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Ijtihad: Concept, requirements, derivatives, and issues from Imam Zakariya Al-Sunaiki's perspective

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Abstract

This research paper focuses on the work of Imam Zakariya Assunaiki: Ghayat al-Wusul. In addition, the paper will also clarify the term and address the requirements of Ijtihad and its status in sharia via comparative qualitative research methods. As a result, ijthad is a central concept in the discipline of Principles of Jurisprudence. In conclusion, Zakariya's work was successful; it was a well-researched and thoroughly analyzed ad hoc study, presenting the concept in a way that both the general reader and researcher find useful.

Keywords: Ijtihad, Deductive, Analogy, Presumption, Continuity.

El concepto, los requisitos, los derivados y los problemas desde la perspectiva del Imam Zakariya Al-Sunaiki

Resumen

Este trabajo de investigación se centra en el trabajo del Imam Zakariya Assunaiki: Ghayat al-Wusul. Además, el documento también

aclarará el término y abordará los requisitos de ijtihad y su estado en la sharia a través de métodos comparativos de investigación cualitativa. Como resultado, Ijtihad es un concepto central en la disciplina de los Principios de Jurisprudencia. En conclusión, el trabajo de Zakariya fue exitoso; fue un estudio ad hoc bien investigado y analizado a fondo, presentando el concepto de una manera que tanto el lector general como el investigador encuentran útil.

Palabras clave: Ijtihad, Deductivo, Analogía, Presunción, Continuidad.

1. INTRODUCTION

Ijtihad is a central concept in the discipline of Fundamentals of Jurisprudence (usul-al-fiqh). In addition to others, the following is a group of concepts derived from ijtihad: deductive reasoning (istinbat), deductive analogy (qiyas), the presumption of continuity (istishab al-hal), equality and preferences of evidence (ta'adul wa tarajuh), and issuance of legal opinion or fatwa (ifta'). All these subjects are related to the concept of ijtihad. The objective of ijtihad is for sharia to appear strong, coherent, ever-new and flexible. This permits the sharia to keep pace with changing realities and to accompany the Muslim society as it faces the challenges of globalization. It leads human beings to save progress and prosperity.

It helps the Muslim navigate difficulties in life by remaining committed to his religion and, at the same time, interacting with the modern global context around him. Every time some innovative things appear, the sharia presents adequate solutions that derive their legitimacy from the deductive reasoning carried out by a pious diligent or mujtahid. The mujtahid exerts his maximum effort in search of a suitable ruling for all novel situations. He is always vigilant and prepared to spot new

situations and provide God's judgment on the given matter. That is because experts of *ijtihad*, whenever tested by the emergence of a new situation, seek to find the judgment of Allah on this matter in the Text. When there is no mention of the given matter in the Text, they resort to *ijtihad* and *qiyas*. They do not permit the use of *ijtihad* or *qiyas* when there is a text on the given issue.

Ijtihad helps Muslims stay reassured that they are on the right path with regards to dealing with unprecedented cases, for this responsibility rests on highly-esteemed *ulema*. They are highly competent in *sharia*, its outward and inward aspects, as well as its apparent texts and interpreting its meaning. They have a strong desire to provide satisfying answers to all new matters, situations, and contemporary issues. As Ash-Shafi' said: All unprecedented cases have a ruling [in *sharia*], Nowadays, circumstances are undoubtedly more complex; nations and homes are mixed and people live and interact with each other more often. This requires the *mujtahid* to examine the situations deemed a necessity for investigation, analyzing them and explaining their components and circumstances and later evaluating the results of this examination.

Deconstructing the new cases and following up with their development in accordance with religious texts, using reasoning and deduction, makes the *sharia* smooth and inclusive of all cases, the small and the grave issues. The judgment of Allah concerns everything in life. For this reason, *ijtihad* was considered a legislative necessity and a communal obligation. It may even become an individual obligation in case there is a possibility of misjudging the given incident (WARDHAUGH, 2002).

Although this research paper is concerned with the concept of *ijtihad* and its relationship with human being-building in general, I have decided to narrow it down to reach specific and accurate research results. Research about the concept of *ijtihad* is vast, with abundant perceptions and various materials; therefore, I focus on the work of Imam Zakariya Assunaiki: *Ghayat al-Wusul*. In addition to explaining the view of this scholar about *ijtihad* and the concepts and issues pertinent to it, the paper will also clarify the term and address the requirements of *ijtihad* and its status in sharia (NORRICK, 1991).

2. METHODOLOGY

The conceptual definition of *ijtihad* is not far from the literal meanings previously mentioned. It was derived from these meanings. The conceptual meaning is, however, more focused and accurate. This is because definitions are technical procedures that use concise words and focus on the features of the concept, its classifications, categories, and special attributes. The aim is to distinguish the given concept from all concepts similar to or closer in meaning to it. *Ijtihad* was given several definitions that differ, in terms of procedure, depending on the approach adopted by the coiner when explicating the defined term (ALSALOUK, 1994).

One of the definitions of *ijtihad* is the one proposed by Al-jurjani who said: the terminological meaning of *ijtihad* is exerting the maximum effort on the part of the *faqih* to make a strong assumption about a ruling, according to this definition, *ijtihad* concerns the *faqih* who is specialized

in sharia. It may not be performed by someone else, for it is the faqih who is the primary subject of the sharia discourse. It is up to the faqih to interpret the hidden and apparent meanings of sharia since he is the guardian of the revelation of Allah, the sunnah of the prophet, the opinions of the companions and successors, and the explanations of the greatest ulema. This definition, however, restricts ijtihad in narrow terms with its two main components being the faqih and the sharia. There was a need for a broader definition, one that keeps the term unlimited and not related to a specific field (IBN AL-QYYIM, 2010).

Since the previous definition is narrow as it limits ijtihad to sharia, Al-Jurjani proposed a more inclusive definition encompassing all aspects requiring effort, be it sharia-related or not. He said: Ijtihad is making an effort in pursuit of an objective using legal reasoning. What distinguishes this definition from the previous one is the legal reasoning. This means that an ijtihad is an act based on attributing the same ruling to two cases due to the similarities between them. According to this definition, ijtihad is a scientific procedure that every expert in any given field needs whenever they are met with a new unprecedented case, be it religious, linguistic, philosophical, etc...It is the beacon through its light one can navigate the novel situations and deal with the new terms related to sharia, language or general usage (RAMIREZ, 2015).

Thus, ijtihad is based mainly on making effort in pursuit of an objective using legal reasoning. Al-Kafawi in Al-Kuliyat mentioned two usages of ijtihad. Ijtihad is an ifti'al Masdar of the verb jahada, meaning to become exhausted. The ifti'al Masdar here denotes burden not complying. It is exerting an effort to attain an objective. In fuqaha terminology, it

means exerting the maximum effort on the part of the faqih to the extent that he feels incapable of making an extra effort, to attain a strong assumption concerning a particular ruling (AL-SOHAIBANI, 2017).

The phrase exerting the maximum effort... means the same as al-Jurjani's definition, but the phrase to the extent that he feels incapable of making extra effort signifies the higher status of ijihad. It is not enough to merely search for the ruling of an unprecedented case. One must also exhibit a high level of devotion when searching for religious texts. Besides, he must make his maximum mental effort until he reaches a level where he is certain his thinking cannot go further in finding a better conclusion. This definition signals the greatness of ijihad, as well as its difficulty on both scientific and practical levels (ASHIPU, 2013).

Imam Zakariya discussed the literal meaning of ijihad and said: Linguistically, it is an ifti'al Masdar of the verb jahada with a fatha diacritic mark and a damma diacritic mark on the jeem. It means capability and difficulty. This is, however, the same meaning as the one discussed earlier when we addressed the language meanings of ijihad. In technical terms, ijihad is exerting the maximum effort on the part of the faqih to attain a strong assumption about a ruling. It is worth noticing that Imam Zakariya only cited the definition of the author and explained it without going further. Exerting the maximum effort on the part of the faqih means using his full capacity when looking into the evidence, to attain a strong assumption about a ruling, acting as a faqih. Thus, there is no need to describe the ruling as legal, as Ibn al-Hajib did. The word faqih in the definition excludes the effort made by the non-faqih and the effort made by the faqih to reach a ruling about the reason (NADAWI, 1968).

Based on the explanation of the definition provided by Zakaria, we can conclude that the latter defines *ijtihad* as exerting the full effort by a *faqih* searching the legal evidence to find a ruling for a given incident. By *faqih*, Zakaria means the person qualified to research *fiqh*. According to Zakaria, *faqih* in the definition refers to the person qualified to practice *fiqh*; he is commonly referred to as *faqih* in figurative usage, and he becomes a *faqih* in reality once he possesses the required knowledge. The author's insistence on including the word *faqih* in the definition indicates excluding the *muqallid*, for he lacks qualifications required for dealing with clear evidence, let alone the unprecedented cases with no clear text addressing them (MESTHRIE, 2001).

The concept of *fiqh* went through two stages before it was developed and fixed to its current usage. Al-Ghazali, for instance, addressed the original meaning of *fiqh* and then its terminological sense, which became the only connotation that comes to mind when the word is used. According to Ghazali, *fiqh* originally refers to knowledge and understanding. When we say that someone has *fiqh* about right and evil, we mean that he knows them and understands them. It is, however, used in *ulema* terminology to refer to knowledge about legal rules relating to the acts of the persons obliged by *sharia* to discharge the duties. Thus, the word *faqih* is never used to refer to a theologian, philosophy specialist, grammarian, or exegetist. In fact, it is specifically related to knowledge about legal rules pertinent to human actions like obligation and prohibition. Based on Ghazali's definition, the word *fiqh* when generally used refers to knowledge about legal rules. This meaning is what comes to mind whenever the words *fiqh* or *faqih* are used, and this is something that everyone agrees on.

Ijtihad is a great chapter with a noble goal. It is a legislative attempt to fill the gap in the cases which were not addressed by the religious text, or the cases that occurred after the revelation stopped and the Chosen Prophet passed away. The jurists realized the significance of ijtihad and how difficult it is to fulfill the required qualifications. Therefore, the mujtahid had to possess a high level of knowledge and excellent comportment. Because it occupies a significant status, fuqaha and jurists put forward strict criteria that must be found in whoever aspires to deduce legal rules using ijtihad.

3. RESULT AND DISCUSSION

This is the result of ijtihad. It means behaving according to it. Talking about the ratio legis of qiyas, Zakaria said: it is enough to have a strong assumption about it. The purpose of ijtihad is to act. This means the status which makes one qualified for engaging in the process of ijtihad. Speaking about the permissibility of women's participation in ijtihad, Zakariya concluded that some women can possess the power of ijtihad, despite being deficient in terms of their reasoning and observance of religion. Slaves also may practice ijtihad while they are not serving their masters. The essential requirement of ijtihad is fulfilling the scholarly required qualifications and skills essential for arriving at deduction and understanding and comparing texts. It is, therefore, not only restricted to men. Every Muslim, man or woman, may become a mujtahid, provided that he meets the requirements and qualifications of ijtihad. The prophet (peace be upon him) said: ulema are the successors of the prophets. The prophets had not left gold or silver. They left knowledge. So, whoever

took it, he took a great fortune. The status of knowledge is an honor that Allah bestows on whomever he wants, regardless of whether it is a man or a woman.

One may notice that the author did not thoroughly discuss the power or status of *ijtihād*. For this reason, we think it is useful to shed more light on this concept. We will just cite al-Shatibi for what he wrote is enough. According to Shatibi, the student of knowledge goes through three stages throughout his learning journey. In the first stage, the student contemplates what he memorized. His mind is aware of what he memorized and searches for reasons. This only happens when the student understands the meaning of what he acquired. This meaning, however, remains ambiguous, and though he might partially understand certain aspects, he still struggles to fathom the legal evidence, hoping to have a grasp of the origins and objectives. Despite his struggle, he remains unable to fully master it. He is not allowed to practice *ijtihād* as he does not have full command of the basis of *ijtihād*. At this stage, the student must remain committed to *taqlid* and not follow his inclination by engaging in a vitiated *ijtihād*.

The second stage involves scrutiny and thorough examination of the texts and their meanings. This leads him to certainty about the meaning of the knowledge he acquired according to sharia evidence. He is completely certain without any doubt, whatsoever. Nevertheless, he still lacks regard for the particular cases of *fiqh* and he sometimes violates them when concluding a given ruling. The permissibility of *ijtihād* for students at this level is, according to Shatibi, a controversial issue among scholars. The third stage is the full and complete command of sharia. The

student at this level masters all aspects of sharia, its general and particular meanings, without neglecting one or focusing on another. According to Shatibi, people reaching this stage are undoubtedly allowed to practice *ijtihad*, unlike the previous cases.

This refers to all technical words which linguistically and conceptually belong to the root of the concept being studied. *Mujtahid* is the person who is competent in Sharia and who exerts his effort to deduce the legal opinion, using detailed evidence. He is also known as the one deriving the particles of *fiqh* evidence out of the general evidence. He is the *mujtahid*, because, unlike the *muqallid*, he can prefer one proof over the other when the conflict of evidence occurs.

This refers to the conclusion he arrives at after searching for the right ruling for an unprecedented case. According to Zakariya, the assumption of a *mujtahid* is strong enough to be similar to knowledge. It is knowledge for it is through the assumption of a *mujtahid* that the ruling of the case, with no text, addressing it, becomes known. The act of *mujtahid* is the procedure he employs for deducing the ruling. When talking about *qiyas* being the assignment of the *hukm* of an existing case to a new case, the author mentioned that the assignment is the act of the *mujtahid*, therefore the *qiyas* is the act of *mujtahid*, even though it is evidence designated by sharia, whether the *mujtahid* looked into it or not.

This refers to the brain of the *mujtahid* which is the store of his expertise and thinking. Speaking about the conflict of the evidence whether in reality or at the level of the *mujtahid*'s mind, the author says: some argue that cannot occur without one of the proofs outweighing the

other; this is backed up by the fact that the original principle rules out the possibility of conflict, for God's words may not contradict. Others contend that conflict is possible. At the level of mujtahid's mind, the conflict is possible. It is the origin of the mujtahid's indecision.

Clear evidence may sometimes exhibit some contradictions in rulings and conflict in conceptions. Therefore, the mujtahid must carefully examine this evidence to clarify the generalities and limit the specifics. He is required to remove the conflict in certain texts. This conflict does not exist in reality. There just seems to be a contradiction, and it must be interpreted or specified, depending on the approach the jurist-mujtahid prefers.

The mujtahid is obliged to believe in and follow the ruling of the given matter. In this regard, he is similar to muqallid who has to follow his Imam. The mujtahid, too, has to follow the ruling to which his ijtiḥad led him. He may not act in a way incongruent with the result of his ijtiḥad. Likewise, the muqallid of a particular madhab may not go against the premises of his Imam, for he has to commit to following his Imam like the mujtahid has to commit to the evidence he arrives at.

The opinions of mujtahids are their assumptions which are deduced from religious texts, but for the muqallid, they are as binding as religious texts. According to Zakariya, the opinions of mujtahid for the muqallid have the same status as the religious evidence for the mujtahid. One has to follow the strong opinions of mujtahids as he has to abide by strong sharia evidence.

The faqih-mujtahid is the person who possesses the requirements of *ijtihad*. According to Zakariya, faqih-mujtahid is synonymous with mujtahid-faqih. He made this comment on the following quote by the author: Mujtahid-faqih and faqih-mujtahid. This means the same thing. The case concerned with *ijtihad* is the new case being the subject of *ijtihad*. When talking about the concept of familiarity, he said: being familiar with the previous cases of *ijtihad* means familiarity with the cases related to the given issue, not all cases of *ijtihad*. The partial mujtahid is the one who had not reached the status of absolute mujtahid. Speaking about *qiyas*, the author says: He is the mujtahid, absolute or partial, whether his assignment of the *hukm* to the new case was accurate or proved to be wrong. The definition, therefore, includes both the invalid analogy and the valid one.

The absolute mujtahid possesses all the previously-mentioned prerequisites of *ijtihad*. Speaking about the possibility of issuing a fatwa on the part of fatwa mujtahid, the author says: It is argued that he may, out of necessity, when there is no absolute mujtahid or the one who can extrapolate based on his imam's precepts. He is extensively experienced in his Imam's madhab and he is capable of extrapolating an opinion based on another. Although he is at the lower end of the mujtahids' pyramid, he may issue a fatwa. This is contrary to what is understood from al-Amidi who argued that this controversy concerns the madhab mujtahid and that the fatwa mujtahid is not allowed to issue a fatwa. This opinion is, however, too extreme and goes against what al-Nawawi cited in his *Majmou*.

This refers to the mujtahid who had not seen the prophet or directly heard from him. Talking about the authenticity of the opinion of the

companion, Zakariya said: such as when a non-companion mujtahid made ijthihad and the others did not comment on it. It is also argued that it is evidence, even if it goes against analogy.

The Madhab mujtahid is the one who follows the madhab of a particular Imam and specializes in it to the extent that he hardly misses any of the madhab's precepts and texts. This mujtahid is capable of making ijthihad at the level of branches and deducing rules and interpreting the texts. As Zakariya said: as for the one capable of extrapolation, he is the mujtahid of the madhab. He is allowed to issue a fatwa, as reported by Zarkashi, Barmawi, and others. The mujtahid of the madhab is higher in status than the previously-mentioned fatwa mujtahid, for the latter is incapable of making tarjih and exploring the hidden aspects of the text and its possible figurative interpretations. Unlike the fatwa mujtahid, the mujtahid of the madhab possesses a strong scientific faculty enabling him to extrapolate based on his Imam's precepts.

4. CONCLUSION

As this paper illustrated, ijthihad is a central concept in the discipline of Principles of Jurisprudence. It encompasses a list of concepts that include, inter alia, deductive reasoning, deductive analogy, the presumption of continuity, equality, and preferences of evidence, and issuance of legal opinion or fatwa. Imam Zakariya's work, *Ghayat-al-Usul fi sharhi Lub-al-Usul*, was an attempt to explore this concept, tracing its development trajectory and outlining its requirements and constituent elements as defined by scholars of sharia.

To a large extent, Zakariya's work was successful; it was a well-researched and thoroughly analysed ad hoc study, presenting the concept in a way that both the general reader and researcher find useful.

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