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IDENTIFYING THE MOST LEARNED

AND THE

ISSUE OF PARTIAL TAQLĪD

in Shī'ite Jurisprudence

According to

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## ABSTRACT

This article examines the ways by which the most learned *mujtahid* can be identified—affirming that this process is still very much a viable one—and discusses the conditions and limitations of partial taqlīd. All the opinions quoted are based on the books of Ayatullah Sīstānī (may Allah bless him with a long life).

## INTRODUCTION: BASIC PRINCIPLES AND DEFINITIONS

In Shī'ite jurisprudence (*fiqh*), *taqlīd* is obligatory upon every sane individual who has reached the age of maturity. *Taqlīd* means:

. . . acting according to the verdicts of a *mujtahid*. It is necessary that the *mujtahid* who is followed be male, adult, sane, Twelve-Imam Shia, of legitimate birth, living and just . . . And in case it is known—albeit generally—that there is a difference in the verdicts of *mujtahidin*<sup>1</sup> on issues that commonly arise, it is necessary that the *mujtahid* a person follows is the most learned (*'alam*), that is, the one who is more capable in understanding the law of Allah than all the other contemporary *mujtahidin*.<sup>2</sup>

A *mujtahid* is a person who has attained the level of *ijtihād*, qualifying him to be a point of reference in Islamic law. *Ijtihād* is the process of deducing Islamic laws and principles from the authentic sources and applying them to various aspects of life.

At present, the diversity of *mujtahidīn* regarded as being 'the most learned' by various *ahl al-khibrah* ('the experts', discussed later in this article) is evidence of the fact that there is no consensus among the *ahl al-khibrah* as to who the most learned is. As a result, it is sometimes thought that it is impossible to identify the most learned in this day and age and that therefore, *tab'īd* ('partial taqlīd', also discussed later) is the appropriate course of action. However, there are a number of stages specified in Shī'ite jurisprudence that a *mukallaf*—that is, the person obligated to observe the precepts of Islamic law—must traverse in order to exhaust all possibility of identifying the most learned before he is legally allowed to resort to *tab'īd* as a final solution.

## IDENTIFYING THE MOST LEARNED

The ways to identify a *mujtahid* and the most learned are clearly stated in Shī'ite jurisprudence:

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<sup>1</sup> For the purposes of this article, *mujtahidīn* will be used as the plural form of *mujtahid* (author's note).

<sup>2</sup> Al-Sīstānī, *Tawḍīḥ al-Masā'il*, 6, ruling no. 2.

There are three ways that a *mujtahid* and the most learned can be identified:

*First*, a person attains certainty himself; for example, he is a scholar and has the ability to identify a *mujtahid* and the most learned.

*Second*, two learned and just people who have the ability to distinguish the most learned *mujtahid* confirm that a person is a *mujtahid* or the most learned, with the condition that two other learned and just people do not contradict them; in fact, being a *mujtahid* or the most learned is also established by one person from among the *ahl al-khibrah* who is trusted by the person.

*Third*, a person derives satisfaction by rational means as to someone being a *mujtahid* or the most learned; for example, a number of learned people who have the ability to distinguish a *mujtahid* and the most learned and from whom satisfaction is derived, confirm that a person is a *mujtahid* or the most learned.<sup>3</sup>

## THE *AHL AL-KHIBRAH*

The *ahl al-khibrah* are:

. . . the *mujtahidīn* and those close to them in learning, who are conversant with the level of those considered to be the most learned, in the most important matters that are taken into consideration in [determining the most learned].<sup>4</sup>

In order to identify the most competent person in any particular field, the normal and logical procedure is to refer to qualified people in that field. Similarly, in the issue of identifying the most learned *mujtahid*, it is necessary for the vast majority of people to refer to the *ahl al-khibrah*:

In order to determine the most learned, it is obligatory [upon a mukallaf who can not identify the most learned himself] to refer to the reliable (*thiqah*) among those who are *ahl al-khibrah* and have the ability of deducing the laws and are conversant—albeit generally—with the level of those considered to be the most learned, in matters influential in [determining the most learned]. [Moreover,] it is not permissible to refer to a person who has no expertise in this matter.<sup>5</sup>

Since most people are generally unaware of the *ahl al-khibrah*, their duty is to consult reliable regionally based scholars who are constantly in contact with the Islamic seminaries and by this way come to know the opinion of the *ahl al-khibrah*:

<sup>3</sup> *Tawḍīḥ al-Masā'il*, 6, ruling no. 3.

<sup>4</sup> Al-Sīstānī, *Al-Fiqh li al-Mughtaribīn*, 68, ruling no. 30.

<sup>5</sup> Al-Sīstānī, *Al-Masā'il al-Muntakhabah*, 10, ruling no. 17.

It is possible to know [the *ahl al-khibrah* and their opinions] through the religious scholars and others who are reliable in their personality and understanding [and] who are in contact with the religious seminaries and with the scholars spread out in other countries.<sup>6</sup>

## DIFFERENCE OF OPINION AMONG THE AHL AL-KHIBRAH

If the *ahl al-khibrah* differ in their opinion as to which particular *mujtahid* is the most learned, a *mukallaf* has to act according to the opinion of the more competent *ahl al-khibrah*.<sup>7</sup>

If the *ahl al-khibrah* differ in determining the most learned, [then] it is necessary to accept the statement of those among them who are more expert and competent, as is the norm in other cases where there is a difference of opinion amongst experts.<sup>8</sup>

Put in another way, “. . . if there is a contradiction [in the opinions of the *ahl al-khibrah*], the statement of those among them who are more expert is to be accepted.”<sup>9</sup>

## EQUALITY IN LEARNING AMONG MUJTAHIDIN

In case at this stage two or more *mujtahidin* are regarded as being equally more learned than the others, or it can not be established which *mujtahid* is the most learned, then the next step is to follow the *mujtahid* who is more cautious (*awra*) in the giving of verdicts:<sup>10</sup>

If the two *mujtahidin* are equal in learning, or it can not be established that one of them is more learned than the other, then [in this case,] if it is established that one of them is more cautious than the other—that is, [he is] more accurate and careful in the giving of verdicts—[then] it is obligatory to follow him.<sup>11</sup>

## THE ISSUE OF TAB‘ĪD

If after having traversed *all* the aforementioned steps a *mukallaf* reaches the conclusion that two or more *mujtahidin* equally share the characteristics of ‘the most learned’ and none of them is more cautious in the giving of verdicts, then in this

<sup>6</sup> Al-Sīstānī, *Al-Fiqh li al-Mughtaribīn*, 67, ruling no. 29.

<sup>7</sup> Here also, the *mukallaf* will have to refer to the *ahl al-khibrah*—or if this is not possible, to the reliable regionally based scholars who are constantly in contact with the Islamic seminaries—in order to determine the more competent among them.

<sup>8</sup> Al-Sīstānī, *Al-Fiqh li al-Mughtaribīn*, 69, ruling no. 31.

<sup>9</sup> Al-Yazdī, Muḥammad Kāzīm, *Al-‘Urwah al-Wuthqā’, with the footnotes of Ayatullah Sīstānī*, 1:14, footnote no. 22.

<sup>10</sup> In order to do this, the same people mentioned in footnote no. 7 would need to be consulted.

<sup>11</sup> Al-Sīstānī, *Al-Masā’il al-Muntakhabah*, 9, ruling no. 14.

situation, the *mukallaf* can either choose to follow one *mujtahid* in particular, or to follow more than one *mujtahid* in different issues. In Islamic jurisprudence, this is known as *tab‘īd* (partial taqlīd).

An important point to note however is that partial taqlīd is limited to cases where there is no ‘accountable summary knowledge’ (*‘ilm al-ijmālī al-munajjiz*):<sup>12</sup>

If [the issue of one of them being more cautious than the other] is not established either, [then] the *mukallaf* has the choice to conform his actions with the rulings of any of the two, and it is not necessary for him to observe precaution between the views of the two except in those issues that are accompanied by summary knowledge of compulsory laws and the like, such as when one of them gives the ruling that shortening prayers (*qasr*) is obligatory and the other [gives the ruling that] complete prayers (*itmām*) is obligatory; [in such a case,] it is obligatory on [the *mukallaf*] to act according to both of them; or [for example,] when one of them rules that a certain transaction is correct and the other [rules] that it is incorrect, the *mukallaf* knows that it is prohibited to utilise one of the two exchanged commodities and so in this case, he must act in precaution (*ihtiyāt*).<sup>13</sup>

## CONCLUSION

The ways to identify the most learned *mujtahid* have been clearly laid down in Shī‘ite jurisprudence by the jurists (*fuqahā*). They believe that identifying the most learned is perfectly viable, otherwise they would not rule it as a necessary condition for *taqlīd* as that would entail holding the *mukallaf* responsible for something beyond his capacity, which is neither legally (*shar‘an*) nor rationally (*‘aqlan*) correct. Therefore, in the words of Ayatullah Sīstānī, “. . . although determining the most learned *mujtahid* involves some difficulties, it is not proper to regard it as a serious problem,”<sup>14</sup> especially, one might add, in this age of rapid communication. Moreover, a *mukallaf* can only practice *tab‘īd* once he has exhausted *all* the possible ways of identifying the most learned and has still not arrived at a reasonable conclusion; even then, the door of *tab‘īd* is only open in those cases where there is no accountable summary knowledge.

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<sup>12</sup> ‘Summary knowledge’ (*‘ilm al-ijmālī*) is a concept referred to in the Islamic science known as ‘The Principles of Jurisprudence’ (*uṣūl al-fiqh*) and can be explained further by elaborating upon the example cited above. Suppose you are in a situation where you are certain that praying (*ṣalāh*) is obligatory on you but you do not know exactly whether your duty is to shorten the prayers (*qasr*) or to complete them (*itmām*). This state of knowledge in relation to a particular duty, accompanied by doubt as to the exact nature of the duty, is known as ‘summary knowledge’. In this example, the summary knowledge is ‘accountable’ (*munajjiz*), meaning that the *mukallaf* would have to observe both the possibilities—in this case, performing the shortened *and* complete forms of the prayer—in order to be sure that he has performed his duty.

<sup>13</sup> Al-Sīstānī, *Al-Masā’il al-Muntakhabah*, 10, ruling no. 14.

<sup>14</sup> Al-Sīstānī, *Al-Fiqh li al-Mughtaribīn*, 67, ruling no. 29.

## References

1. Al-Sīstānī, ‘Alī al-Husainī. *Al-Fiqh li al-Mughtaribīn*, compiled by ‘Abd al-Hādī Muḥammad Taqī al-Ḥakīm, 2<sup>nd</sup> ed. Qum: Ayatullah Sīstānī’s Qum Office, 1419H.
2. ———. *Al-Masā’il al-Muntakhabah*, 12<sup>th</sup> ed. Qum: Ayatullah Sīstānī’s Qum Office, 1426H.
3. ———. *Tawḍīḥ al-Masā’il*. 22<sup>nd</sup> ed. Qum: Ayatullah Sīstānī’s Qum Office, 1423H.
4. Al-Yazdī, Muḥammad Kāzīm. *Al-‘Urwah al-Wuthqā’, with the footnotes of Ayatullah Sīstānī*. 2<sup>nd</sup> ed. Vol. 1. Qum: Ayatullah Sīstānī’s Qum Office, 1425H.