Encyclopædia Iranica

EJTEHĀD
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Published: December 15, 1998
Last Updated: April 24, 2013

EJTEHĀD

EJTEHĀD in Shiʿism *Ejtehād* is an Arabic verbal noun having the literal sense of exerting effort. Both *ejtehād* and its derivatives, including the active participle *mojtahed*, are used in Islamic literature in several distinct senses. Although as a technical legal term it has been variously defined, according to what is perhaps the most illuminating definition common to Sunni and Shiʿite writers, *ejtehād* is the "expending of one's utmost effort in the inquiry into legal questions admitting of only probable answers" (*masāʾel ẓannīya*; ʿAllāma Ḥellī, p. 51). The legitimacy of *ejtehād* as thus defined, its appropriate scope, and the correct evaluation of its results have long been the objects of extensive discussion among both Sunni and Shiʿite scholars.

The debate over the legitimacy of *ejtehād* has been particularly protracted among Twelver Shiʿites and goes back to the earliest Twelver Shiʿite legal theorists influenced by Muʿtazilite theology, i.e., the Oṣūlīs (Šahrestānī, I, pp. 165, 172), who were active during the Lesser Occultation (*ḡayba ṣoḡrā*) of the Twelfth Imam and shortly thereafter, a period which also saw intensive efforts in the collecting of Hadith on the part of the then numerically dominant traditionists (Aḵbārīya, q.v.) such as Abū Jaʿfar Moḥammad Kolaynī (d. 329/941) and Ebn Bābawayh (d. 381/991, qqv; Faḵr-al-Dīn Rāzī, IV, p. 384). Among legal theorists there were those such as Ebn Qeba Rāzī (d. before 319/931, q.v.), known for his appeal to reason in rejecting traditions from the Prophet and the Imams that were not transmitted widely enough to ensure more than their probable authenticity, the so-called *aḵbār al-āḥād* (sing. *ḵabar al-wāḥed*; Anṣārī, I, p. 69; Modarressi, 1993, pp. 127-30). The theorists of Ebn

Qeba's persuasion denied *ejtehād* any role in Twelver jurisprudence (Šarīf Mortażā, *Rasāʾel* I, p. 211). At the other extreme was Ebn Jonayd (d. 381/991), who, in urging the compatibility of *ejtehād* with Shiʿite teaching, went so far as to use analogical reasoning (*qīās*; Najāšī, I, pp. 307-10), reliance on which was condemned in numerous traditions from the Imams (e.g., Barqī, pp. 209-15; Ḥorr ʿĀmelī, XVIII, pp. 20-41), although the practice of *qīās* is already attributed to such early jurists as Yūnes b. ʿAbd-al-Raḥmān (d. 206/821) and Fażl b. Šāḏān (q.v.; d. 260/874; Šarīf Mortażā, *Rasāʾel* III, p. 311; Modarressi, *An Introduction*, pp. 28-31). The division of the Twelver Shiʿite legal theorists over the legitimacy of *ejtehād* mirrors a similar division among the Muʿtazilites (Ebn Qeba in Modarressi, *Crisis and Consolidation*, p. 197, tr. p. 238), the Twelvers who rejected *ejtehād* aligning themselves with such Baghdadi Muʿtazilites as Jaʿfar b. Mobaššer (d. 234/849) and Jaʿfar b. Ḥarb (d. 236/850; Ḵayyāṭ, p. 63, tr., p. 74 ; Šarīf Mortażā, *Rasāʾel* I, p. 27).

According to the Abu'l-Ḥasan Ašʿarī (d. 324/936, p. 53) the Imamis of his day were unanimous in their rejection of *ejtehād*, and this remained the dominant teaching among the Oṣūlīs in the following centuries. For them the superiority of Shiʿism lay precisely in that it could offer a legal system based on certainty as against the welter of conflicting rules issuing from the Sunni *mojtaheds*, in justification of which both Muʿtazilite and Ashʿarite theologians came to embrace the doctrine of "infallibilism" (*taṣwīb*), according to which there was no transcendent rule beyond the opinions of the qualified *mojtaheds*. In opposition to the alleged infallibility of *ejtehād*, the Shiʿite theorists insisted that there was only one correct answer for every possible legal question, the doctrine known as "fallibilism" (*taḵṭeʾa*; e.g., Karājekī [d. 449/1057], II, p. 218). In this way they claimed to preserve intact the infallible teachings of the Imams, a claim that would have been fatally compromised by the acceptance of *aḵbār al-āḥād* as sources of law (Ḵayyāṭ, p. 99, tr. p. 124).

While Shiʿites vigorously polemicized against the *ejtehād*, and particularly the *qīās*, of the Sunnis, among themselves the focal point of the debate on *ejtehād* was and long remained the status of the traditions, the unsoundness of *qīās* not being in doubt. Thus both Shaikh Mofīd (d. 413/1022; "al-Masāʾel al-sarawīya," with *al-Masāʾel al-jārūdīya*, pp. 56-57) and his student Šarīf Mortażā (d. 436/1044; pp. 78, 83), condemned Ebn Jonayd as much for his reliance on *aḵbār al-āḥād* as on *qīās*, and Šarīf Mortażā was unsparing in his disdain for the uncritical Shiʿite collectors of traditions. Their student Abū Jaʿfar Ṭūsī (d. 460/1067), however, in Šarīf Mortażā's lifetime and in direct response to the

latter's views, argued that the consensus (*ejmāʿ*) of the Shiʿites supported reliance on Shiʿite *aḵbār al-āḥād*, although not on *aḵbār al-āḥād* in general (*ʿOddat al-oṣūl*, pp. 51-58; cf. idem, *Tebyān* IX, pp. 343-44 on Qurʾān 49:6). While thus admitting probability into the law, Ṭūsī nonetheless denied that he was recognizing the legitimacy of *ejtehād*, since for him *ejtehād* bore the sense of a loose form of legal reasoning on a level with *qīās*. The apparent inconsistencies introduced into the law by the recognition of *aḵbār al-āḥād* could, he argued, be so dealt with as to avoid infallibilism (*ʿOddat al-oṣūl*, pp. 291-92).

Despite Ṭūsī's great influence on succeeding jurists, Twelver Shiʿite legal theorists continued to adhere to Šarīf Mortażā's rejection of *ejtehād* in all forms, including reliance on *aḵbār al-āḥād* (Moḥaqqeq Ḥellī, *Moʿtabar*, p. 6; Fāżel Tūnī, d. 1071/1660, p. 158). This was the position, for example, of Ebn Barrāj (d. 481/1088), Fāżel Ṭabresī (d. 548/1153; IX, p. 169 on Qurʾān 49:6), Ebn Zohra (d. 585/1189; pp. 475-77), and Ebn Edrīs (d. 598/1202; I, p. 47).

Rather abruptly, an acknowledgment of the inevitability of *ejtehād* appears with several writers. Rażī-al-Dīn b. Ṭāwūs (d. 664/1266; q.v.) insisted that the Shiʿite jurists, including Šarīf Mortażā, had been relying on *aḵbār al-āḥād* all along (Anṣārī, I, pp. 220-21; cf. Tostarī, VIII, p. 45), while the four fold classification of such traditions that became standard among Twelver jurists is attributed to his brother Jamāl-al-Dīn b. Ṭāwūs (d. 673/1274; q.v.; Ḥasan b. Zayn-al-Dīn, I, p. 13). The recognition of the validity of *ejtehād* already found in the writings of Moḥaqqeq Ḥellī (d. 676/1277; p. 118 **)**and Mayṯam Baḥrānī (d. 699/1300; p. 137) was more fully elaborated in the writings of ʿAllāma Ḥellī (d. 726/1325), who, nevertheless, continued in his polemical writings to present Twelver Shiʿite law as excluding *ejtehād* (Ebn Taymīya, I, p. 231; this inconsistency cannot be explained by the chronology of Ḥellī's works as suggested by Amir Arjomand, pp. 304-05, n. 82; see Schmidtke, pp. 52-53, 66-67). ʿAllāma Ḥellī and his followers openly based their exposition of *ejtehād* on the current Sunni works of legal theory, especially the influential *Moḵtaṣar al-montahā* of the Malikite jurist Ebn Ḥājeb (d. 646/1248). Their legal theory recognized *aḵbār al-āḥād*, although on a different basis than Ṭūsī had, and acknowledged the *ejtehād* involved in the interpretation and harmonization of legal sources, while continuing to exclude *qīās* in most of its forms.

The influence of this new teaching in favor of *ejtehād* appears to have grown unchecked until the appearance of Moḥammad-Amīn Estarābādī's (d. 1033/1623) *al-Fawāʾed al-madanīya*. Estarābādī had devoted years of study to

Sunni legal theory, but came to see himself as called upon to revive the path of the Aḵbārīs. He argued that the received Shiʿite traditions, by virtue of their attendant circumstances (*qarāʾen*), provided moral certainty (*ʿelm ʿādī*), which completely obviated the need for *ejtehād*. Failure to recognize the incompatibility of Shiʿism as preserved in the traditions with probabilistic inferences had led some Shiʿites, most notably ʿAllama Ḥellī, to borrow the practice of *ejtehād* from the Sunnis. A position similar to that of the Akhbarism of Estarābādī was later vigorously defended by the Šayḵī Moḥammad-Karīm Khan Kermānī (d. 1288/1871). The classic defense of *ejtehād* against the *aḵbārī* challenge, *Resālat al-ejtehād wa'l-aḵbār* of Waḥīd Behbahānī (d. 1207/1792), stressed the general unavailability of certainty throughout the law in the wake of the *ḡayba*. There was no alternative but recourse to probability on the part of those qualified to deal in such matters, i.e. the *mojtaheds*.

Since the 19th century the *mojtaheds* have been divided into two groups on the basis of how they legitimize *ejtehād*, it being agreed that the legitimacy of resorting to probability requires proof in the face of the many Koranic verses and traditions insisting that action must rest on knowledge (cf. Kermānī, "Resālat al-ḥojja," pp. 269-71). One group, following Behbahānī, see recourse to probability as necessitated by the general "closing off of the gate of knowledge"(*ensedād bāb al-ʿelm*), that is, of avenues to certainty earlier available. This closing off calls for reliance on probability at large (*moṭlaq al-ẓann*, *ẓann-e moṭlaq*) to keep the legal system from breaking down. According to one interpretation of this argument, reliance on probability is dictated by reason (*ḥokūma*); according to another interpretation (*kašf*), what reason dictates in this case coincides with the will of the Lawgiver. Rather far-reaching implications from the argument from closing off were drawn by Waḥīd Behbahānī's student Abu'l-Qāsem Qomī (d. 1231/1816) in his *Qawānīn al-oṣūl*, including the potentially full standing of deceased *mojtaheds* as sources of guidance. Since his time most *mojtaheds* have favored the opposing view that certainty is available as to the specific sorts of probability that may be relied upon (*ẓann-e ḵāṣṣ*). This is the doctrine known as *enfetāḥ*, the openness of the avenues of knowledge and of those types of probability that are known to be valid (*al-ʿelm wa'l-ʿelmī*).The plausibility of *enfetāḥ* rests particularly on the validity of *aḵbār al-āḥād*, which its proponents (*enfetāḥī*) justify on the basis of Koranic verses and traditions and most confidently on the ground of the universal reliance of rational persons in their everyday affairs on information transmitted by similar reports (*ṭarīqat al-ʿoqalāʾ*), a practice which, it is argued, must have been known to and approved of by the

Lawgiver (Anṣārī, I, pp. 230-01). The extensive corpus of *aḵbār al-āḥād* precludes the need to resort to probability at large across the legal system (Ḥāʾerī, II, p. 65). Even for the adherents of *enfetāḥ* in general, however, there may be certain delimited areas, such as the determination of the reliability of Hadith transmitters, where the absence of specific guidelines calls for the application of a small-scale argument from closing off (*ensedād ṣāḡīr*) in order to validate reliance on probability at large (Sabzavārī, II, p. 111; Ḵāqānī, p. 10). While both groups of *mojtaheds* recognize the importance of the *ḡayba* in expanding the scope for *ejtehād*, for proponents of *ensedād* (*ensedādī*) the *ḡayba* signals a radical break in Shiʿite legal history. On either doctrine, *ensedād* or *enfetāḥ*, *qīās* in almost all of its forms is regarded as outside the scope of legitimate *ejtehād*.

The process of *ejtehād* is generally understood to arrive at ostensible rules of law (*aḥkām ẓāherīya*) which may or may not coincide with the actual rules (*aḥkām wāqeʿīya*) imposed by God, unascertainable in the great majority of cases, but known to the Hidden Imam. The Imams, like the Prophet, are above the need to resort to the fallible practice of *ejtehād* (ʿAllāma Ḥellī, p. 51; Sabzavārī, II, p. 120-21). The existence for all possible questions of law of a complete body of actual rules preserves the doctrine of fallibilism consistently espoused by Twelver Shiʿites, while at the same time due recognition is given to the practical validity of the ostensible rules resulting from *ejtehād*. Different accounts have been put forward of what value there can be in adhering to an ostensible rule that does not coincide with the actual rule and thus must fail to achieve the purpose intended by the Lawgiver.

Ejtehād is a communal obligation (*farż kefāya*), requiring not that every individual Shiʿite personally resolve his or her legal questions, but that enough Shiʿites undertake the task of qualifying themselves in legal matters to provide guidance for the rest of the community. All Shiʿites are thus divided into *mojtaheds*, those who have so qualified themselves, and those who require guidance, the *moqalleds*. The latter are expected to invest (*taqlīd*) a *mojtahed* with competence as their authority (*marjaʾ*) on all legal questions except those so clearly and universally resolved as not to require expert guidance. All actions within the scope of *taqlīd* in which a *moqalled* acts without the guidance of a *mojtahed* are potentially invalid (*bāṭel*). In principle, however, both *mojtaheds* and *moqalleds* may exercise precaution (*eḥtīāṭ*) by acting in such a way as to be certain of discharging their obligations on all creditable views, but these views are themselves the products of *ejtehād*, and in any case

a *moqalled* will need the guidance of a *mojtahed* to practice precaution properly.

In ascertaining the ostensible rule governing a given situation, each *mojtahed* imposes an obligation to follow that rule upon himself in the first instance and secondarily on those who choose to follow him. The legitimacy of making *ejtehād* the basis for *taqlīd*, as well as for the holding of judicial office (Sobḥānī, pp. 143-61; cf. Moḥsenī, *al-Qażāʾ wa'l šahāda*, pp. 23-25), depends on the identification of the *mojtahed* with the jurist (*faqīh*, *ʿālem*) to whom the Imams urged their followers to turn in their absence, a laudatory use of the term *ejtehād* being apparently unattested in the corpus of Shiʿite traditions. It was the unabashed assertion of the mediating function of the *mojtahed*'s assessment of probability that provoked the attacks on *ejtehād* by theAḵbārīs andŠayḵīs, for whom the role of the jurist referred to by the Imams is primarily that of a transmitter of traditions.

The qualifications for *ejtehād* include as a minimum familiarity with Arabic, the legal contents of the Qurʾān and traditions, and legal method as expounded in works of legal theory (*oṣūl al-feqh*), as well as possession of an innate divinely bestowed aptitude for legal reasoning (*qowwa qodsīya*). In order to serve as a guide for others, a *mojtahed* must be a loyal adherent of Twelver Shiʿism, of moral integrity, and, it is generally held, although not without question, an adult male of legitimate birth. There has been considerable controversy as to whether a *moqalled* may follow a *mojtahedmotajazzeʾ*, an incomplete or partial *mojtahed*, that is one whose expertise does not extend to all areas of law, as distinguished from a *mojtahedmoṭlaq*, a complete or absolute *mojtahed*. Controversy also extends to the circumstances under which a *moqalled* may follow a deceased *mojtahed*. Many recognize the validity under certain circumstances of a *moqalled*'s continuing (*baqāʾ; estemrār*) to follow a deceased *mojtahed* whom he had already followed prior to his death, but preferably with the approval of a living *mojtahed*.

Individual *moqalled*s are enjoined to attach themselves to the most learned (*aʿlam*) *mojtahed* of their day as determined by their own assessment if they are competent or by reputation. Where the available guides are equally qualified, the *moqalled* is free to choose (*taḵyīr*). Following several *mojtaheds* (*tabʿīż*) where they are the most learned in different areas may be appropriate. Shifting allegiance (*ʿodūl*) from one *mojtahed* to another is not countenanced unless the first *mojtahed* is no longer the most learned or in some other way is no longer fit. *Mojtaheds*, on the other hand, are not permitted to practice *taqlīd*

unless on a matter beyond their competence. It has been suggested that an *ensedādīmojtahed*, because he relies on probability at large, does not qualify as an *ʿālem* in the strict sense, and hence cannot validly serve as a guide for others, but this view has not gained support (Šīrāzī, V, p. 323).

The full recognition accorded *ejtehād* in modern Twelver jurisprudence is evident in the constitutional documents of Persia. Article 2 of the Supplement to the Constitution of 1907 (see CONSTITUTIONAL REVOLUTION III) established a committee of not fewer than five *mojtaheds* to determine the Islamic validity of legislation, while Article 71 restricted judicial office in Islamic law cases to qualified *mojtaheds*. Article 2, section 6a, of the 1979 Constitution of the Islamic Republic of Iran (q.v.) affirms that continuous *ejtehād* (*ejtehād-e mostamerr*) is one of the means of securing human dignity and freedom along with progress in science and technology and opposition to tyranny. *Ejtehād* is also integral to the doctrine of *welāyat-e faqīh* implemented by Article 5, according to which a *faqīh* is to be entrusted with governance and the leadership of the nation (*welāyat-e amr wa emāmat-e ommat*). In recent years intense academic interest has focused on the institutionalization of *ejtehād* among Twelver Shiʿites since the middle of the 19th century, resulting in an unprecedented number *mojtaheds*, the emergence of strata within the ranks of the *mojtaheds*, and particularly on the involvement of leading *mojtaheds* in political affairs, culminating in the Revolution of 1978-79 (Calmard, “Āyatullāh”; idem, “Mujtahid”).

The label *mojtahed* is now widely applied by Twelver Shiʿites to eminent Shiʿite jurists of the past, whether traditionists like Kolaynī or those like Shaikh Mofīd who wrote in condemnation of *ejtehād*. Earlier critiques of *ejtehād* are routinely understood to refer to objectionable Sunni practices such as *qīās* (e.g., Shaikh Mofīd, *Awāʾel al-maqālāt*, pp. 115-17, n. 1), although, not entirely consistently, it is also common for the stagnation of *ejtehād* among Sunnis to be unfavorably contrasted with its vitality among Shiʿites (e.g., Reżā Ṣadr, p. 9). Leading Safavid Aḵbārīs are also recognized as having attained the rank of *mojtahed* despite their professed hostility to *ejtehād* (Frank, p. 188, tr., p. 180; Samāhījī, p. 34, tr., p. 49; cf. Yūsof Baḥrānī [d. 1186/1773], *Ḥadāʾeq* I, p. 25, quoting Neʿmat-Allāh Jazāʾerī [d. 1112/1700] to the effect that tracing *fatwās* to their Hadith sources is the true *ejtehād*). Aḵbārī writers for their part also treat Shaikh Mofīd and his followers as *mojtaheds* since, on the one hand, they construe their reliance on rational arguments as an appeal to forms of probable inference (Estarābādī, p. 176) and, on the other hand, use the

rejection of *aḵbār al-āḥād* as a criterion for determining allegiance to *ejtehād* (cf. Baḥrānī, *Loʾloʾat al-baḥrayn*, p. 279). Thus Abū Jaʿfar Ṭūsī, having given Shiʿite *aḵbār al-āḥād* a privileged status, was accounted as really an Aḵbārī by Estarābādī (p. 135).

According to Aššʿarī, the Zaydis were divided over the legitimacy of *ejtehād* (p. 74). Other sources attribute the rejection of *ejtehād* to the followers of Abu'l-Jārūd Zīād b. al-Monḏer (d. after 150/767), the Jārūdīya or Sorḥūbīya, the other Zaydi sects recognizing its validity (*Feraq al-šīʿa*, pp. 48-50; Saʿd Qomī, pp. 72-3). Zaydi authors assert that *ejtehād* in the form of *qīās* was practiced and approved of by such leading members of the *ahl al-bayt* as ʿAlī b. Abī Ṭāleb (q.v.) and his great grandson Zayd (d. 122/740; Ebn Ḥābes quoted in Zayd b. ʿAlī p. cxxxvi-vii; Ḥosayn b. Qāsem, II, p. 470, n. 1). The Zaydis' endorsement of *ejtehād* was condemned by Twelver polemicists from the period before the general acceptance of *ejtehād* among Twelvers (Ebn Qeba, "Naqż," pp. 175, 195, 197, 200, tr., 208, 236, 238, 242). More recently Twelver writers have attributed the practice of *qīās* by the Zaydis to borrowing from the Hanafites (Ṭabāṭabāʾī, d. 1242/1826, unpaginated). Sunni polemicists, however, such as Ebn Taymīya (d. 728/1328; II, p. 89) and Shah ʿAbd-al-ʿAzīz Dehlavī (d. 1239/1824; p. 28) have cited the Zaydis' use of *qīās* as an argument against the claim of Twelvers to represent the authentic teaching of the *ahl-al-bayt*.

Full discussions of the scope and evaluation of *ejtehād* are to be found in writings from both the Caspian and Yemeni Zaydi Imamates. Although some Zaydi jurists claimed consensus for the requirement that an imam be a *mojtahed*, there were later Zaydis, among them the Yemeni imam Yaḥyā b. Ḥamza (d. 745/1344; Ebn Mortażā, V, pp. 379-80) who were prepared to recognize the validity of the imamate of a *moqalled* (Ṣanʿānī, IV, p. 2483, n. 1; Ebn Meftāḥ, IV, pp. 520-21). So, too, there is disagreement among the Zaydis as to whether *ejtehād* is a prerequisite for judicial office (idem, pp. 310-11).

Under Muʿtazilite influence, the doctrine of the infallibility of *ejtehād* gained a significant following among Zaydis (Ebn al-Moẓaffar, I, p. 18; in favor of fallibilism, see ʿAbd-Allāh Moḥammad Manṣūr [b. 1315/1898], p. 98) and was invoked by the Caspian imam Abū ʿAbd-Allāh Mahdī (d. 360/970) in quieting the unrest among his subjects, who were divided between Daylamite supporters of the teachings of Qāsem b. Ebrāhīm (d. 246/860) and Gīlānī followers of Nāṣer Oṭrūš (d. 304/917; Madelung, pp. 114-5; for a different harmonizing solution to such inner divisions, see Ebn al-Wazīr, pp. 130-31).

Šahrestānī (d. 548/1153; I, p. 162) already reports that most of the Zaydis of his day were practicing *taqlīd*, rather than engaging in *ejtehād* and for at least the past five centuries noteworthy jurists have arisen among the Yemeni Zaydis to call for the reinvigoration of *ejtehād* after a period of perceived stagnation. The most famous of those who have made such an appeal is the Yemeni chief justice Moḥammad b. ʿAlī Šawkānī (d. 1250/1834), whose writings, influential in Yemen itself, have become popular among Sunnis outside of Yemen. Šawkānī was prepared to recognize the validity of the imamate of a *moqalled*, but insisted that the appointment of a *moqalled* as judge amounted to granting a license to render judgment according to a false god (*ṭāgūt*; Qurʾān 4:60; Šawkānī, *al-Sayl al-jarrār* IV, 274-75, 507-08)

Among the Ismaʿilis there has been no embracing of *ejtehād* such as has taken place among the Twelvers and Zaydis. The structure of authority in both the Nezārīand Ṭayyebī communities has evidently remained such as to render unnecessary the elaboration of a doctrine of *ejtehād*. The classical Ismaʿili statement on legal theory, *Ketāb eḵtelāf oṣūl al-maḏāheb* of the Fatimid chief justice Noʿmān b. Moḥammad (d. 363/974) gained the personal approbation of three consecutive Fatimid imams, al-Moʿezz (d. 365/975), al-ʿAzīz (d. 386/996), and al-Ḥākem (d. 411/1021). It contains a vigorous attack on *ejtehād* along with other elements of the Sunni legal theory of the day.

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