

Istihsan and its comparison with Equity.

Mohammad Ijaz*

Istihsan literally means preferring or regarding a thing as good. As a term of Islamic Jurisprudence, *Istihsan* has been defined by Shokani:

الاستحسان هو العدول عن قياس إلى قياس أقوى منه¹

Istihsan is to give preference to stronger *Qiyas* over the other *Qiyas*. Karkhi definition is the most comprehensive one. He says,

الاستحسان هو أن يعدل الإنسان عن أن يحكم في المسألة بمثل ما حكم به في نظائرها إلى خلافه لوجه يقتضي العدول عن الأول²

"In case of some legal problem exception is created from its analogous precedents on the basis of some stronger argument which renders it distinguishable."

Mac. Danald Defines:

"*Istihsan* is the one that the legist, in spite of the fact that the analogy of the fixed code clearly points out to one course, considers it better to follow a different one."³

Lecturer Sh. Zayed Islamic Centre, University of the Punjab Lahore.

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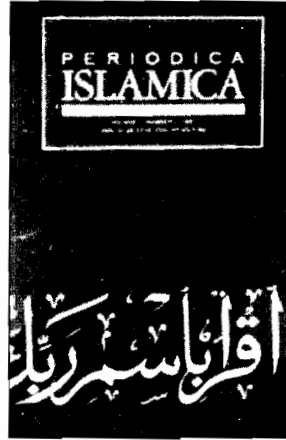
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- Tadh* id, *Tadhkirah al-Ḥaffāz*, Beirut, n.d.
- Taqyīd* Al-Khaṭīb al-Baghdādī, *Taqyīd al-`Ilm*, ed. Yūsuf al-Ishsh, Damascus, 1949.
- Ta`riḫh* Al-Khaṭīb al-Baghdādī, *Ta`riḫh Baghdād*, Cairo, 1931.

the city he was told about the death of the former and serious illness of the later.⁽⁵⁴⁾ Ḥammād b. Salamah (d. 167) when reached Makkah to acquire knowledge from `Aṭā b. Abī Rabāḥ (d. 114) the Shaykh had already passed away.⁽⁵⁵⁾ `Abd Allāh b. Dāwūd al-Khuraybī when reached Baṣrah to acquire *al-`ilm* from `Abd Allāh b. `Awn, the later had passed away.⁽⁵⁶⁾

The fact is that these academic travels which started in the life time of Prophet accelerated in the succeeding generations and continued with zeal and fervour till the time Muslim retained their leading role in world affairs and their socio religious institutions did not became decadent. When non-Muslim west took over the Muslim world new institutions were introduced replacing the classical pattern of Islamic education. However, the tradition survived upto recent years though in low profile. This tradition, surely, indicate the commitment, sincerity dedication of early generations of the Muslims *Ummah*.

Abbreviations and Bibliography

- Bukhārī Al-Bukhārī, Muḥammad b. Ismā`il (d. 256) *al-Jāmi' al-Ṣaḥīḥ*, Dar al-Fikr, Beirut.
- Concordance* Wensinck, A.J. et alii, *Concordance et Indices de la Tradition*, Leiden.
- Fāsil* Rāmahurmuzī, Ḥasan b. `Abd al-Raḥmān, (d. 360), *al-Muḥaddith al-Fāsil Bayan al-Rāwī wa l-Wā`i*, ed. `Ajjāj al-Khaṭīb, Beirut, 1391.
- Ibn Ṣalāḥ Ibn Ṣalāḥ, `Uthmān b. `Abd al-Raḥmān (d. 643); *Muqaddimah Ibn Ṣalāḥ*, ed. Nūr al-Dīn `Itr, Dar al-Fikr, Syria.
- Irshād* Al-Nawawī, Yaḥyā b. Sharaf (d. 676); *Irshād Ṭullāb al-Ḥaqq'a'iq*, ed. Nūr al-Dīn `Itr, 1988.
- Jāmi`* Ibn `Abd al-Barr, yusuf b. `Abd Allāh (d. 463) *Jāmi` Bayān al-`Ilm*, Madinah, n.d.
- Kifāyah* Al-Khaṭīb al-Baghdādī (d. 463), *Al-Kifāyah fī `Ilm al-Riwāyah*, Madinah, n.d.
- Manhaj* `Itr Nūr al-Dīn, *al-Naqd fī `Ulūm al-ḥadīth*, Damascus, 1401/1981.

54 Ibid, 168.

55 Ibid, 177-72.

56 Ibid, 176-177.

Umar for their contention which they heard in Iraq.⁽⁴⁴⁾ Abū Uthmān al-Nahdī (d. 95) travelled for Ḥajj with the purpose to listen a ḥadīth transmitted by Abū Hurayrah from him personally.⁽⁴⁵⁾

The references reveal that the *riḥlah* was at first a more or less personal affair, with one scholar seeking another usually for a particular piece of information but by the end of first century Hijrah a second practice evolved, whereby the travelling 'Ulamā were sought by or presented to the learned people in the cities which they visited. Umar II presented Abū Qilābah al-Jarmī (d. 104) who was himself seeking knowledge.⁽⁴⁶⁾ During Hishām's regin Ibn 'Ā'idh visited 'Irāq when both Baṣrans and Kūfans wrote down his *aḥādīth*.⁽⁴⁷⁾ Later in the second century A.H., scholars of repute were invited to address and disseminate the knowledge to the learned circle.

Ibn Rahawayh (d. 238), as mentioned in the sources, undertook a journey of 'Iraq at the request of some traditionists of 'Irāq so that he might preside at a certain meeting of the traditionists.⁽⁴⁸⁾ Hushaym b. Bashīr al Wāsiṭī (d. 163) continuously was moving between Baṣrah and Khfah to hear *aḥādīth*.⁽⁴⁹⁾ 'Abd Allāh b. al-Mubārak (d. 181) travelled from Merve to different cities at the age of 20 to acquire *al-ilm* from *ṭabī'un*.⁽⁵⁰⁾ Ḥafṣ b. Ghiyāth (d. 194) travelled to Baghdād and other cities to acquire and disseminate *al-ilm*.⁽⁵¹⁾

There are several instances that these assiduous students of ḥadīth travelled to hear and acquaire *al-ilm* from some *shuyūkh* but on their arrival knew about their death.

For instance 'Abd al-Raḥmān b. 'Usaylah travelled to Madīnah to acquire knowledge from Prophet, but on his way knew about the sad demise of the Prophet.⁽⁵²⁾

Likewise Zayd b. Wahb (d. 83) travelled to Madīnah to see the Prophet on his way he knew that the Prophet had passed away.⁽⁵³⁾ Al-Awzā'ī (d. 153) travelled to Baṣrah to hear from Ḥasan al-Baṣrī (d. 110) and Ibn Sīrīn (d. 110). On his arrival in

44 Ibn Ṣalāḥ, 247

45 *Riḥlah*, 132 ff.

46 Sa'd, VII/1/134; *Fāsil*, 223.

47 *BTK*, III/1/324.

48 *Tarīkh*, VI/351; 'Asākir, II/412.

49 *Riḥlah*, 155.

50 *Siyar*, VIII/379; *Riḥlah*, 156-157.

51 *Tadh*, I/298.

52 *Riḥlah*, 167.

53 *Idem*.

available sources reveal that these devotees of *ḥadīth* and *sunnah* travelled to hear/check only one tradition from the *Ṣaḥābī* who had heard directly from the Prophet. Older companions were sought out for their knowledge. Abū Ayyūb al-Anṣārī (d. 52), a renowned *Ṣaḥābī*, travelled to Egypt to hear a *ḥadīth* from `Uqbah b. `Āmir (d. 58) and returned to Madīnah as soon as he got the objective.⁽³⁴⁾

Masrūq b. al-Ajda' (d. 62), a student of `Ā'ishah Ṣiddīqah, travelled back and forth among the provinces in pursuit of knowledge.⁽³⁵⁾

`Abd Allāh b. `Umar followed Prophet's movements in order to gather informations concerning the events of Muḥammad's life associated with various localities.⁽³⁶⁾ Faḍālah b. `Ubayd (d. 53) was visited by a *Ṣaḥābī* for a *ḥadīth* which he had heard from the Prophet directly.⁽³⁷⁾

`Alqamah (d. 62) and al-Aswad (d. 75) travelled to Madīnah to listen a *ḥadīth* directly from `Umar which they had heard in `Irāq.⁽³⁸⁾

Jābir b. `Abd Allāh travelled for a month likewise in search of a tradition.⁽³⁹⁾

Abū al-`Āliyah (d. 93) travelled to provinces to acquire knowledge,⁽⁴⁰⁾ Sa`īd b. al-Musayyab (d. 93) reports that he travelled nights and days in search of a single tradition.⁽⁴¹⁾ Al-A`raj (d. 117), famed Qur`ān copyist, travelled from Madīnah to Syria, Egypt and Alexandria. Wherever he went his materials were written down by the students of *ḥadīth*.

Busr b. `Ubaydullāh al-Ḥaḍramī (d. 110) travelled from Syria to Egypt for a single tradition.⁽⁴²⁾

Baṣrans were on the move in search of knowledge from the time their city was founded. Many Baṣrans travelled to Makkah to hear `Abd Allāh b. `Amr b. al-`Āṣ.⁽⁴³⁾ Many of them not content with the version of *ḥadīth* heard from Companions who had settled in Baṣrah, journeyed to Madīnah to hear the same traditions. `Alqamah (d. 62) and al-Aswad (d. 75) travelled to Madīnah to hear a *ḥadīth* directly from

34 *Riḥlah*, 118-19, et passim; *Ma`rifah*, 7-8.

35 *Fāṣil*, 224.

36 *Ta`riḥ*, I/172.

37 *Riḥlah*, 124-125.

38 Ibn Ṣalāḥ, 246-47.

39 *Jāmi`*, I/93.

40 *Kifāyah*, 402-403.

41 *Fāṣil*, 223; *Kifāyah*, 402; *Ma`rifah*, 8.

42 *Riḥlah*, 147-148.

43 *Ibid*, 137-138.

It will be evident from the following instances that most of these travels were made to hear *aḥādīth* from principal transmitters. The 'Ulamā' and *muḥaddithūn* appreciated 'Uluw *al-Sanad* and urged students to acquire *Sanad 'ali*.⁽²⁸⁾

The *riḥlāt* also helped the people to know about the personal life of transmitters by meeting them and asking others about their veracity and honesty. Some of the people were eager to hear a *ḥadīth* from a number of chain of transmitters which strengthened the genuineness of *ḥadīth*.⁽²⁹⁾

The practice of memorising *ahadith* collectively was considered necessary.⁽³⁰⁾ We find in the second century that the students of *ḥadīth* travelled to other cities for *mudhakarh al-ḥadīth*.⁽³¹⁾

These *riḥlāt* played an important role for the ascertainment and verification of a particular piece of information. When a tradition reached to these travelers from a number of *ṭuruq* (chain of transmitters) it helped them in distinguishing a spurious *ḥadīth* from a genuine one.

It also played a significant role in unifying and crystallising Islamic culture.

It contributed to the recording of traditions. The travelling scholars usually wrote down the *aḥādīth* they acquired for preservation and future reference though their teachers were also busy writing their own material. They acquired a large body of traditions on one theme or a group of related themes to transmit or to recast them.

It is difficult to mention all the travels of *muḥaddithūn* in details. Therefore we will limit this study to a few of travels during the first two centuries A.H.

To acquire some of the 'ilm of 'Umar I was purpose of the *riḥlah* of many of the Companions. Older Companions such as 'Alī b. Abī Ṭalīb, Ibn 'Umar, 'Abd Allāh b. 'Amr b. al-Āṣ, Ma'ādh b. Jabal etc. were likewise sought out for their knowledge.⁽³²⁾ Anṣār either living in Madīna or settled in different provinces, were visited by scholars who were eager to hear and transmit from them directly.⁽³³⁾ The

informed that Allāh forgave him due to his travels in pursuit of *aḥādīth* (*Riḥlah*, 90).

28 Ibn Ṣalāḥ, 254 ff; *Irshād*, 175 ff; *Manhaj*, 358 f.

29 The scholars preferred to hear a *ḥadīth* from different chain of transmitters. Yahyā b. Ma'in is reported to say: **لو لم نكتب الحديث خمسين مرة ما عرفناه**. (*Siyar*, XI/84).

30 See present writers article (**مذاكرة الحديث**) in *Al-Qalam*, Vol: 1 No. 1, P. 43 ff. Instt: of Islamic Studies, Punjab University, LHR

31 *Siyar*, XI/49, 50-51, IX/157; *Riḥlah*, 23.

32 Ibn Ḥanbal, *Musnad*, V/196; For details see Tarājim in *Rijāl* books.

33 *Jāmi'*, I/32-38, 92-95.

does not travel to acquire knowledge".(15)

Sha'bī (d. 104), a veteran scholar of *ḥadīth* and *fiqh* told an inquirer that travel and patience accumulated his *ʿilm*.(16) Again he is reported as saying that a journey from Northern Syria to Southern Yemen in search of a wisdom was not a lost effort.(17) It became accepted among the people that the *Ummah* will be protected from misfortunes because of these travels.(18) Ibn Ḥanbal (d. 241) is reported to have said that to travel for hearing a *ḥadīth* from principal transmitter is a part of *dīn*.(19)

The following informations will depict to the reader that arduous travels were undertaken inspite of meagre means of subsistence and transport facilities. The students of *ḥadīth* experienced destitution and ate herbs and other petty things to keep body and soul together. But all these disagreeable conditions were borne by these lovers of *ḥadīth* with courage and determination. Shu'bah is recorded to have said that he had to sell the *ṭast* (tub) of his mother for acquiring knowledge.(20) Bukhārī (d. 256), the compiler of *al-Jāmi' al-Ṣaḥīḥ* during one of his travels was forced to eat herbs.(21) Baqī b. Makhlad (d. 276) travelled on foot to hear from *shuyūkh*(22).

It is on record that Ya'qūb al-Fasawī (d. 277) continued travelling between different cities for a period of thirty years. His means of subsistence finished then he engaged himself in copying books at night and attended the circles of *'Ulamā'* during day time.(23) Abū Ḥatim al-Rāzī (d. 277) is recorded as saying that he travelled on foot thousands of miles. On one occasion he stayed in Basrah for 14 years to acquire *al-ʿilm*. During his stay his means of livelihood finished and he had to sell his clothes and faced starvation.(24)

These strenuous travels were made with noble aim and goal. Some of the students of *ḥadīth* travelled in compliance of the order of God(25) and the Prophet;(26) while others in the hope of reward from Allāh.(27)

15 *Riḥlah*, 89; *Ma'rifah*, 9.

16 *Siyar*, IV/300.

17 *Jāmi'*, 1/95.

18 Ibn Ṣalāḥ, 247; *Riḥlah*, 90;

19 *Riḥlah*, 89.

20 *Tadh*, I/195.

21 *Faṭḥ al-Bārī (muqaddimah)*, 566.

22 *Tadh*, II/632, 631.

23 *Tadh*, II/583; *Siyar*, XI/386, 87

24 *Ibid*, II/568.

25 *Al-Tawbah*/122; *Tafsīr* Ibn Kathir, I/393.

26 Ibn Mājah, *al-Sunan, muqaddimah*, I/81, 83, 85, 86.

27 Ibn Mājah, *op.cit.*, I/82; Zakariyyā b. 'Adī says that he saw Ibn al-Mubārak in sleep and he was

These travels started in the Prophet's time.⁽⁹⁾ Representatives of various tribes came to the Prophet and acquired some traditions; some of them wrote them down while others committed them to memory and subsequently returned home to teach their tribes and family members.⁽¹⁰⁾ Ḍimām b. Tha`labah, of the tribe of banū sa`d, came to the Prophet to know and learn Islām and then convey it in his turn to his tribe.⁽¹¹⁾

A group of the tribe of `Abd al-Qays is reported to have visited the Prophet to acquire knowledge.⁽¹²⁾ The ninth year of *hijrah* is marked for such visits. A large number of individuals as well as tribes came to the Prophet from different parts of Ḥijāz, to seek knowledge and afterwards disseminate it to the members of their tribes.⁽¹³⁾

After the demise of the Prophet and with the extension of Islamic domain, quite a large number of *Ṣahābah* moved from Ḥijāz and settled in different parts of Islamic state where new cities were built.

To understand the Qur`ān, the basic source of Islām, and to get religious knowledge it was necessary to know, learn and check the acquired knowledge of *aḥādīth* with those who had heard from the Prophet. The material indicates that the *Ṣahābah*, *tābi`ūn* and succeeding generations tried to learn *aḥādīth* directly from the persons who had heard from the Prophet or from the senior *Ṣahābah*.

These devotees of *ḥadīth* and *sunnah* showed great enthusiasm in assimilating *aḥādīth* and undertook journeys. These travels were highly exalted by *Ṣahābah*, *tābi`ūn* and succeeding generations and became inseparable from *talab al-`ilm*. Ibn Salah is reported to have said that a student after hearing from the `Ulamā' of his city should travel to avail from the `Ulamā' settled in different cities.⁽¹⁴⁾ Yahyā b. Ma`īn is on record as saying, "No integrity of conduct can be expected from a person who

9 Goldziher places the start of this institution towards the end of the first century (*MST*, II/42), while Juynboll concludes that the earliest data on *talab al-`ilm* journeys cannot be traced back to a time earlier than the beginning of the second century" (*Muslim Tradition*, 66) While this may be true of very long journeys from one region to another for purposes to *talab al-`ilm*, it is nonetheless evident from the sources that shorter journeys within particular regions were undertaken earlier for that purpose (note that Rāmāhurmuzī refers to *al-raḥīlūn alladhīna Jama`ū bayn al-aqṭār*) *Fāsil*, 229.

10 *Taqyīd*, 64 ff; *Riḥlah*, 187 ff; *Jāmi`* 1/94, 95.

11 Bukhārī, *K. al-`ilm bāb al-qira`at*, 1/23.

12 Muslim, *K. al-īmān, bāb al-`amr bi-l-īmān* 1/35, 36, Dar al-Fikr Beirut.

13 *Sīrah*, IV/205-243.

14 Some of the traditionists did not appreciate travelling and preferred to hear and acquire knowledge from *Shuyūkh* of their own city cf. *Fāsil*, 216-17.

TRAVEL IN PURSUIT OF KNOWLEDGE

(*Rihlah fī Ṭalab al-`Ilm*)

* Dr. Jamila Shaukat

A cursory look at the Qur'ān and history reveals that the institution of travel in pursuit of knowledge and right path was not alien to different nations and sharā'ih in pre-Islamic days.

The Qur'ān⁽¹⁾ and *ḥadīth*⁽²⁾ have recorded the journey of Prophet Moses in search of a learned person to acquire knowledge from him.⁽³⁾

Salmān al-Fārsī, before Islam, travelled extensively in search of right path.⁽⁴⁾

The available material reflects that this practice was also rooted in the cultural and spiritual stirring among the 'Arabs on the advent of Islam. A good number of individuals of the tribe of Quraysh, in the *ḥanīf* group, roamed the earth in search of knowledge and right path among *ahl al-Kitāb* and other religious denominations.⁽⁵⁾

Islam not only encourages the travels (*rihlāt*) in pursuit of *al-`ilm*⁽⁶⁾ but also institutionalised it through Qur'ānic injunction: ⁽⁷⁾

فَلَوْلَا نَفَرَ مِنْ كُلِّ فِرْقَةٍ مِنْهُمْ طَائِفَةٌ لِيَتَفَقَّهُوا فِي الدِّينِ وَ
لِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ .

The verse urges the representatives from each tribe or community to go forth in search of religious knowledge and to return and teach their respective people what they had learned. Standard works on *ḥadīth* and *'ulūm al-Ḥadīth* have a section on the *rihlah*.⁽⁸⁾

* Professor, Instt. of Islamic Studies, University of the Punjab, Quaid-e-Azam Campus, Lahore.

1 Al-Kahf/60.

2 Bukhārī, *al-Jāmi'*, *kitāb al-tafsīr*, v/230, Dār al-Fikr, Beirut.

3 Ibid.

4 *Siyar*, I/506, 507, 508.

5 *Siyar*, I/27.

6 In the beginning of Islam the term *al-`ilm* generally denoted for religious knowledge i.e. Qur'ān, *ḥadīth* and *Fiqh*, but particularly it meant *'ilm al-Ḥadīth* (Bukhārī, *Kitāb al-Ḥajj*, *bāb wujūb al-Ṣafā wa'l-Marwa*, II/70; *Fāsil*, 368, 372, 414; *Jāmi'*, I/73, II/28; Ibn 'Abd al-Barr and Khaṭīb al-Baghḍādī have rightly named their books *Jāmi' Bayān al-'Ilm* and *Taqyīd al-'Ilm* respectively).

7 Al-Tawbah/122.

8 *Concordance*, II/506, IV/8-11; *Fāsil*, 229-232; *Jāmi'* I/32-39, 92-95; *Ma'rifah*, 7-9, 27; M. M. Abū Zahu, *al-Ḥadīth wa'l-Muḥaddithūn*, 118 ff; al-Khaṭīb al-Baghḍādī appropriately named his book *Kutāb al-Rihlah*.

seen by the eyes, with twinkling stars. It should be made clear that limits of his observation and investigation are beyond these stars."²⁰

Wherever the introduction of God has been made referring to the huge signs along side the tiny creatures like bee, mosquito etc, it has been meant to show His grandeur and perfection. For Example,

'And thy Lord Taught the bee to build its cells in hills, on trees and in (men's) habitations."²¹

The above quoted verse has been beautifully elaborated by Maulana Mufti Mohammad Shafi. He writes, "the system of life of this crippled animal runs on the principle of human politics and administration. After observing her strange and astonishing system and consolidated laws and discipline of her life, a man is amazed. The queen of these bees delivers six to twelve thousand eggs in only three weeks."²²

In Short one who recites Holy *Quran* to get Acquainted with God, *Quran* links him with God provided one meditates over the signs described by the *Quran*.

(20) Islahi, Amin Ahsan, *Tadabbur-e-Quran* (Faran Foundation) Vol. 1
Page : 145

(21) Al-Nahal : 68

(22) Mufti Mohammad Shafi, *Ma'arif-ul-Quran* (Dar-ul-Ulum Karachi) Vol. 5
Page 350

"Knowledge derived from *Quran* has five categories, one category among them is about the creator of earth and heavens and reveler to mankind of their necessities and it also deals with perfect characteristics of God."¹⁶

On one hand man himself is a supreme specimen of God's creation but on the other the whole universe is also showing him the glories of God that have been described in *Quran* in superb manner.

"See ye the fire which ye kindle? Is it you who grow the tree which feeds the fire or do We grow it? . We have made it a memorial (of our handwork) and an article of comfort and convenience for the denizens of deserts."¹⁷

With reference to above verses Maulana Maudoodi explains "If man does not fall victim to stupor and become unconscious then merely fire is sufficient to remind him that from whose blessings and mercies he is getting benefits for himself in this world."¹⁸

Earth and heavens are the greatest signs in this universe, and *Quran* has reiterated that God is creator of the both.

"It is He who hath created for you all things that are on earth; Moreover His design comprehended the heavens, for He gave order and perfection to the seven firmaments; and all of things, He hath perfect knowledge."¹⁹

'Elucidating these verses Maulana Amin Ahsan Islahi says, "the allusion to the seven skies is just to remove this misconception on the part of man that the universe is not confined only to the sky which is

(16) Shah-Wali-Ullah, *Al Fauz-ul-Kabeer* Page : 4

(17) Al-waqia 71--73

(18) Moududi, Abul-A'la, *Tafheem-ul-Quran* (Idara Tarjaman-ul-*Quran*)
Vol. 5 Page : 290

(19) Al-Baqra 29