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TÍTULO: Ijtihad y el gobierno desde el punto de vista Chiíta.

AUTORES:

- 1. Ph.D. Bahador Mehraki.
- 2. Ph.D. Abdolrasool Azimiyan.

RESUMEN: Desde la perspectiva de los eruditos chiítas, ¿quién es responsable del liderazgo y el gobierno de los musulmanes durante la Ocultación? ¿Cuál es el alcance de sus deberes y poderes? Estas fueron las principales preguntas del estudio. Los hallazgos determinan tres puntos de vista dominantes: primero, el gobierno es solo el derecho del imán infalible, y nadie más tiene el derecho de estar en esta posición; segundo, la monarquía del rey es reconocida y el papel de los juristas se limita únicamente a ocupar los cargos religiosos y judiciales; tercero, la gobernanza y la administración de los asuntos sociales y políticos de los musulmanes se consideran deberes de los juristas justos y deben formar un gobierno. Este estudio descriptivo-analítico indicó que el establecimiento de un gobierno en la sociedad islámica es necesario para la institucionalización y la realización de la jurisprudencia científica en la práctica.

PALABRAS CLAVES: Shiíta, Ijtihad, Jurisprudencia, Gobierno Constitucional.

TITLE: Ijtihad and Government from the Shia Viewpoint.

AUTHORS:

- 1. Ph.D. Bahador Mehraki.
- 2. Ph.D. Abdolrasool Azimiyan.

ABSTRACT: From Shiite scholars' perspective, who is responsible for leadership and rule of Muslims during the Occultation? What is the scope of his duties and powers? They were main questions addressed in the study. Findings determine three dominant views: first, the governance is only the right of the infallible Imam, and no one else has the right to be in this position; second, the king's monarchy is recognized and the role of the jurists is only limited to holing the religious and judicial positions; third, governance and the administration of social and political affairs of Muslims are considered to be the duties of the just jurists and they should form a government. This descriptive-analytical study indicated that the establishment of a government in the Islamic society is necessary for the institutionalization and realization of scientific jurisprudence in practice.

KEY WORDS: Shiite, Ijtihad, Jurisprudence, Constitutional Government.

INTRODUCTION.

After the demise of the Prophet (PBUH), several divisions were formed in various religious and social spheres and also in religion. One of the most important of these issues was the succession of the Prophet (PBUH). The followers of Twelver Shiism believe that the immediate successors of the Prophet (PBUH) are the twelve infallible Imams appointed by God and authorized the Prophet one after the other, and the scope of their duties and powers is the same as that of the Prophet (PBUH). Another point that has always been a controversy among Shi'a scholars was the issue of governance and the leader during the Occultation (the absence of the Twelfth Imam of Shiites), and the person who can serve as the Muslims' leader during the Occultation time. Can numerous sultans who had been constantly in charge of the affairs and most of them were oppressors be true examples of the

Muslims' leader, or these are jurists who have the right of governance and power to deal with Muslim affairs, and if so, what is the scope of their duties and powers?

To investigate the topic in question, three theories are reviewed here: The followers of the first theory believe that at the Occultation time, governance belongs solely to the infallible Imam, and another person's taking this position is unfair and rejected. The followers of the second theory believe that jurists can only assume responsibility in religious, judicial, and arbitration matters. Finally, the followers of the third theory consider the formation of the government during the Occultation time as one of the duties of the righteous jurists and they have the same rights and powers that the Prophet had in the administration of the Islamic community. This descriptive-analytical study tries to explain these three theories based on the original and reliable references (Kheiry et al, 2013; Bahremand, 2015; Soorya et al, 2017; Kulkarni et al, 2019).

DEVELOPMENT.

Ijtihad.

The root of the term ijtihad (ijtihād) is jāhd or johd in Arabic. Some philologists such as Jowhari believe the term means potency and tolerance and stated that the word jāhd also means hardship and suffering in terms of physical or mental effort (Hosseini Zubaidi). Some others stated that jāhd means hardship and johd connotes potency and tolerance (Ibn al-Athir, 1966).

Ijtihad as an Islamic legal term refers to independent reasoning or the thorough exertion of a jurist's mental faculty in finding a solution to a legal question. Sometimes it refers to the criterion used by the jurist to infer a legal solution from the existing evidence (Khorasani, 1409: 464; Husseini Firoozabadi, 2013: 6/162).

Upon reflection on the literal meaning of ijtihad, it can be said that these two meanings are very close to each other, and therefore the scholars in the field of Uṣūl al-fiqh (principles of Islamic jurisprudence) have given special attention to the literal meaning of ijtihad when discussing it. To come up with a better understanding of the term, the viewpoints of one of the contemporary thinkers, Imam Khomeini, about ijtihad are discussed here.

Ijtihad from Imam Khomeini's point of view.

Imam Khomeini believes the meaning of ijtihad in the common sense used in schools of theology is not satisfactory as a mujtahid, in addition to the scientific and practical capabilities and experiences that are commonly required for ijtihad, should have other qualifications; for instance, the mujtahid should be familiar with Arabic sciences to the extent that he can use them in ijtihad. In addition, he should have mastery over the interpretation of the Qur'an, the principles of Islamic jurisprudence, logic, and rules of making inferences and reasoning. Also, the mujtahid should be familiar with biographical evaluation and hadith studies so that he can respond to the needs of the Islamic society at the time (Khorasani, 1409: 2/329, Mousavi Khomeini, 1410: 94/2, Seyyed Morteza, 1984: 2/324). A qualified mujtahid should possess personal characteristics such as justice, piety, asceticism, devoutness, modesty, chastity, and indifference to the material world.

Concerning the awareness of time and place as a requirement for mujtahids, one of the researchers says: "If we accept that we need to imitate a living mujtahid, we have in fact accepted that only a person who is actively present in the society is able to solve the daily problems of that society. Obviously, presence in the society has a meaning other than living in the society, as there are many people who are living in the present world, but their thoughts are fundamentally rooted in the last century and also there are many living persons who lost their power of thought and ijtihad. Therefore, only those who are able to appreciate change can, in fact, reconcile the two concepts of eternity and change and this is a requirement for the recognition of time and place (Motahari, 1962: 60).

Ijtihad commonly refers to a scientific effort to infer religious injunctions and rules and is associated with individual characteristics such as having justice and piety. While adhering to the principles of Islam and having mastery over human sciences, mujtahid present religious instructions and rules in accordance with spatial and temporal conditions of the society including cultural and economic conditions, and responds to the political, economic, and administrative needs of the society, and thus keeps Islam alive, dynamic and accountable at all times (Deser, 2018; Kalenik et al, 2018).

In addition to the above characteristics, Imam Khomeini also emphasized the temporal and spatial requirements and believes that these two elements should be taken into account more seriously by jurists, especially at the time of the formation of the Islamic government. Moreover, the mujtahid should have the power of discretion and decision making, deliberation, and foresight in terms of social issues, political insight, open-mindedness, sagacity, and knowledge of different ideas and cultures so that he can infer Islamic practical rules in terms of various issues such as ownership and its scope, complex issues related to money, currency, banking, taxation, and domestic and foreign trade, cultural issues such as photography, painting, sculpture, music, theater and cinema, conservation of the environment and nature, medical problems such as transplantation of human organs, legal issues and international law, the limits of individual and social freedom, the quality of performing religious duties in space and naval travels, and other matters faced by people and the state (Mousavi Khomeini, 1988: 21/176-177, 217-218, 288-290).

Based on what was mentioned, it can be stated that government and ijtihad are related to each other; hence we need to get familiar with the views of jurists and authorities in this regard.

Government from the viewpoint of Shi'a jurists.

The idea of government at the Occultation time and the interpretation of its quality throughout the history of the Shi'a school have been the source of controversy and the exchange of ideas among scholars, although such exchange of ideas has been more pronounced after the Safavid dynasty. From the point of view of a majority of Shi'a scholars, the government begins longitudinally from God and is then passed the Prophet of Islam (PBUH) and then to the Imams (AS) and belongs solely to them. According to this view, other people who are assigned to this position are usurpers and are

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not entitled to possess it. Meanwhile, most scholars did not have any contact with kings and sultans and did not care about their rule, until Shaykh Tusi (385-460 A.H./995-1068 A.D.) created a division between the religious and political government by showing tolerance towards rulers and sultans and the acceptance of their monarchy. This marked the beginning of a series of thoughts and actions taken by subsequent jurists who believed that the sultan can establish his monarchy and other people should obey his commands.

In a later period, Sheikh Morteza Ansari (1214-1281 AH), rejected this theory and believed that jurists are not entitled to hold the position of leadership and it was not stipulated in religious hadiths and texts, and therefore according to him, people are not required to give Khums and Zakat to jurists (Ansari, 1415: 3/557-558).

In addition, he has made a distinction between the responsibilities of the jurist and political ruler as follows:

- 1. Dealing with religious affairs, this is an indisputable task of jurists.
- 2. Handing administrative and judicial affairs which is absolutely within the powers of mujtahids.
- 3. Administering political and governmental affairs and government; whether the policy and the government should be handled by Islamic jurists is not unconditionally accepted by all scholars (Ansari, 1415: 3/558).

With the advent of Kashf ul-Ghita (d. 1228 AH), a fundamental change was made in the dimensions of some principles, such as the extent to which Shiite authorities intervened in government affairs, the permission for jihad, and the relationship between the sultan and the jurist. He provided some reasons in support for obeying the sultan; for instance, he classified all kinds of jihad and stated that jihad against infidel enemies and the protection of Muslims are obligatory for all Muslims (an intrinsically incumbent obligation), in such a way that, even in the absence of the Imam (AS) to lead the society, mujtahids in the first place, or anyone else who has the insight and is aware of politics

and its complexities, should try to perform it. Therefore, obeying the sultan's commands is obligatory for the provision of weaponry and making arrangements to defend the Muslim nation. In fact, it can be stated that obeying the ruler is valued in this regard (Kashf ul-Ghita, 1422: 4/333).

Concerning Shiite authorities and their role in the government, Sheikh Kashf ul-Ghita stated that: "The sultan which is at the head of the community and the military forces commanding the public should be authorized by the owner of the shari'a and the owner of the "divine reign" or mujtahids as the protector of and appointed by shari'a" (Ibid., p. 385). This suggests that the government is not legitimate if it is not authorized by the Imam and his deputy (mujtahid) and if the monarchy opposes to mujtahids it will lose its legitimacy.

Shaykh Muhammad Hasan al-Najafi (1192-1246 AH) (the author of Jawahir al-Kalam fi Sharh Shara'i al-Islam) was a disciple of Sheikh Ali Kashf ul-Ghita. Concerning the imposition of hudud, i.e., the punishments that are mandatory under Islamic law (shariah), he pointed that Shi'i jurists are allowed to enforce hudud at the Occultation in the same way that they can rule the people, provided they are safe from the harms of the ruling monarch, and it is obligatory for the public to help the scholars to do this, just as they are required to help the infallible Imam (AS) (al-Najafi, 1404: 21/394). Another famous Islamic scholar of the Qajar period, Mullah Ahmad Naraqi (d. 1245 AH) (known as Fāḍil al-Narāqī) was a student of Ayatollah Vahid Behbahani (1118-1205 AH) and Ayatollah Kashf ul-Ghita. In his book "Awayed Al-Ayyam" (Earning a living), he has provided a detailed discussion of the authorities and powers of jurists in government affairs. He regards the authority of jurists over the general public (in particular matters) to be legitimate and calls it "the authority of the jurists who are rulers and the Imam's deputies in the absence of the Imam (AS)".

With the expansion of these discussions among the scholars and their increasing attention to the government, a new wave of opinions was formed which is the most complete form appeared in the form of the constitutional revolution and movement in which Islamic scholars played a vital role.

Constitutional government from the point of view of Shi'i scholars.

Among the scholars and thinkers supporting the Constitutional Movement, Ayatollah Naini (d. 1355 AH) and Ayatollah Mahallati (born 1269 AH-QUR 1343 AH) are the most prominent figures. Ayatollah Naini is the author of the manifest which is a fairly coherent and systematic work on the constitutional principles. In their arguments for preferring the constitutional government over other governments, both scholars have categorized different types of governments as follows:

A. Autocracy, which is arbitrary government and based on the will of the king.

- B. Constitutional government in which that the power of the king is limited and conditional upon some requirements.
- C. The government of the infallible Imam (AS), which is the only rightful government and as it cannot be actualized (due to the absence of Imam (AS)), so we have to choose between the two types of government mentioned above, and according to common sense, the constitutional government is better than autocracy. The reason is that the monarchy has limited and conditional control over the state's affairs and all citizens are partners in Bayt al-mal and have equal rights and shares in it (Naini, 1972: 9-12).

In addition, autocracy is also a usurper of the divine dominion and oppression to the holy realm of divinity. It is also the usurper of the leadership of the Islamic state and oppresses God's servants. In contrast, the ruler in the constitutional government is only the usurper of the leadership of the community, and thus it less harmful than autocracy. As a result, it is more advisable to choose a government that has less unfavorable consequences.

Islamic scholars, religious leaders, and theorists of constitutionalism have almost unanimously stated that the government and leadership belong to the infallible imams and they are entitled to have authority over the Islamic community. However, as is not currently possible to have access to such a

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government, then there should be a government that is somewhat similar to it and tries to establish justice and law. Under such a government, the king has limited and conditional power.

After determining the three types of government, the third type has been regarded as a divine government and is beyond the scope of our discussion. So, the two other types of government (autocracy and constitutional government) must be measured fairly in order to determine which one is preferable to the other. However, if the third type of government became accessible, the other types of government will be negated (Mahalati, 1958: 5).

Constitutionalist scholars, in addition to expressing their reasons and views on the support for constitutionalism, have also responded to opponents and dismissed their claims. When the eminent mujtahids of Najaf including Akhund Khorasani (1255-1329 AH), Mirza Hussein Tehrani (1232-1326 AH) and Sheikh Abdullah Mazandarani (1259-1331 AH) raised the banner of constitutionalism and declared their support for constitutional principles, they defended the principle of ijtihad and the power of the mujtahid in social and political affairs, and when their opponents accused constitutionalism of bringing a law against the divine law and heresy in religion, they also refuted this claim by stating that: "The constitutional law is the same of Islamic law" (Esfahani, 1948: 9), and the constitutional principles are only for the welfare of the community and specify the hudud (the punishments that are mandatory under Islamic law), the rights and the duties of all groups of the community and the administrative and political systems, and they are not against the divine law or its replacement.

What was mentioned here was merely a summary of contemporary Shi'a history aimed at clarifying how constitutionalist scholars supported the idea of the constitutional government and upraised for the creation of justice, equality and freedom for the members of the community, and the elimination of oppression and tyranny from the Islamic state and the salvation of Muslim citizens from oppression, corruption, chaos, the reliance on infidel people, and the influence and domination of foreigners.

In the current period when the Islamic Republic has been established with the victory of the Islamic revolution on February 11, 1979, led by the clergy in the country of Iran, and the concepts of authority and leadership have received special attentions both theoretically and practically, it is necessary to address the view of the great theorist of the Islamic Republic, Imam Khomeini (1892-1989).

Imam Khomeini, as a Sadraian philosopher, argued with people who believed in stereotyped and formalistic ideas and attended the public to present his interpretations of the four journeys of mysticism and transcendental wisdom. He expanded the practical, social and political dimensions of mysticism and, by overthrowing the Pahlavi regime, he was seated at the top of the ruling system and gained political power and tried to implement and enforce the Islamic practical rules including social justice in the society. In other words, when Imam Khomeini was disappointed with the reform of the Pahlavi regime, he publicly opposed the Pahlavi regime and eventually overthrown it. As a result, he manifested the hidden part of the transcendental wisdom of Sadra Shirazi, including its general and practical aspects.

Islamic government from Imam Khomeini's point of view.

From Imam Khomeini's point of view, the Islamic government is established upon the divine will and is accepted by people with their own free will. For instance, Imam Ali (AS) refused to accept the responsibility of the government unless people explicitly invited him to accept the government. Concerning the formation of the Islamic state, Imam Khomeini stated: "The Islamic government is neither autocratic nor absolute, but constitutional, as the rulers are bound by a set of conditions and requirements determined by the Holy Quran and the tradition of the Prophet (PBUH). This set of conditions is the same as Islamic laws and regulations that must be observed and enforced. In the Islamic government, there are some qualifications and requirements that must be possessed by the leader. The two basic requirements are:

- 1. Ruling by the law.
- 2. Justice.

Therefore, if a competent person who possesses these two characteristics raises and forms a government, he will have the same authority and position held by Prophet (PBUH) in the administration of the society, and people should obey him" (Mousavi Khomeini, 1994: 37).

Concerning the powers of the Islamic ruler at the time of Occultation, Imam Khomeini believes that the powers of the jurist who is at the head of government are the same as the powers of the Prophet and the Imams (AS): "The idea that the Prophet's (PBUH) authorities are more than Imam Ali's (AS) or the authorities of Imam Ali (AS) are more than the jurist is an illusion. For example, one of the responsibilities of the jurist who serves as a leader is to enforce hudud, i.e., the punishments that are mandatory under Islamic law. Are there any differences between the Prophet (PBUH), the Imam, and the jurist in terms of enforcing hudud? Is it true to say that since the jurist is lower in rank, he should impose less punishment? The answer is definitely no. because the ruler is in charge of the executive branch of the government and he must enforce the punishments determined by God, and it does not matter whether the rule is the Prophet (PBUH), Imam Ali (AS), or his representative and judge in Basra and Kufa or the faqih of the time" (Mousavi Khomeini, 1994).

Therefore, it can be said that since Islam is a complete religion and is able to meet the needs of Muslims at all times and places, then at the Occultation time when Muslims do not seem to have access to the world of revelation and infallible Imams, it is necessary for the jurist to act on the behalf of the infallible Imams (AS) to form a government, administer justice, and implement other teachings of Islam in the society

CONCLUSIONS.

Based on the discussions presented in this paper, it can be suggested that ijtihad refers to independent reasoning or the thorough exertion of a jurist's mental faculty in finding a solution to a legal question and responding to the Islamic society's new issues.

Another point that has always been a controversy among Shi'a scholars was the issue of governance and the leadership during the Occultation and its quality and requirements. Based on the three views discussed earlier, it can be suggested that the formation of government in the Shia jurisprudence is an indispensable requirement of jurisprudence, as jurisprudence without government remains as a theoretical concept and is not manifested in practice. Besides, the ruler (a highly qualified jurist) who is leading the Islamic society at the Occultation time has all the authorities and powers held by the Prophet (PBUH) and the infallible imams in a way that there is no difference between the Prophet (PBUH), the Imam, and the jurist in terms of enforcing hudud, i.e., the punishments that are mandatory under Islamic law.

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DATA OF THE AUTHORS.

 Bahador Mehraki. Assistant Professor of Islamic Education Department, School of Medicine, Shiraz University of Medical Sciences, Shiraz, Iran. Corresponding author: <u>Dr.b.mehraki@gmail.com</u> <u>https://orcid.org/0000-0002-0534-8968</u>

2. Abdolrasool Azimiyan. Department of Islamic Education, School of Medicine, Shiraz University of Medical Sciences, Shiraz, Iran. <u>https://orcid.org/0000-0002-6154-0428</u>

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