

Introduction to Islamic Sciences Part 2: Fiqh and Usul al-fiqh

Authors(s):

Rasoul Imani Khoshkhu [1]

Publisher(s):

Ahul Bayt World Assembly [4]

Translator(s):

Mohammad Reza Farajian [5]

Category:

Islamic Laws [6]

Journal:

Vol. 13, no 3, Autumn 2012 [7]

This article touches upon two subjects: Fiqh (Islamic Jurisprudence) and Usul of Fiqh (Principles of Fiqh). Fiqh – the profound understanding of religious rulings – is the most comprehensive subject in Islamic sciences. Among the five schools of thought, namely, Ja’fari, Hanafi, Hanbali, Shafi’i, and Maliki, this article delves into Shi’a Ja’fari fiqh, offering a glance into its history, key subjects, and sources.

Topic Tags:

Islamic Sciences [8]

Usul al-Fiqh [9]

Fiqh [10]

Islamic fiqh [11]

Introduction to Islamic Sciences Part 2: Fiqh and Usul al-fiqh

Rasoul Imani Khoshku

Translated by Mohammad Reza Farajian

Abstract

The previous article – Introduction to Islamic Sciences, Part I – presented some of the most important Islamic sciences that have long been studied in Islamic seminaries, namely theology (kalam), philosophy, mysticism (irfan), and jurisprudence. This article touches upon two subjects: Fiqh (Islamic Jurisprudence) and Usul of Fiqh (Principles of Fiqh). Fiqh – the profound understanding of religious rulings – is the most comprehensive subject in Islamic sciences. Among the five schools of thought, namely, Ja'fari, Hanafi, Hanbali, Shafi'i, and Maliki, this article delves into Shi'a Ja'fari fiqh, offering a glance into its history, key subjects, and sources.

Its major subjects comprise of acts of worship, contracts, occasions, and rulings, while its sources include the Qur'an, Sunnah, consensus, and reason. Connected with fiqh is the study of Usul of Fiqh (Principles of Fiqh), or the study of rules used in deducing Islamic laws. This will be studied with a brief look into its history and key issues.

Fiqh (Islamic Jurisprudence)

Fiqh is among the broadest and most comprehensive Islamic sciences. There are five major schools in fiqh: Ja'fari, Hanafi, Hanbali, Shafi'i, and Maliki. Ja'fari fiqh is a title given to the school of Ahl al-Bayt's (a) fiqh; the other four schools are Sunni schools of fiqh. Except the mentioned four schools of fiqh, there have been other schools of fiqh among Sunnis which have lost their followers so far, and most Sunni Muslims currently follow the four mentioned schools around the world¹.

The major difference of opinion among the Shi'a and Sunni schools of fiqh revolves around their ways of

understanding the Prophet's (s) conduct (Sunnah) and the sources of fiqh. Sunnis have adopted the Prophet's (s) hadiths and conduct from the companions of the Prophet, while the Shi'a have received them from his progeny (a).

On the other hand, Sunni schools of fiqh follow the opinions of some scholars of fiqh (faqih) of Medina and Iraq, while the Shi'a schools of fiqh follow the opinions of the Imams (a). Among the Shi'a, the Twelvers, who constitute the great majority, follow the opinions of their twelve Imams (a), especially their sixth Imam, Abu Abdullah Ja'far ibn Muhammad al-Sadiq (a) and due to which they are well-known as Ja'fari².

Ja'fari fiqh will be introduced below and the definition, history, issues and sources of fiqh will be explained in the Twelver school of the thought.

Definition of Fiqh

The term 'fiqh' means 'a profound understanding'. In the terminology of Twelver faqihs, fiqh refers to 'the knowledge of secondary rulings³ of Islam and practical tasks acquired through explanatory sources for them.'⁴

Islamic scholars have categorized Islamic teachings into three: a) beliefs such as subjects concerning the origin of creation, the hereafter, Prophethood, revelation, the angels, and Imamate; b) morality and educational issues including spiritual virtues such as piety, self-restraint, generosity, courage; as well as vices a person is expected to refrain from such as greed, begrudging, and lying; c) rulings and practical issues which allocate our tasks and practical duties in certain conditions and the quality of their accomplishment during lifetime; i.e. laws and rulings made by God for regulating people's deeds.

The last mentioned category of Islamic teachings is the subject of fiqh, or Islamic jurisprudence, which is the extension of the Islamic law (sharia) explained in the Qur'an often accompanied by tradition (Sunnah) and implemented by the rulings and interpretations of Islamic jurists (fuqaha).

History of Imami Fiqh

History of Imami Fiqh⁵

If we consider fiqh as the knowledge of divine rulings, it has a history as long as the rise of Islam itself. Undoubtedly, the holy Prophet (s) is the primary source for adopting the rulings; he issued rulings through direct contact with divine revelation⁶ and thus, his speech is the final word on fiqh. Thus, following his orders are mandatory whether in legislation or in resolving arguments.⁷

The history of Imami [Ja'fari] fiqh after the Prophet (s) are divided into four main periods:

1. The time of the companions [of the Prophet (s)] (until 40 A.H.)

2. The Era of the Followers (tabi'in)⁸ and their followers and the followers of their followers until the Minor Occultation (260 A.H.)

3. The time of the Four Agents and the four delegates until the Major Occultation (329 A.H.)⁹

At the time of the Followers (tabi'in), there were seven persons known as the Seven Fiqh Scholars as the authorities to whom people referred after the companions. They are listed as follows in chronological order of their death: 1. 'Urwah ibn Zubayr ibn 'Awwam (d. 74 A.H.) 2. Sa'id ibn Musayyib (d. 91 A.H.) 3. Abu Bakr ibn 'Abd al-Rahman (d. 94 A.H.) 4. Sulayman ibn Yasar (d. 94 A.H.) 5. 'Ubaydallah ibn 'Utbah (d.98 A.H.) 6. Kharijah ibn Zayd (d. 99 A.H.) 7. Qasim ibn Muhammad ibn Abi Bakr (d. 101 A.H.).¹⁰

The infallible Imams (a) approved some of the mentioned faqihs according to the late Kulayni quoted from Imam Sadiq (a): "Sa'id ibn Musayyib, Qasim ibn Muhammad ibn Abi Bakr, and Abu Khalid Kabuli were reliable and trustworthy in the eyes of Ali ibn al-Husayn (a)."¹¹

During the time of the Infallible Imams (a) which continued until the middle of the third century A.H., the major source and the reference of people for their questions in fiqh and practical rulings were the Imams (a) themselves. Still, they would introduce certain persons as faqihs and ask them to answer people's questions in fiqh through ijihad.¹²

Notable faqihs of this period were 1) Zirah, 2) Ma'ruf ibn Kharbud, 3) Abu Basir Asadi, 4) Barid ibn Mu'awiyah, 5) Muhammad ibn Muslim Ta'ifi, 6) Yunis ibn 'Abd al-Rahman, and 7) Safwan ibn Yahya Biya' Sabiri.¹³

Although some of them wrote on fiqh and their books contained their perspectives, they were mostly relied on hadiths; they would convey authentic hadiths on any topic and practice it accordingly. Therefore, their books have been compiled in the form of hadith collections.¹⁴

After the period of the Imams' (a) presence and the beginning of the Minor Occultation when the Shi'as were able to contact the last Imam (a) only through his four special agents, distinguished faqihs emerged. Although ijihad in fiqh had become more prominent during this period, it was through the indirect contact of the scholars (ulama) with the infallible Imam (a) that the jurists could receive the Imam's (a) guidance and supports in complex issues.

Generally, the history of Twelvers' fiqh is divided in some periods, namely:

1. The beginning of minor Occultation up until the time of Sheikh al-Oa'ifah – Sheikh Ousi (d. 460 A.H.)
2. The era of Sheikh Ousi until the time of 'Allamah Hilli (d. 728 A.H.)
3. The era of 'Allamah Hilli until the time of Aqa Baqir Behbahani (d. 1208 A.H.)
4. The time of Aqa Baqir Behbahani until the present era.¹⁵

The history of fiqh after the occultation of the Twelfth Imam (a) until the time of Sheikh Ousi can be considered a period of Shi'a fiqh that had two distinctive features: a) categorization of hadiths, and b) development and promotion of ijtiḥad.¹⁶

In that period, collections of hadiths based on various topics were categorized thematically according to topics in fiqh whereas previous hadith collections excluded any specific order. The Four Books of Shi'a are the most important heritage of this period which were written with thematic classification.

In addition to the faqihs' great efforts in writing these collections, ijtiḥad also had a key role in this period to such an extent that some researchers call the faqihs of this period as Ahlul Fatwa as the authorities to whom people referred to for receiving religious permission and knowing their practical duties. Faqihs such as Ali ibn Babiwayh Qummi (d. 329), Ibn Junayd Iskafī (d. 381) and Sayyid Murtadha known as 'Alam al-Huda (d. 436).

A great turning point in the history of Shi'a fiqh is the emergence of Sheikh Tusi, one of the few most prominent figures who greatly influenced fiqh for around a century. His progeny were among scholars and faqihs for some generations. He was born in 385 A.H. and immigrated to Baghdad – the center for Islamic culture and sciences – in 408 A.H.

He became the scientific and legal Shi'a authority following his teacher, Sayyid Murtadha. After Sayyid Murtadha's death, Sheikh Tusi's house and library were plundered due to some riots, and as a result, he moved to Najaf where he established a seminary. He passed away in Najaf in 460 A.H., leaving behind prominent works, the most important being *Al-Tahdhib* and *Istibṣar*, two of the Four Books of Shi'a traditions.

He also left behind *Al-Nihayah* which has been one of the textbooks for seminary students from long ago, *Mabsut*, the finest descriptive book in Shi'a fiqh, and *Khilaf*, a collection of all Shi'a and Sunni scholars' opinions in fiqh.

About a century after he passed away, his ideas were followed by many Shi'a faqihs. The method of ijtiḥad (individual judgment) which made the essential element of Shi'a thought was the major element of his fiqh fundamentals and thoughts. The situation did not change until the sixth century, when the seminary of Hillah flourished and the Twelvers' fiqh entered a new period of development and progress.

Indeed, Ibn Idris Hilli (543 – 598 A.H.), the great faqih and mujtahid was the one who started that progress. Thanks to his lively mind and outstanding talent, he made ijtiḥad about many issues in fiqh, without having to think twice as to whether his judgments and justifications contradicted those of previous scholars such as Sheikh Tusi's or not.

In *Sara'ir*, although he showed utmost respect for Sheikh Tusi, when his opinion differed from Sheikh Tusi, he managed to bring firm justification and judgments and reviewed Sheikh Tusi's works for clarification in some of his works. Sheikh Tusi's opinions were similar to that of Ibn Idris.¹⁷

The innovation of Ibn Idris in the seventh century was a great turning point in the history of Shi'a fiqh. In that century, tens of critical works in fiqh that were published have been among the most significant references of Shi'a fiqh. The principles of fiqh received great attention from the scholars of that period, and rules and regulations were made for assessing the authenticity of hadiths.

There are many other prominent scholars living in the seventh and eighth centuries such as Najib al-Din ibn Namay-e Hilli (565 – 645 A.H.), Najm al-Din Ja'far ibn Hasan Din, known as Muhaqqiq Hilli (602 – 676 A.H.), the author of *Shara' al-Islam fi Masa'il al-Halal wa al-Haram*, Jamal al-Din Hasan ibn Yusuf Hilli, known as 'Allamah Hilli (648 – 726 A.H.), the author of *Tadhkirah al-Fuqaha' wa Nihayah al-Ahkam fi Ma'rifah al-Ahkam*, Muhammad ibn Hassan ibn Yusuf known as Fakhr al-Muhaqqiqin (682 – 771 A.H.), the author of *Idah al-Fawa'id fi Hall Mushkilat al-Qawa'id*, Muhammad ibn Makki 'Amili (734 – 786 A.H.), and the author of *Durus al-Shar'iyyah fi fiqh al-Imamiyyah wa al-Lum'ah al-Damishqiyyah*.

[After this period] Muhammad Baqir Behbahani (1118 – 1205 A.H.), the great Mujtahid with a high scientific status, revived the Shi'a method of ijihad. Historians considered his life as the beginning of a new period in Shi'a fiqh.

In the eleventh century, Muhammad Amin Astarabadi¹⁸ founded the Akhbari school of thought. The Akhbaris are Twelver Shi'a Muslims who excluded the use of reasoning in deriving verdicts, and believe the Qur'an and hadith as the only source of law.

Unlike Usulis, Akhbaris do not follow marjas¹⁹ who practiced the modern form of ijihad. Akhbari's argue that Imams did not allow ijihad. In *al-Fawa'id al-Madaniyyah*, Astarabadi expressed that deriving verdicts according to the apparent meaning of the Qur'an is not permitted because of the existence of numerous modifiers and the possibility of imposing one's personal opinion on the Qur'an unless there is a tradition from the Ahlul Bayt (a) in such an interpretation.²⁰

Moreover, he considered hadiths from the Ahlul Bayt (a) as the only valid source for knowing speculative (not self-evident) doctrines of religion including major and minor ones. He also rejected the necessity of agreement between reason and hadith and insisted on necessity of following hadith.

Relying only upon the surface meaning of hadiths and rejecting reasoning as a valid source of understanding, this school of thought seriously threatened Shi'a fiqh relying on ijihad. The Akhbari thought transformed a progressive phenomenon that could fulfill the needs in any period based on original sources in religion to a static and inoperative element. In such an atmosphere which prevailed over the seminaries of Iraq and Karbala in the twelfth century and was driving out the Usuli²¹ faqihs, Muhaqqiq Behbahani rose to defend the fiqh relying on ijihad and principles of fiqh and fought against the Akhbari school of thought. He expressed that to practice according to the apparent meaning of the Qur'an after considering all the modifiers is different from following one's personal opinions. He wrote a treatise on goodness and badness (husn-o-qubh) according to the intellect and considered the rule of reasoning about *Mustaqillat al-Aqli*²² as valid. He also criticized intellect in some hadiths to be

speculations such as (deduction) *qiyas* or *istihsan*.²³

Thanks to the scientific endeavors of Muhaqqiq Behbahani, intellectual reasoning returned to fiqh circles of Iraq and was used again in interpretations and judgments in fiqh. The principles of fiqh was once again widely held. Moreover, many Akhbari scholars were convinced by the arguments of Muhaqqiq Behbahani and the Akhbari movement declined in later periods.

After Muhaqqiq Behbahani, fiqh relying on *ijtihad* and reasoning began its evolutionary movement. It flourished thanks to great publications on principles of fiqh that bloomed in renowned works such as *Jawahir al-Kalam*.

Sheikh Muhammad Hasan Najafi's fiqh encyclopedia *Jawahir al-Kalam fi Sharh Shara'i' al-Islam* is among the noble works of Shi'a fiqh that was written in 30 years. Its richness of content manifests the intelligence, perseverance, and endless endeavor of the author. Sheikh Najafi was one of the renowned jurists and finally possessed the absolute authority in the Shi'a world. He passed away in 1266 A.H., contemporary with the beginning years of Nasiruddin Shah's kingdom.

After Sheikh Muhammad Hasan Najafi, the second most distinguished recent Shi'a fiqh is Sheikh Murtadha Ansari. Originally from Dezful, Iran, he was homeschooled by his father until the age of twenty and then left Iraq with him. When his contemporary scholars saw his extraordinary talent, they asked his father not to take Murtadha with himself to Iraq.

After staying in Iraq for five years and benefitting from the lessons of great teachers, he returned to Iran, travelled to different cities, and benefitted from famous teachers throughout his journeys. In 1253 A.H., he returned to Iraq, began teaching, and reached absolute authority after Sheikh Muhammad Hasan Najafi.

There are very few scholars in Shi'a history similar to Sheikh Ansari in precision and insight. He entered the principles of fiqh and fiqh itself into a new era and made new exceptional innovations. His two prominent works, *Rasa'il* and *Makasib*, are still taught as textbooks in all seminaries. The scholars after him were mostly his followers and wrote various commentaries on the margins of his books. He passed away in 1281 A.H. in Najaf.

After Sheikh Ansari, there were great scholars in fiqh and *ijtihad* such as Muhammad Hasan Shirazi, Mulla Muhammad Kazim Kurasani, Sayyid Abu al-Hassan Isfahani, and Haj Aqa Husayn Burujirdi. They transferred the valuable heritage of fiqh from the Ahlul Bayt to contemporary Shi'a faqihs.

The history of Shi'a fiqh as taught in seminaries from the beginning of the Age of Major Occultation until today have been functioning uninterruptedly to the extent that the lineage of student-teacher relationships has never halted. For any contemporary Shi'a jurist chosen, his chain of teachers can be traced back to the time of the Ahlul Bayt (a). Such an unbroken chain seems to be unavailable in other civilizations and cultures. One might find longer courses in their history, but there have been many

interruptions and breaks in them.²⁴

Major Subjects in Fiqh

Generally, Islamic teachings are categorized into three categories: beliefs, ethics, and practical rulings. Beliefs include the thoughts and knowledge a Muslim must have; ethical codes are the good attributes every believer must endeavor to achieve; and practical rulings are orders from Allah upon Muslims to organize their lives accordingly.

Fiqh generally includes the practical orders of Islam and thus it describes the rulings Allah has issued upon Muslims. The most important topics in fiqh are classified in four groups: acts of worship, contracts ('uqiid), one-sided obligations (iqa'at), and rulings.²⁵

About the reason behind the mentioned classification, it has been stated that topics in fiqh are either related to the hereafter and a person's spiritual life or they are related to a person's worldly life.

The first part is acts of worship; the second part is transactions, which by themselves are divided into two kinds: a) obligations that people have towards one another and b) obligations that are not reciprocal. The former type is divided in two: a) some of them are reciprocal; i.e. the parties are responsible towards the other parties and they are called contracts, and b) some others are when one party takes on obligations, called one-sided obligations.²⁶

It is customary now that books of fiqh address the topics in all the four mentioned divisions. However, in the beginning centuries after the hijrah, books were written concerning one or some topics in fiqh. Another point to mention accordingly is that major topics of fiqh which refer to a certain topic are known to faqihs as Books; each chapter is called a 'book' i.e. The Book of Prayer or The Book of the Marriage.

Topics and subtopics of each of the four mentioned divisions in Books of fiqh are as follows:²⁷

A) Acts of Worship

a. The Book of Cleansing (concerning Nijasah [impurities /filth] and cleaners. Also, it includes a chapter on the rulings associated with non-Muslims and corpses.)

b. The Book of Prayer: topics on the time of prayer and Qiblah are discussed. Also in the section of Friday congregational prayer, there are discussions on the social status of a faqih, his duties, and the nature of the Islamic government.

c. The Book of Zakah²⁸

d. The Book of Khums: a fifth of everyone's outcome taken out from all types of outcomes is considered as khums by Shi'a fiqh and must be paid. Also, rulings concerning non-Muslims living in an Islamic territory are mentioned in this section since one of the cases for which the fifth (khums) is calculated and

extracted is the lands sold to non-Muslims. The end of this section includes a discussion including the issues about Anfal, or the properties of an Islamic government including all the dead lands and the natural resources.

e. The Book of Fasting

f. The Book of I'tikaf, or the recommended act of seeking solitude in the major mosque of the city for the purpose of worship. The Book of Hajj, or the pilgrimage to Mecca and performing certain actions and rituals in Dhil Hijji, the last month of the Hijri calendar.

g. The Book of 'Umrah which is the simpler way of pilgrimage to Mecca and can be performed at any time of the year.

h. The Book of Jihad, or holy war, whether offensive or defensive, the latter of which is to defend against external or internal enemies. In this book, the relations between the Islamic government and other non-Islamic governments, the situation of non-Muslims living in the Islamic territories and similar issues are discussed.

i. The Book of enjoining the good and forbidding the evil includes discussions on the associated rulings with this common social duty of all individuals living in an Islamic society.

B) Contracts

a. The Book of Transactions discusses the right and wrong ways of transactions and financial exchanges, illegal transactions, different options of withdrawal [from transactions], rulings about the conditions of contracts and similar issues. This chapter also includes discussions on the ownership and tax system of different types of land in the Islamic territory. The ruling about working for unjust and illegitimate governments, their rights and limits over Muslims treasures (and in the recent sources of fiqh since the last century on, there has been a chapter on Wilayah of Faqih). Issues such as listening to music and financial interest on interest-free loans are discussed in this chapter.

b. The Book of Mortgage

c. The Book of the Bankruptcy: About bankruptcy and the government's responsibilities toward such a person, whose income is not enough for his debts.

d. The Book of [legal] disability, regarding one who has no right to make decision on his property or he cannot sell it as this is applicable for the insane and the underaged children.

e. The Book of Trust: Financial guarantee for persons (bail) are discussed in this chapter.

f. The Book of Agreement: about an agreement between two persons on a particular subject, the details of which are not clear, such as an agreement between a debtor and a creditor on a specific value when

the value of debt is not clear.

g. The Book of Partnership

h. The Book of Sponsorship: about an agreement on a partnership in which the capital is provided by one party and business is performed by the other party.

i. The Book of Crop-sharing contract (muzara'ah) and a lease of plantation for one crop period (musaqat) is about situations when a landowner gives his land to the peasant in return for a part of product.

j. The Book of Keeping in Trust

k. The Book of Deposit (Keeping someone's property as a trust)

l. The Book of Loaning

m. The Book of Leasing

n. The Book of Delegation (Deputyship)

o. The Book of Devotion and Donation

p. The Book of (temporary) Allocation

q. The Book of Competition and Archery (archery, horse, and camel racing which are the only cases where betting is allowed in Islamic fiqh reserved for contestants).

r. The Book of Conducting Wills

s. The Book of Marriage

C) Occasions

a. The Book of Divorce

b. The Book of Khul' and Mubara'ah (two kinds of divorce in which the wife redeems herself from the marriage contract on certain grounds)

c. The Book of Zihar (When a husband likens his wife to his mother in certain way which charges him with atonement)

d. The Book of Tla' (when a husband swears to abstain from his wife which makes her forbidden for him for a period of more than four months, in which he must either break his vow or have a divorce)

e. The Book of Li'an (which is the husband's swearing at his wife for her unfaithfulness at the presence of the court or the wife's swearing the same way at her husband, the repetition of which action leads to

the cancelation of the marriage).

f. The Book of 'Itq (pertaining the laws and rules of manumission of slaves)

g. The Book of Tadbir, Mukatibah, and Istilad (three ways of manumission of slaves. Tadbir becomes possible when the owner of the slave dies. Mukatibah is a contract between the owner and the slave. Istilad is about a female slave who becomes pregnant by her owner and becomes free after her owner dies because of her child.)

h. The Book of Iqrar (issues pertaining the acknowledgement of a person about his debt, his family relationships and as such)

i. The Book of Ju'alah (when a person owes money to another because of his commitment to him)

j. The Book of Tman (about swearing on the great name of God)

k. The Book of Nadhr (undertaking to do something for the sake of God, provided that something specified would not happen or something specified would happen).

D) Rulings

a. The Book of Hunting and Slaughtering

b. The Book of Foods and Drinks

c. The Book of Extortion (Usurpation)

d. The Book of Shuf'ah (pre-emption) (the right of the partner in buying the other part of property)

e. The Book of Reviving Barren Land (to change an arid land to farmable land. This section is about the fiqh of lands and studying the common issues such as water and pasture)

f. The Book of Luqtah (Found Property)

g. The Book of Fara'id (about inheritance computation)

h. The Book of Judgment (about judicial issues)

i. The Book of Testimonies (in cases of bearing witness and testimony)

j. The Book of Penal Laws

k. The Book of Retribution (as of the right for the oppressed to retribution)

l. The Book of Compensations (as blood money, for money, etc.)

Sources of Shi'a Fiqh

As it was mentioned in the definition of fiqh, it is the knowledge of drawing practical rulings²⁹ from original sources. Now let us refer to the authentic sources of the Twelvers' fiqh used for deducing ruling:

The Qur'an

It is the primary source containing the rules in Islam and is agreed upon by all Islamic schools of thought to be the main source for knowing the rulings.³⁰ In the Qur'an, there are more than 500 verses (about one-thirteenth of the Qur'a) about rulings. Islamic scholars have written numerous books about them, such as *Ayat al-Ahkam* by Muqaddas Ardebili, a pious Shi'a faqih and mujtahid.

Since early Islam, Muslims referred primarily to the Qur'an, but at the time of the Safavids, the Akhbarids forbade referring to the Qur'an and claimed that only the Prophet (s) and Imams (a) have the right to refer to and interpret it, while others must refer to the sunnah, i.e. narrations and hadiths. Although, the Akhbari movement could expand its ideas through some of the southern cities of Iran and some of the religious cities of Iraq at the beginning, their influence was counteracted by eminent mujtahids and were eventually pushed aside.

Sunnah

The speech and act of the Ahlul Bayt or their acknowledgement of something. Shi'as believe that imamate is in line with prophethood; there is no difference between the sayings and acts of Imams (a) with the Prophet (s). Their only difference lies in the issue of revelation.³¹ Therefore, if there is a statement about a ruling in the sayings of the Prophet (s) and Imams (a) or it is proved how they have acted in a certain situation or others have performed religious obligations in front of them and the Prophet (s) or Imams (a) have approved that act verbally or in action, i.e. they maintained silence towards that act, then a faqih can refer to it and allow or disallow an act accordingly.

Consensus

The agreement of scholars on one opinion towards a ruling. In Shi'a fiqh, consensus is not accepted as an independent source for religious rulings, yet it is acceptable once it is the means for understanding the Infallibles' speech; it serves as a proof that either the Prophet (s) or Imams (a) have had the same opinion as of the scholars' who have reached consensus over one issue.

Among Shi'a scholars, Usuli scholars have different methods to achieve the mentioned discovery with certainty. For instance, some scholars assume the consensus of all scholars on the wrong as inadmissible, suggesting that it is incumbent upon the Imam (a) to provoke disagreement between them in order to save the Ummah from going astray. Another group of scholars assume the consensus of all scholars on one issue indicates the existence of a hadith which has been available to those scholars and they could issue a fatwa based on it.³²

Reason

Shi'a scholars believe that there is full correspondence between religious rulings and reason and that reason supports any Islamic ruling; thus, they always have considered reason a valid means for knowing religion and its rulings in the absence of other sources such as the Qur'an and Sunnah.³³

However, they distinguished between the issues of *Mustaqillat al-Aqli*³⁴ and other issues and they considered reason to be valid only regarding the former issues. Furthermore, in cases where intellectual judgments are the products of sane intellect and not mingled with carnal intentions and desires, the judgment of reason is valid and the intellect can understand an issue independently and without the assistance of religion.

However, sometimes a judgment is based on carnal desires and inclinations, and they prevent reason from having sound judgment. In such cases, those who are not sharp-sighted would consider these judgments as intellectual, while the fact is that such judgments are unreliable and are not the products of sound intellect.³⁵ Therefore, in religious epistemology, only sound intellect can be used as a source for knowing the religion and its rulings.

Usul of Fiqh (Principles of Fiqh)

Principles of Fiqh, briefly known as *usul*, is "the knowledge of general rules for deducing Islamic rulings from their sources i.e. the Qur'an, Sunnah, reason, and consensus."³⁶ The relation between *fiqh* and *usul* is like the relation between philosophy and logic.³⁷

Fiqh is the profound understanding of Islamic rulings using the basic sources of religion. This discipline is essential since many details of Islamic rulings are not specifically mentioned in the Qur'an or even Sunnah. Thus, the jurist (*fuqaha*) come to a judgment about specific cases concerning *mukallafs*³⁸ through looking into the primary source using the general and common rules. This in turn requires a new discipline to formulate the rules for jurists to understand jurisprudential issues and eventually deduce the rulings.³⁹

Therefore, the study of the principles of jurisprudence is the study of the rules to be used in deducing Islamic laws along with teaching students the correct way of doing so. This discipline enables students to discern the valid method of deducing and extracting the laws of Islam from the sources of jurisprudence by using reason and the proofs provided by God through the Prophet and the Imams.

The History of Usul in Shi'ism

Some believe that *usul* first emerged through Sunni scholars. Ibn Idris Shafi'i was the founder and first author of *usul*;⁴⁰ however, history reveals that some topics in *usul* such as orders, prohibitions, and broad and specific issues were discussed among the Shi'a before Shafi'i.

Existence of some treatises⁴¹ which were written by the companions of the Imams (a) proves that they were already involved in usul and that the discipline of usul did not emerge among the Shi'a just after the Occultation of Imam Mahdi (aj).

Thus, issues relating to this discipline existed at the time of Imams (a), particularly Imam Sadiq (a) and Imam Baqir (a), both of whom prepared the grounds for usul by teaching its principles and demonstrating to their students how to infer from the Qur'an and Sunnah.⁴²

Sayyid Murtadha: Since the beginning of the Major Occultation, the first scholar who wrote books in usul and whose works were discussed for centuries after him was Sayyid Murtadha 'Allam al-Huda (d. 436A.H). He lived in the fourth and fifth centuries and was Sheikh Mufid's student.⁴³ His most famous work in usul was *Al-Dhari'ah Ila Usul al-Shi'ah*.

Sheikh Tusi: After Sayyid Murtadha, Sheikh Abu Ja'far Tusi (d. 460 A.H) – a student of Sayyid Murtadha and Sheikh Mufid – was the leading scholar. His ideas remained very influential for three to four centuries.

He also established the seminary of Najaf. His book in Usul al-fiqh, *'Uddat al-Usul*, was very well received. Both *Al-Dhari'ah Ila Usul al-Shi'ah* and *'Uddat al-Usul* were unmatched in their quality as they were the most influential sources of usul until the end of the 5th century.⁴⁴

After Sheikh Tusi, the disciplines of fiqh and usul declined in Shi'a seminaries in the sixth century. Some have argued that this was largely due to the fact that in the Sunni world fiqh and usul al-fiqh had declined and therefore there was no serious debates and discussion happening among the two schools of Islam.⁴⁵

However, the promotion of the Seminary of Hillah and the scientific endeavors of Ibn Idris Hilli (d. 543 – 549 A.H) in the seminary steered Shi'a fiqh and usul to a new stage of development. Although Ibn Idris did not compose a work on usul, he used the Qur'an, Sunnah, consensus, and reason to eloquently discuss issues in fiqh and usul in his book *Sara'ir*. He also benefitted from *Bara'ah* (exemption) and *Ihtiyat* (precaution) as a means of reasoning from time to time.⁴⁶

In the seventh century, usul was reinvigorated through the scientific quality in the works of Najm al-Din Ja'far ibn Hasan Hilli,⁴⁷ the great Shi'a scholar known as Muhaqqiq Hilli. He wrote two books in usul: *Ma'arij al-Usul* and *Nahj al-Wusul ila Ma'rifah al-'Ilm al-Usul*, the former of which is now available to us.

Ma'arij al-Usul is a brief yet comprehensive reference for the most important topics in usul. Its other advantages include the separation of issues in logic and kalam from usul, as well as its more developed organization and classification compared to previous references in usul.⁴⁸

After Muhaqqiq Hilli, Shi'a fiqh flourished through his nephew, Jamal al-Din Hasan ibn Yusuf Hilli⁴⁹ known as Allamah Hilli. He was the most prolific author in the history of usul; some of his books include

Tahdhib al-Wusul ila al-'Ilm al-Usul, Mabadi al-Wusul ila al-'Ilm al- Usul, Nihayah al-Wusul ila al-'Ilm al-Usul, Muntaha al-Wusul ila al-'Ilm al-Kalam wa al-Usul.

Subsequently, usul continued its development in the 10th and 11th centuries, its works including: *Tamhid al-Qawa'id* written by Zayn al-Din 'Amili⁵⁰ (or Shahid al-Thani). In this book, he discussed the related issues after each principle in usul. Doing such a comparative practice, he demonstrated the principles of usul as a prerequisite for fiqh and avoided irrelevant details and discussions.⁵¹

After Shahid al-Thani, Sheikh Hasan ibn Zayn al-Din,⁵² author of *Ma'alim*, was the most eminent figure known to Shi'a scholars in usul. His *Ma'alim al-Din wa Maladh al-Mujtahidin* was referred to by researchers and was long being taught in seminaries with commentaries written on it for centuries after him, namely: *Hashiyeh*,⁵³ *Mulla Salih Mazandarani, Hashiyeh-ye Sultan al-'Ulama* and Sheikh Muhammad Taqi Isfahani's *Hidayah al-Mustashriqin*.

Among the most important historical challenges faced in usul was the emergence of the Akhbari movement in the 11th century. Akhbaris opposed usul considering it as a derivative and misleading knowledge towards the common tradition of the companions in referring to the infallible Imams (a) and following their hadiths.

They considered the commonly known ijihad⁵⁴ as a knowledge that created doubt in that referring to usul to derive practical rules was impermissible. They brought many reasons⁵⁵ in rejecting it and wrote many critiques regarding the principles of mujtahids to verify their arguments.⁵⁶

Muhammad Baqir Wahid Behbahani⁵⁷ strongly rose up against the Akhbari movement. He had entered the Karbala Seminary when the Akhbari movement was strongly influential. While teaching usul and ijihad, he also debated and held discussions with Sheikh Yusuf Bahrani, the grand Akhbari scholar of Karbala Seminary.

During these years, he trained outstanding students such as Kashif al-Ghita', Sayyid Ali Oabataba'i and Mirza-ye Qummi through whom he revived usul and emphasized on the need for mujtahids. Among his works are: *Marginal Notes (Hashiyeh)* on *Ma'alim al-Usul*, *Marginal notes (Hashiyeh)* on Mirza-ye Qummi's *Qawanin al-Usul*, *critical marginal notes* on Fayd Kashani's *Al-Fawa'id al-Usuliyah*, and *Al-Fawa'id al-Ha'iriyyah*.

In the contemporary centuries, the most influential usul scholar distinguished among others was Sheikh Murtadha Ansari, who brought usul to a new stage and whose opinions are currently taught and discussed in seminaries.

His deep influence gained him the status of being the founder of a new school in usul.⁵⁸ All scholars after him followed his school as there has not been any doctrine that drastically changed this department.⁵⁹

In addition to being an usul scholar, he was great in theorization, without ignoring the importance of literature review in research. His works indicate his reviews of the opinions of the previous scholars. He also classified the discussions sequentially and added additional theories, integrated them into a developed one, and afterwards critiqued it.⁶⁰

Sheikh Murtadha Ansari's most important work which includes much of his research and innovations in usul is *Fara'id al-Usul*, predominantly known as *Rasa'il*. Most scholars after him followed the example of this book in structure and content, and it has been officially taught in seminaries since then.

Because of its significance, there has been more than eighty Hashiyehs and commentaries written about it,⁶¹ among which are *Bahr al-Fawa'id* written by Muhammad Hasan Ashtiyani,⁶² *Durar al-Fawa'id fi Sharh al-Fawa'id* written by Mulla Muhammad Kazim Khurasani and *Hashiyeh-ye Rasa'il* written by Muhammad Kazim Yazdi.⁶³

The most renowned student in Sheikh Murtadha Ansari's seminary was Mulla Muhammad Kazim Khurasani⁶⁴ who wrote the valued book of *Kifayah al-Usul*. This book has also been among the collections of works in seminaries from long ago. After the late Mulla Muhammad Kazim Khurasani (known as Akhund Khurasani), there has been an emergence of new perspectives. Currently, its development carries on with the on-going courses and discussions in seminaries that address issues in usul.

Issues in Usul

Issues in usul are classified into four categories:⁶⁵

1. Linguistic Discussions address the application of terms for concepts and the way people use them in both factual and allegorical senses. Other general issues included in this section refer to different models of enjoining good and prohibiting bad, the approach to apply general rules to certain cases ('amm and khass; general and specific), absolute rules and their specific cases (muflaq and muqayyad; absolute and conditioned) and major and minor reasons for rules (meaning and appearance).
2. Intellectual Discussions study the rulings that are not expressly mentioned in the Qur'an or hadiths but are implied logically by them such as a) the correlation between a religious rule and an intellectual one, b) the religious necessity of the prerequisites for a religious obligation, c) the possibility of being addressed by a command and a prohibition at the same time from two different aspects, and d) the question whether the opposite action to what has been commanded becomes prohibited.
3. Religious Proof (hujjat) refers to an action that fulfils one's duty towards God and discharges him from a religious obligation. This way, the validity of issues such as a khabar al-wahid خير الواحد .

Although in Arabic the term "wahid" means one, technically it is not meant to only refer to a narration narrated by one person. It refers to every hadith which cannot be classified under mutawatir and

furthermore does not have any other evidence to prove that it is definitely from the Prophet (s) or his household (a). Also, the validity of acting according to the apparent meaning of the Qur'an and the validity of other sources of fiqh such as tradition, consensus, and reason is discussed.

4. The Principles of Application (al-usul al-'amaliyyah) study validity and the limits of the validity of practical principles. These practical principles are *bara'ah*,⁶⁶ *ihtiyat*,⁶⁷ *takhyir*⁶⁸ and *istishab*.⁶⁹ These four principles include all cases where the real obligation is not clear.⁷⁰

If an instance has a history and its previous state is clear, then according to *istishab* (continuance), the latest rule must be followed, otherwise, *bara'ah* (exemption) suggests that there is no obligation regarding that instance.

However, if the existence of an obligation is obvious, but its quality and limits makes two or more options, then one must fulfil all related options as obligatory about that instance based on *ihtiyat* until he is certain about the fulfilment of his obligation. This can be applied only if it is possible.

If not, that the person does all of those options. Afterwards, according to *takhyir* (option), he can choose one of the options to fulfil. In the recent Shi'a Usul of fiqh, these four principles including their application and domain of usage are crucial and have been scrutinized. Many logical and philosophical concepts have been used and through these discussions, many new logical and philosophical ideas emerged for the first time.⁷¹

Further to the four mentioned types of issues, there is another common chapter in the books of usul about *ta'adul*⁷² and *tarajih*.⁷³ When referring to narrations, it frequently occurs that there are various narrations about one subject which contradict each other. A great deal of the efforts of usul scholars is dedicated to collect such hadiths or to find regulations and evidence for rejecting one narration and acting according to another. Some of these regulations are instructions suggested by Imams (a) are known as '*ilajiyah* (remedial) hadiths.'

The upcoming articles in these series continue with the sections entitled "Hadith Studies" and "Qur'anic Sciences."

1. Tawakkuli, Mohammad Ra'uf, *The Four Imams of Sunnah and Jam'ah*, p. 9.

2. Tabataba'i, Sayyid Husayn Mudarrisi, *Muqaddameh-1 bar Fiqh Shi'a*, trans. by Muhammad Asif Fekrat, p. 11.

3. Rulings other than principles of religion.

4. Meshkini, Mirza Ali, *Istilahat al-Usul wa Mu'azzam Abhathiha*, p. 180.

5. Twelvers' fiqh.

6. As an instance, one might refer to the event of asking the Prophet (s) of the ruling on the way of inheriting of *Kilalah* (brothers and sisters of one's father or mother) which is mentioned in the Surah of Nisa' (Women), ayah no. 176.

7. Subhani, Ja'far, *Tarikh fiqh wa fuqaha-ye Imamiyyah*, translated by Hassan Jalali, p. 40.

8. This refers to the people who did not see the Prophet (s), but saw some of his companions.

9. Khurasani, Mahmud ibn Abd al-Salam Turbati Shahabi, *Adwar Fiqh (Shahabi)*, vol. 3, p. 64.

10. Ibid., vol. 3, p. 328.
11. Kulayni, Al-Kafi, vol. 1, p. 472
12. A method of independent judgment
13. Subhani, Ja'far, Tarikh fiqh wa fuqaha-ye Imamiyyah, translated by Hassan Jalali, p. 71
14. Mutahhari, Murtadha, Ashna'i ba 'Ulum-e Islami, vol. 3, p. 61. [trans. as "Understanding Islamic Sciences," ICAS, 2000: London]
15. Khurasani, ibid., p. 64.
16. Subhani, Ja'far, Adwar al-fiqh al-Imamiyyah, p. 73.
17. Ibid., p. 167.
18. Believing only in Khabar (a tradition or hadith from Imams (a) explaining an issue)
19. scholars as models for imitation.
20. Astarabadi, Muhammad Amin, Fawa'id al-Madaniyyah – Shawahid al-Makkiyyah, p. 269.
21. Relying on principles of fiqh for judgment.
22. Issues understood by intellect independently from religion.
23. Leaving deduction by the faqih or judge and prefer what is easier for people according to the intellect.
24. Mutahhari, Murtadha, Ashna'i ba 'Ulum-e Islami, vol. 3, p. 85. [trans. as Understanding Islamic Sciences, ICAS, 2000: London].
25. In Al-Marasim al-'Alawiyyah wa al-Ahkam al-Nabawiyyah, Sallar Daylami categorized fiqh in two groups of acts of worship and transactions. Then, he categorized transactions into contracts and rulings. He categorized rulings into penal rulings and other rulings. Muhaqqiq Hilli wrote his book called Shara'i' in four parts of acts of worship, contracts, one-sided obligations and rulings. This approach was accepted by all faqihs after him. Modarrisi, Sayyid Husayn, Muqaddamih-yi bar fiqh Shi'a, trans. by Muhammad Asif Fikrat, p. 21.
26. Iqa'at.
27. Excerpt from Tabataba'i, Sayyid Husayn Mudarrisi, Muqaddameh-i bar Fiqh Shi'a, pp. 25– 28.
28. Obligatory alms on livestock
29. Rulings other than principles of religion
30. Mohammad Ibrahim Jannati, Manabi' Ijtihad az Didigah Madhahib Islami, p. 5.
31. Ibid. p. 75.
32. Meshkini, Ali, Istilahat al-Usul wa Mu'zam Abhathiha, pp. 23 – 24.
33. Ibn Idris, Sara'ir al-Hawi li Tahrir al-Fatawi, p. 19.
34. Intellectual Independents
35. Mohammad Ibrahim Jannati, Manabi' Ijtihad az Didigah Madhahib Islami, p. 243.
36. Sadr, Sayyid Muhammad Baqir, 'Ilm Usul (Marhaleh Awwal wa dowwom), trans. Nasrullah Hekmat, p. 30.
37. Ibid., p. 35.
38. Those for whom worship is obligatory in Islam
39. Sadr, Sayyid Muhammad Baqir, Al-Ma'alim al-Jadidah, Collection of Works no. 8, pp. 19 – 22, (Qom: Congress of the Martyr Sadr)
40. Suyuti, Jalal al-Din, Al-Wasa'il ila Ma'rifah al-Awa'il, p. 117.
41. Treatises such as Al-Alfaz and Al-Alfaz Kayf Tasih written by Hisham ibn Hakam (d. 179 or 199 AH), Ikhtilaf al-Hadith wa Mas'alah 'an Abi al-Hasan Musa ibn Ja'far written by Yunus ibn 'Abd al-Rahman (d. 183 AH).
42. Mir'Imadi, Sayyid Ahmad, ibid., p. 18.
43. a renowned famous Shi'a kalam (theology) scholar who died in 413 A.H
44. Alipur, Mahdi, Dar'amadi bi Tarikh 'Ilm Usul, p. 127.
45. Sadr, Muhammad Baqir, Al-Ma'alim al-Jadidah, pp. 88 – 89
46. 'Alipur, ibid., p. 148.
47. 602 – 672 AH
48. 48 Ibid. p. 156.
49. 648 – 726 AH

50. 911 – 965 AH
51. Ibid. p. 183.
52. 959 – 1011 AH
53. A type of commentary in the form of notes written in the margins of the original book.
54. In Islamic law: a scholar's independent interpretation or use of reason to derive a rule of divine law from the Qur'an if not precisely described in the Qur'an, hadiths, and scholarly consensus.
55. Cf. Astarabadi, Muhammad Amin, *Al-Fawa'id al-Muduniyyah*, pp. 90 – 120.
56. Also cf. Mulla Muhsin Fayd Kashani's *Al-Usul al-Asliyyah*, Sheikh Tusi's *Al-Fawa'id al-Tusiyyah* and Sheikh Hurr 'Amili's *Al-Fusul al-Muhimmah*.
57. 1118 – 1205 AH.
58. Aqa Bozorg Tehrani, *Al-Dhari'ah*, vol. 16, p. 132
59. Mutahhari, Murtadha, *Ashna'i ba 'Ulum-e Eslami*, vol. 3, p. 23. [trans. as "Understanding Islamic Sciences", ICAS, 2000: London].
60. 'Alipur, Mahdi, *Dar'amadi bi Tarikh 'Ilm Usul*, p. 366.
61. Aqa Bozorg Tehrani, *Al-Dhar'ah*, vol. 6, pp. 152 – 162.
62. 248 – 1319 AH
63. d. 1337 AH
64. d. 1328 AH
65. *Al-Muzaffar*, Muhammad Reza, *Usul ul-Fiqh*, p. 8.
66. Principle of exemption.
67. Principle of precaution.
68. Principle of option.
69. Principle of continuance.
70. As it was mentioned in the Twelvers Shi'a definition of Usul, this discipline helps faqih drawing up the rules for specific cases from the four major sources of fiqh. However, it is possible that through ijtiḥād, a faqih might face cases, for which he cannot reach a judgment out of the four sources of the Qur'an, tradition, consensus, and reason. In such cases, due to the problem of the people in finding the real rule for their specific cases, religion has considered a series of alternative rules and practical tasks for people called "apparent rules."
71. Mudarrisi, Sayyid Hassan, *Muqaddameh-yi bar Fiqh-e Shi'a*, p. 17.
72. Balance. This refers to equality of both hadiths in their validity
73. Preferences. This refers to preferring one hadith because of having more evidence on its side

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