of Allah and His messenger,

whether he does so personally, by being a mujtahid Imam, or by means of another, by following one.

## **Contradicting Text**

The scholars of *usul* (principles) recognised as their starting assumption that conflicts between the revealed texts were no more than conflicts of interpretation and could not reflect inconsistencies in the Lawgiver's message as conveyed by the Prophet (may Allah bless him and grant him peace). The message of Islam had been perfectly conveyed before his demise; and the function of subsequent scholars was exclusively one of interpretation, not of amendment.

## **Scrutiny**

Armed with this awareness, the Islamic scholar, when examining problematic texts, begins by attempting a series of preliminary academic tests and methods of resolution. The system developed by the early *ulama* was that if two Quranic or hadith texts appeared to contradict each other, then the scholar must first analyze the texts linguistically, to see if the contradiction arises from an error in interpreting the Arabic. If the contradiction cannot be resolved by this method, then he must attempt to determine, on the basis of a range of textual, legal and historiography techniques, whether one of them is subject to *takhsis* "restriction", that is, concerns special circumstances only, and hence forms a specific exception to the more general principle in the other text. The jurist must also assess the textual status of the reports, recalling the principle that a Quranic verse will overrule a hadith related by only one *isnad* (the type of hadith known as *ahad*), as will a hadith have supplied by many *isnads* (*mutawatir* or *mashhur*). If, after applying all these, the jurist finds that the conflict remains, he must then investigate the possibility that one of the texts was subject to formal abrogation (*Nasikh*) by the other.

## Examples

The best-known instance of this was the progressive prohibition of wine, which had been discouraged by an early Quranic verse, then condemned, and finally prohibited.

## The History Behind The Prohibition

### Stage 1

The first revelation was aimed at creating hatred for alcohol, so it could prepare people to abandon it altogether. The background behind this verse was that 'Umar ibn Khattab, Ma'aaz ibn Jabal and other companions (may Allah be pleased with them all) came to the Messenger of Allah (may Allah bless him and grant him peace) and said that alcohol has adverse effects on the mind and is a waste of money, and they were eager to know what Islam's stance was on alcohol.<sup>i</sup> The Qur'an stated that both alcohol and gambling are harmful. Though they do sometimes lead to temporary gain, but they cause more pain and grief in the long run, and lead to religious and worldly loss. When this verse was revealed, some Muslims gave up drinking immediately.

### Stage 2

Later, the Muslims were once performing the Maghrib Salaah just after drinking alcohol. The Imam, under the influence of alcohol, recited the Qur'an so incorrectly that in normal, sober circumstances, this would have been apostasy if he had recited the Qur'an likewise. He read '*O infidels! I worship what you worship*'<sup>11</sup> instead of '*O infidels! I do not worship what you worship*' and didn't realise his mistake. Thus, the second order concerning alcohol was revealed where Allah (The Exalted) ordered the Muslims not to perform Salaah while they were under the influence of alcohol.

*"O believers! Approach not prayer while you are intoxicated, until you have so much sense that what you say, you understand ..."*<sup>ii</sup>

After this, the companions rarely drank alcohol.

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<sup>11</sup> Meaning I worship idols.

### Stage 3

Then on one occasion, alcohol was available in a gathering where some drunkards started a fight in which many people were hurt.<sup>iii</sup> When this incident was reported to the Messenger of Allah (may Allah bless him and grant him peace), the final revelation regarding intoxication was revealed. The Qur'an affirmed that alcohol was impure and the work of the devil, and that Muslims should hate it.

*“O believers! Wine and gambling and idols and divine arrows are only unclean things, a work of devil (Shaytaan) then save yourselves from them, so that you may prosper.”<sup>iv</sup>*

When this final verse was revealed, the Messenger of Allah (may Allah bless him and grant him peace) ordered the Muslims to announce the prohibition of alcohol in the streets of Madinah. The effects were immediate: whoever was drinking at the time threw their glasses down in disgust. The homes, containers and jars of alcohol were smashed and soon, the gutters of Madinah were overflowing with discarded alcohol.<sup>v</sup> *Subhanallah!*

Another example, touching an even more basic principle, was the Scriptural (canonical) prayer, which the early Ummah had been obliged to say only twice daily, but which, following the Miraj, was increased to five times a day. Mutah (temporary marriage) had been permitted in the early days of Islam, but was subsequently prohibited as social conditions developed, respect for women grew, and morals became firmer. There are several other instances of this, most being datable to the years immediately following the Hijra, when the circumstances of the young Ummah changed in radical ways.

### Nasikh

There are two types of Nasikh: explicit (sarih) or implicit (dimni). The former is easily identified, for it involves texts which themselves specify that an earlier ruling is being changed. For instance, there is the verse in the Quran (2:142) which commands the Muslims to turn in prayer to the Kaba rather than to Jerusalem. In the hadith literature this is even more frequently encountered; for example, in a hadith narrated by Imam

Muslim we read: "I used to forbid you to visit graves; but you should now visit them." Commenting on this, the ulama of hadith explain that in early Islam, when idolatrous practices were still fresh in peoples' memories, visiting graves had been forbidden because of the fear that some new Muslims might commit shirk. As the Muslims grew stronger in their monotheism, however, this prohibition was discarded as no longer necessary, so that today it is a recommended practice for Muslims to go out to visit graves in order to pray for the dead and to be reminded of the hereafter.

The other type of Nasikh is subtler, and often taxed the brilliance of the early ulama to the limit. It involves texts which cancel earlier ones, or modify them substantially, but without actually stating that this has taken place. The ulama have given many examples of this, including the two verses in Surat al-Baqarah which give differing instructions as to the period for which widows should be maintained out of an estate (2:240 and 234). And in the hadith literature, there is the example of the incident in which the Prophet (may Allah bless him and grant him peace) once told the Companions that when he prayed sitting because he was burdened by some illness, they should sit behind him. This hadith is given by Imam Muslim. And yet we find another hadith, also narrated by Imam Muslim, which records an incident in which the Companions prayed standing while the Prophet (may Allah bless him and grant him peace) was sitting. The apparent contradiction has been resolved by careful sequential analysis, which shows that the latter incident took place after the former, and therefore takes precedence over it. This has duly been recorded in the Fiqh of the great scholars.

The techniques of Nasikh identification have enabled the ulama to resolve most of the recognised cases of taarud al-adilla. They demand a rigorous and detailed knowledge not just of the hadith disciplines, but of history, seerah, and of the views held by the Companions and other scholars on the circumstances surrounding the genesis (origins) and exegesis (explanations) of the hadith in question. In some cases, hadith scholars would travel throughout the Islamic world to locate the required information relevant to a single hadith.



## The Text And Chain

In cases where in spite of all efforts, abrogation cannot be proved, then the ulama of the salaf recognised the need to apply further tests. Important among these is the analysis of the matn (the transmitted text rather than the isnad of the hadith). Clear (sarih) statements are deemed to take precedence over allusive ones (kinayah), and definite (muhkam) words take precedence over words falling into more unclear categories, such as the interpreted (mufassar), the obscure (khafi) and the problematic (mushkil). It may also be necessary to look at the position of the narrators of the conflicting hadiths, giving precedence to the report issuing from the individual who was more directly involved. A famous example of this is the hadith narrated by Maymunah which states that the Prophet (may Allah bless him and grant him peace) married her when not in a state of ihram for the pilgrimage. Because her report was that of an eyewitness, her hadith is given precedence over the conflicting report from Ibn Abbas (may Allah be pleased with him), related by a similarly sound isnad, which states that the Prophet was in fact in a state of ihram at the time.

## Qiyaas

There are many other rules, such as that which states that prohibition takes precedence over permissibility. Similarly, conflicting hadiths may be resolved by utilising the fatwa of a Companion, after taking care that all the relevant fatwa are compared and assessed. Finally, recourse may be had to qiyas (analogy). An example of this is the various reports about the solar eclipse prayer (salat al-kusuf), which specify different numbers of bowings and prostrations. The ulama, having investigated the reports carefully, and having been unable to resolve the contradiction by any of the mechanisms outlined above, have applied analogical reasoning by concluding that since the prayer in question is still called salaah, then the usual form of salaah should be followed, namely, one bowing and two prostrations. The other hadiths are to be abandoned.

## Recognition of Madhhabs

The Sunni ulama rapidly recognised the brilliance of the Four Imams, and after the late third century of Islam we find that hardly any scholars adhered to any other approach. The great hadith specialists, including al-Bukhari and Muslim, were all loyal adherents of one or another of the Madhhabs, particularly that of Imam al-Shafi'i. But within each madhhab, leading scholars continued to improve and refine the roots and branches of their school. In some cases, historical conditions made this not only possible, but necessary. For instance, scholars of the school of Imam Abu Hanifah, which was built on the foundations of the early legal schools of Kufa and Basra, were wary of some hadiths in circulation in Iraq because of the prevalence of forgery caused by the strong sectarian influences there. Later, however, once the original collections of Imam Bukhari, Imam Muslim and others became available, subsequent generations of Hanafi scholars took the entire text of hadiths into account in formulating and revising their madhab. This type of process continued for two centuries, until the Schools reached a condition of maturity in the fourth and fifth centuries since Hijra.

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i Tafseer Ruh-ul-Ma'aani & Tafseer Imdad-ul-Karam, Surah Baqarah, Verse: 219, p. 104

ii Surah Nisa. Surah No: 4. Verse: 43

iii Muslim, Book of the Greatness of the Companions

iv Surah Maida. Surah No: 5. Verse: 90

v Tafseer Qurtubi & Tafseer Imdad-ul-Karam, Surah Baqarah, Verse: 219, p. 104