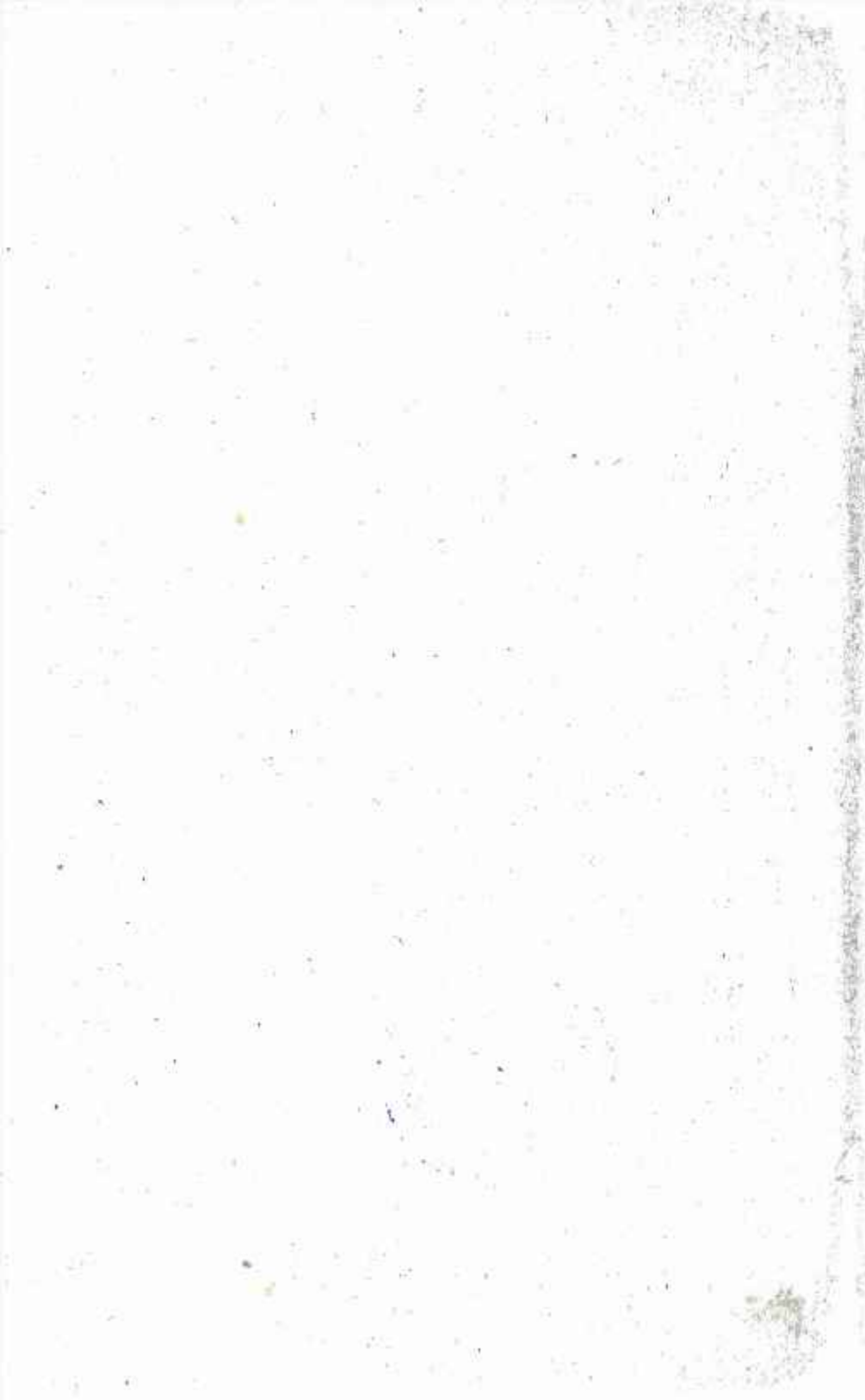


**Sheikh Shabbir
H.Maisami(Lakhani)**

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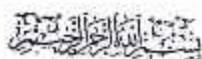
**UNDERSTANDING
THE
SCHOOL OF IJTEHAD**

BY

Sheikh Shabbir H. Maisami (Lakhani)

HAWZA ILMIYAH QUM.

ZAHRA (S.A.) ACADEMY



“The Role of Marja” and its authenticity is discussed very frequently in our community since last few years. Many people have expressed their views openly, some trying to seek clarification and some trying to clarify. I avail this opportunity to discuss it and clarify some of the confusions regarding Marj'a ,Hakim e shariyyah and Qazi ul Quzat(chief justice).

The first point to be clarified is that Islam is a practical religion sent by Allah (s.w.t.) through the Prophets and Masumeen (A.S.) for organizing the life of human beings.

The last prophet, Hazrat Muhammed (S.A.W.W.) performed three main duties, namely:

1. AS A PREACHER OF RELIGION: He passed the message of the Creator and invited people towards Islam. He mainly performed this duty during his stay in

Makkah and continued doing it after migration to Madinah. This we call it as tabligh, in which he used to call people towards Allah (s.w.t.) and tell them their duties i.e. explaining the laws of Islam.

2. AS A RULER OF THE FIRST EVER-ISLAMIC STATE: After migrating to Holy Madinah he created the first ever-Islamic state in accordance with the teachings of Islam. Although this was different from the governments existing during those days, but even then this Islamic State was recognized by many empires of that time. This role of ruling the Muslim ummah, was known as Hakim or Vali ul Amr and had full authority to run an Islamic state according to the laws of Islam and the needs of the day. He used to order muslims to prepare for war, send his representatives for collecting zakat , send his ambassadors to different empires etc.
3. As a Judge or Qazi: After establishing the Islamic government he began settling the differences between people, advising some

and punishing others who violated the laws of the state.

Thus, the Holy Prophet was a messenger, a ruler, and a Qazi.

Imam Ali (A.S.) was to follow him in all the three duties but was not allowed to do so for 25 years. Later on he was requested rather forced to perform these duties. Of course, during those 25 years he performed his duty as a muballigh alongwith many other duties but he was kept away from the other two which were authoritative.

His son, Imam Hasan (A.S.) was forced to give up his Khilafat and thus once again incompetent people came in.

From the time of Imam Hasan (A.S.) all the Imams performed their duties as muballigh but were denied the opportunity of ruling the ummah or becoming Qazi alQuzat (chief justice).

During those days Masumeen (A.S.) themselves guided the people and prepared scholars who could travel and pass the true and real message of Islam.

They were taught and trained in such a way that they could extract the laws from the basic teachings and solve the problems of those muslims who could not travel to the centre of Islamic Studies, during those days it was Holy Madinah.

One of the earliest instances of, preparing students and asking them to guide people, tell them their duties and extract the laws from Quran and sunnah, found in the history is that of Aban-Ibn-Taglib, who was a companion of three Imams namely

- Ali Ibn Al Hussain (A.S.),
- Mohammed Ibn Ali Al Baqir (A.S.) and
- Jaffer Ibn Mohammad Al Sadiq (A.S.).¹

Imam Jaffar Al-Sadiq (A.S.) orders Aban-ibn-Taglib: "Sit in the mosque of Madina and give

¹ According to Najashee (372 - 450 A.H.) in his book named Rejal-un-Najashee (reprinted in "1407 A.H." authenticated by Ayatullah al uzma Shubairee Zanjaneh, page 10)

fatwa to people surely I like to see among my followers like you”.

This hadees clarifies a lot of confusions regarding the validity and beginning of taqleed and its importance. As Imam(A.S.) orders him to sit in the mosque of Madinah even though Imam(A.S.) himself is present there.

Along with this Masumeen(A.S.) introduced to momineen some of their students who were scholars, so that they may be referred to for solutions to their religious problems. Some of them were:

- Younus Ibn Abdur Rahman,
- Ali Ibn Hadeed ,
- Zakaryya Ibn Adam,
- Mohammed Ibn Muslim Saqafee,
- Zurara Ibu Aaun,
- Abu Baseer lais Muradee,
- Buraid Ibn Muaviyyah Ajalle.¹

¹(reffer. Vasaal us shia Vol.18 P.103.)

Masumeen(A.S.), during their life time guided the scholars in understanding the Holy Quran, Sayings of Holy Prophet (S.A.W.W.) and their own sayings, and taught them the ways to extract the laws of Islam from these sources and how to resolve, if they found, any contradictions.¹

This clearly shows how Masumeen(A.S.) trained their students so that they could extract the laws of Islam from its basic sources and solve the problems of mumineen, related to their Islamic duties.

Imam Jaffar AlSadiq(A.S.) used to tell his students , "We give you the basis and it is your duty to find out its branches".

Here we conclude, that one of the responsibilities of mumineen is to gain knowledge, so that they themselves find out their duties after extracting the laws of Islam, from Quran and Sunnah, once they have learned the way of doing it.

¹ (Refer. Vasaal us shia Vol. 18 from page 75 - 89 ,48 Hadees.)

According to the Holy Quran if all the momineen could not do it themselves, as it has always been, then some should go to the center of Islamic studies and after reaching the level of Feqahat should return to their community to pass on the real message of Islam and solve their day to day problems, through their Ijtehad.

This is a clear order from Allah (s.w.t.):

" And it does not beseem the believers that they should go forth all together: why should not then a company from every party from among them go forth that they may apply themselves to obtain deep understanding in religion, and that they may warn their people when they come back to them that they may be cautious?

(Holy Quran chapter: 9 verse 122);

Unfortunately, we deem this to be the duty of some one else and stay clear from the clear order of Holy Quran, which is not a fatwa or verdict from a mujtahid or hakim.

Coming back to the point one of the responsibilities of learned people also known as fuqaha or mujtahedeen is to understand the basis of Islam, and solve the problems of Mummineen

related to their Islamic duties. . This is the first type of responsibility performed by Holy Prophet (S.W.W.W.), Imam Ali(A.S.) and all the Masumeen (A.S.). It does not need any power or authority.

The second important responsibility is of ruling the ummah, which was performed by Holy Prophet (S.A.W.W.), Imam Ali ibn Abu Talib (A.S.) after he was kept away it for 25 years and then by Imam Hasan(A.S.) until he was forced to step down.

During the days of the Masumeen (A.S.) it was their duty and no one was allowed to do so without their permission.

The question arises whether after the great occultation (ghaibat-e-kubra) Islam and Masumeen(A.S.) have left the ummah without clear instructions about the ruler and the way he should rule or did they guide us?

If they guided us what was the line of action set by them? Who is supposed to rule the ummah, as there is no direct connection with Imam-e-Zaman (A.F.).

As far as our "aql" (faculty of reflection) is concerned we find the following options regarding the personality who can rule the ummah:

- 1) Any one who takes over the control.(As is the case in ahl ul sunnah, they consider such a person as Wali ul Amr).
- 2) A practicing momin.

The second option is further divided into two;

- a) a practicing momin even if he has no deep vision in Islam and teachings of Ahl ul Bait(A.S.).
- b) a practicing momin who has a deep vision in Islam and its teaching and can extract the laws of Islam from the basis explained by Holy Prophet(S.A.W.W.) and Ahl ul Bait (A.S.).

The conclusion is left to the readers!

This point should not be neglected that this duty alongwith a deep insight in Islam needs power, authority , management and a vast

power, authority , management and a vast range of study in the political affairs of the Ummah and the present world.

The third duty performed by Holy Prophet (S.A.W.W.) and Imam Ali (A.S.) was that of resolving the differences and punishing the criminals according to Islamic laws.

Once again either these duties were to be performed only by Masumeen (A.S.) or with their permission during the days of their presence and after occultation there was:

- a) nothing to be done, just wait for the Imam (A.S.) to come and resolve the differences and punish the criminal,
- b) anyone in power is allowed to perform these duties.
- c) this duty should be given to those who have deep understanding of Islam and can extract the laws of Islam and apply them from the basis explained by Masumeen (A.S.).¹

¹ (Refer, vasael us shia Vol. 18 page 1 - 591)

There are more than 1800 hadees from Masumeen (A.S.) regarding Justice, Judge, style of imparting justice, prescribed and un-prescribed punishments.

As far as the resolving of differences is concerned no power is needed and when the two sides accept a person as the judge it can be done easily.

But when it comes to punishment especially a capital one, then the real power is needed and without having a proper government and judiciary system it is almost impossible.

So, there are three main duties;

- 1) Explaining the laws of Islam regarding Ibada, dealings and organization of society, the person performing this duty is commonly known as mufti or marj'a.
- 2) Ruling the ummah, and taking care of it. Such a person is known as vali-alfaqeeh , vali Amr or Hakim e Shariah.
- 3) Doing justice by resolving the differences and punishing the criminals. Such a person is named as Qazi. (Judge).

Here we conclude that, the duty of a marja is to give fatwa only which in itself involves very heavy responsibility, and does not have any other duty like that of solving day to day social, economical and political problems. It is the duty of vali al amr who is the leader of the ummah and the Qazi has to take care of the judiciary system of the Ummah. If however, the marja and vali alAmr or Hakim e shariyyat and the Qazi are the same then his duty becomes many fold other wise every one has his own duty to perform.

The common factor among all the three is that they have deep insight and vision in religion and can extract the laws of Islam from:

- 1) Holy Quran.
- 2) Sunnah which includes.
 - a) Sayings of Masum (A.S.)
 - b) Action of Masum (A.S.)
 - c) Silence of Masum (A.S.).

The basic qualification of all the three is known as "Ijtehad" and their title is "Mujtahid".

At the end I would like to answer few questions generally asked by Mumineen regarding the above discussion.

Q.1) Why should we do taqleed?

Ans. All mumin have been made responsible by Allah(s.w.t.) to perform some duties, for fulfilling these we have to;

- i. Know the exact responsibilities, from its resources.
- ii. Perform them.

For knowing them either one should learn and develop the deep understanding of these duties from its resources or depend on those who are capable of extracting them and have done it, as our Imam (A.S.) have guided us to do so.

Q.2) Every one is responsible for his own actions! How we can depend on another person who has developed the deep vision commonly known as mufti or Marja.

Ans. Yes! Every one has to reply for his own actions, whether he performed them correctly or not, but as far as the

understanding of the duty is concerned we have been given a choice either we ourselves become mujtahid or depend on another Mujtahid who has worked hard in this field.

If we select a Mufti or Marja to follow then once again we are answerable to Allah (s.w.t.) regarding our selection, but once we are satisfied that we have selected the correct person then we don't have to answer whether he extracted the laws correctly or not. Of course! We are answerable on whether we followed them correctly or not.

Q.3) If someone can't become mufti or Mujtahid or Marja and is unable to select one, then what should he/she do ?

Ans. As he is responsible for fulfilling his duties, the only way left for such a person is to perform his duties with precaution commonly known as "Ehteyat".

Q.4) Why is it necessary, for a person who himself wants to become mufti to go to a centre of Islamic studies and study

subjects like Arabic with all its branches, logic, fundamentals of Islamic Jurisprudence, Hadees, Holy Quran with all its branches (Tafseer, taveel, nasiqh, mansuqh...), History, Philosophy etc... Why can't we extract the duties to be performed by us from the translations of the Holy Quran and Hadees.

Ans: Although this answer needs another complete article explaining the method of extracting Islamic laws from its sources and for gaining knowledge the person has to go to the centre where he can get the knowledge, the simple answer is that when someone will extract the laws from translations this will again be a sort of taqleed this time of the translator and not of a qualified person of the field called Mufti or a Marja.

Q.4) Isn't it so that the idea of vali e faqeeh or Hakim e Shariyah was generated through the Islamic revolution of Iran and no one had discussed or accepted it before.

Ans. As I have discussed in my article that even if none had discussed it before, our Aql guides us towards it.¹

Of course many of the great ulemas have discussed it before which includes sheikh Mufeed , shahe'ed Awwal, Shahe'ed Sani, Sheikh Murtaza Ansari (R.A.), and many others have discussed this in their main books, of course no one except Imam Khomeini (R.A.) could get chance of applying it.

Q.6) Does every one accept wilayat al faqeeh or Hakim e Shariyyah or there are some Mujtahid who disagree?

Ans. The basic vilayat is accepted by all Mujtahid. That is why they have used the word Kakim-e-shariyah or wali al Amr in chapters of zakat, Khums, Talaq, Amr bil Maroof wa nahi anil Munkar, Jihad and Qaza (Justice). Every Marja uses these

¹ (Refer letters of Imam Ali (A.S.) Nahajul Balagah. Which is full of guidance to his wali and hakim (Governors).

terms in his Tawzeeh (book of Islamic laws) for atleast 50 times or more.

They are of the opinion that the duty of collecting zakat, and Khums is of Hakim, the talaq at times can be read by Hakim without permission of husband, the justice should be done by Hakim or with his permission.

Marhum Ayatullah aluzma Syed Abul Qasim al Khoi (R.A.) one of the great Marja of our time and also Ayatullah aluzma Seestani one of the present marja used the term of Hakim in their tauzeeh ul masail for more then 70 times.

Q.7) What about akhbari ulama, how can you reply them?

Ans. At a certain stage some of our ulema started the discussion that the hadith should be taken as it is and we should not interpret it or take conclusion from it. E.g. if Imam Sadiq(A.S.) wrote on the kafan of his son Ismail, who died during the life time of Imam (A.S.), Ismail yashhadoo i.e. Ismail bears witness ... that! now even if X,Y or

Z die we should write Ismail yashhadoo and not x, y, yashhadoo or so and so yashhadou....

Although they opposed interpretation or conclusion of hadith by the faculty of intellect (aql) but if we see their books they have been doing so not in their fiqh books but also in the books of hadith compiled by them. Refer to the book of Allama Hur-e-Amallee who is one of the akhbaree aalim and has done the same in his book wasail ush shia many times.

Other then that if this argument of the Akhbarees had been a natural thinking then it would have prevailed over the ijtehad school of thought, where as we find a very few following that school of thought and that also not in the center of Islamic studies.

Q.8) Is it necessary that a Marja should be an Irani or Iraqi or a syed only or anyone else also can become a Marja ?.

Ans. That is not so. Who ever studies and works hard with sincerity he gets the results. It is unfortunate that for years and years in our

history hardly few people went to the center of Islamic education and they also did not try to reach the higher levels rather after studying for some time were forced to leave their studies due to the pressure of the family or community and thus did not reach the level of Ijtehad .

In the end I pray to Allah (s.w.t.) that he may guide us to the right path and give courage to some of us to study in the center of Islamic studies now a days Qum, and become mujtahid, so that we can solve the problems of the Community and society while living with them.

