

# INTRODUCTION TO ISLAMIC SCIENCES

## PART II: FIQH AND USUL AL-FIQH

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**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 *Uṣūl 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.

### **1. *Fiqh (Islamic Jurisprudence)***

Fiqh is among the broadest and most comprehensive Islamic sciences. There are five major schools in fiqh: Ja'farī, Ḥanafī, Ḥanbalī, Shāfi'ī, and Mālikī. Ja'farī 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 fiqh

among Sunnis which have lost their followers so far, and most Sunni Muslims currently follow the four mentioned schools around the world.<sup>1</sup>

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*s) 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, Abū Abdullah Ja'far ibn Muhammad al-Şādiq (a) and due to which they are well-known as Ja'fari.<sup>2</sup>

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 rulings<sup>3</sup> of Islam and practical tasks acquired through explanatory sources for them.'<sup>4</sup> 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

<sup>1</sup> Tawakkulī, Mohammad Ra'ūf, *The Four Imams of Sunnah and Jamā'ah*, p. 9.

<sup>2</sup> Tabātabā'ī, Sayyid Ḥusayn Mudarrisi, *Muqaddameh-ī bar Fiqh Shi'a*, trans. by Muhammad Āşif Fekrat, p. 11.

<sup>3</sup> Rulings other than principles of religion

<sup>4</sup> Meshkīnī, Mīrzā Ali, *Iştilāḥāt al-Uşūl wa Mu'azzam Abḥāthihā*, p. 180.

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***<sup>5</sup>

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 revelation<sup>6</sup> and thus, his speech is the final word on *fiqh*. Thus, following his orders are mandatory whether in legislation or in resolving arguments.<sup>7</sup>

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 (*tābi'in*)<sup>8</sup> 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.)<sup>9</sup>

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<sup>5</sup> Twelvers' *fiqh*

<sup>6</sup> 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 Nisā' (Women), ayah no. 176.

<sup>7</sup> Subhānī, Ja'far, *Tārīkh fiqh wa fuqaha-ye Imamīyyah*, translated by Hassan Jalali, p. 40.

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

At the time of the Followers (*tābi'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 'Awwām (d. 74 A.H.) 2. Sa'īd ibn Musayyib (d. 91 A.H.) 3. Abū Bakr ibn 'Abd al-Raḥmān (d. 94 A.H.) 4. Sulaymān ibn Yasār (d. 94 A.H.) 5. 'Ubaydallah ibn 'Utbah (d. 98 A.H.) 6. Khārijah ibn Zayd (d. 99 A.H.) 7. Qāsim ibn Muhammad ibn Abī Bakr (d. 101 A.H.).<sup>10</sup> The infallible Imams (a) approved some of the mentioned faqihs according to the late Kulaynī quoted from Imam Ṣādiq (a): "Sa'īd ibn Musayyib, Qāsim ibn Muhammad ibn Abī Bakr, and Abū Khālid Kābulī were reliable and trustworthy in the eyes of Ali ibn al-Husayn (a)."<sup>11</sup>

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 *ijtihād*.<sup>12</sup> Notable faqihs of this period were 1) Zirah, 2) Ma'rūf ibn Kharbūd, 3) Abu Baṣīr Asadī, 4) Barīd ibn Mu'āwīyah, 5) Muhammad ibn Muslim Ṭā'ifī, 6) Yūnis ibn 'Abd al-Raḥmān, and 7) Ṣafwān ibn Yaḥyā Bīyā' Sābirī.<sup>13</sup> 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.<sup>14</sup>

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

<sup>9</sup> Khurāsānī, Maḥmūd ibn Abd al-Salām Turbatī Shahābī, *Adwār Fiqh (Shahābī)*, vol. 3, p. 64.

<sup>10</sup> *Ibid.*, vol. 3, p. 328.

<sup>11</sup> Kulaynī, *Al-Kāfī*, vol. 1, p. 472.

<sup>12</sup> A method of independent judgment

<sup>13</sup> Subḥānī, Ja'far, *Tārīkh fiqh wa fuqaha-ye Imamīyyah*, translated by Hassan Jalali, p. 71.

<sup>14</sup> Muṭahharī, Murtaḍā, *Āshnā'ī ba 'Ulūm-e Islāmī*, vol. 3, p. 61. [trans. as "Understanding Islamic Sciences," ICAS, 2000: London]

(a) only through his four special agents, distinguished faqihs emerged. Although ijtihād in fiqh had become more prominent during this period, it was through the indirect contact of the scholars (*ulamā*) 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-Óā'ifah – Sheikh Óūsī (d. 460 A.H.)
2. The era of Sheikh Óūsī until the time of 'Allamah Ḥillī (d. 728 A.H.)
3. The era of 'Allamah Ḥillī until the time of Āqā Bāqir Behbahānī (d. 1208 A.H.)
4. The time of Āqā Bāqir Behbahānī until the present era.<sup>15</sup>

The history of fiqh after the occultation of the Twelfth Imam (a) until the time of Sheikh Óūsī can be considered a period of Shi'a fiqh that had two distinctive features: a) categorization of hadiths, and b) development and promotion of ijtihād.<sup>16</sup> 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, ijtihād also had a key role in this period to such an extent that some researchers call the faqihs of this period as *Ahlul Fatwā* as the authorities to whom people referred to for receiving religious permission and knowing their practical duties. Faqihs

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<sup>15</sup> Khurāsānī, *ibid.*, p. 64.

<sup>16</sup> Subhānī, Ja'far, *Adwār al-fiqh al-Imamīyah*, p. 73.

such as Ali ibn Bābiwayh Qummi (d. 329), Ibn Junayd Iskāfī (d. 381) and Sayyid Murtaḍā known as ‘Alam al-Hudā (d. 436).

A great turning point in the history of Shi‘a fiqh is the emergence of Sheikh Tūsī, 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 Murtaḍā. After Sayyid Murtaḍā’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-Tahdhīb* and *Istibṣār*, two of the Four Books of Shi‘a traditions. He also left behind *Al-Nihāyah* which has been one of the textbooks for seminary students from long ago, *Mabsūt*, the finest descriptive book in Shi‘a fiqh, and *Khilāf*, 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 ijtihād (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 Ḥillah flourished and the Twelvers’ fiqh entered a new period of development and progress. Indeed, Ibn Idrīs Ḥillī (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 ijtihād 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 Tūsī’s or not. In *Sarā’ir*, although he showed utmost respect for Sheikh Tūsī, when his opinion differed from Sheikh Tūsī, he managed to bring firm justification and judgments and

reviewed Sheikh Tūsī's works for clarification in some of his works. Sheikh Tūsī's opinions were similar to that of Ibn Idrīs.<sup>17</sup>

The innovation of Ibn Idrīs 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 Najīb al-Dīn ibn Namāy-e Ḥillī (565 – 645 A.H.), Najm al-Dīn Ja'far ibn Hasan Dīn, known as Muḥaqqiq Ḥillī (602 – 676 A.H.), the author of *Sharā' al-Islām fī Masā'il al-Ḥalāl wa al-Ḥarām*, Jamāl al-Dīn Hasan ibn Yūsuf Ḥillī, known as 'Allāmah Ḥillī (648 – 726 A.H.), the author of *Tadhkirah al-Fuqahā' wa Nihāyah al-Aḥkām fī Ma'rifah al-Aḥkām*, Muhammad ibn Hassan ibn Yūsuf known as Fakhr al-Muḥaqqiqīn (682 – 771 A.H.), the author of *Īdāh al-Fawā'id fī Ḥall Mushkilāt al-Qawā'id*, Muhammad ibn Makkī 'Āmilī (734 – 786 A.H.), and the author of *Durūs al-Shar'īyyah fī fiqh al-Imāmīyyah wa al-Lum'ah al-Damishqīyyah*.

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

In the eleventh century, Muhammad Amīn Astarābādī<sup>18</sup> founded the Akhbārī school of thought. The Akhbāris 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, Akhbāris do not follow marjas<sup>19</sup> who practiced the modern form of ijihād. Akhbārī's

<sup>17</sup> Ibid., p. 167.

<sup>18</sup> Believing only in Khabar (a tradition or hadith from Imams (a) explaining an issue)

<sup>19</sup> scholars as models for imitation

argue that Imams did not allow *ijtihād*. In *al-Fawā'id al-Madanīyyah*, 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.<sup>20</sup> 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 *ijtihād*. 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 Uṣūlī<sup>21</sup> faqihs, Muḥaqiq Behbahānī rose to defend the fiqh relying on *ijtihād* and principles of fiqh and fought against the Akhbārī 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 *Mustaqillāt al-Aqlī*<sup>22</sup> as valid. He also criticized intellect in some hadiths to be speculations such as (deduction) *qiyās* or *istihsān*.<sup>23</sup>

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<sup>20</sup> Astarābādī, Muhammad Amīn, *Fawā'id al-Madanīyyah – Shawāhid al-Makkīyyah*, p. 269.

<sup>21</sup> Relying on principles of fiqh for judgment

<sup>22</sup> Issues understood by intellect independently from religion

<sup>23</sup> Leaving deduction by the faqih or judge and prefer what is easier for people according to the intellect.



Thanks to the scientific endeavors of Muḥaqqiq Behbahānī, 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 Akhbārī scholars were convinced by the arguments of Muḥaqqiq Behbahānī and the Akhbārī movement declined in later periods.

After Muḥaqqiq Bihbahānī, fiqh relying on ijtihād and reasoning began its evolutionary movement. It flourished thanks to great publications on principles of fiqh that bloomed in renowned works such as *Jawāhir al-Kalām*.

Sheikh Muhammad Hasan Najafī's fiqh encyclopedia *Jawāhir al-Kalām fī Sharḥ Sharā'i' al-Islām* 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 Najafī 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 Nāṣiruddīn Shāh's kingdom.

After Sheikh Muhammad Hasan Najafī, the second most distinguished recent Shi'a fiqh is Sheikh Murtaḍā Anṣārī. 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 Murtaḍā 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 Najafī. There are very few scholars in Shi'a history similar to Sheikh Anṣārī 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,

*Rasā'il* and *Makāsib*, 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 Anṣārī, there were great scholars in fiqh and ijtihād such as Muhammad Hasan Shīrāzī, Mulla Muhammad Kāḍim Khurāsānī, Sayyid Abu al-Hassan Iṣfahānī, and Hāj Āqā Husayn Burūjirdī. 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.<sup>24</sup>

### ***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

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<sup>24</sup> Muṭahharī, Murtaḍā, *Āshnā'ī ba 'Ulūm-e Eslāmī*, vol. 3, p. 85. [trans. as *Understanding Islamic Sciences*, ICAS, 2000: London]

fiqh are classified in four groups: acts of worship, contracts (*'uqūd*), one-sided obligations (*iqā'āt*), and rulings.<sup>25</sup>

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.<sup>26</sup>

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 faqih 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:<sup>27</sup>

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<sup>25</sup> In *Al-Marāsim al-'Alawīyyah wa al-Aḥkām al-Nabawīyyah*, Sallār Daylamī 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. Muḥaqqiq Ḥillī wrote his book called *Sharā'i* in four parts of acts of worship, contracts, one-sided obligations and rulings. This approach was accepted by all faqih after him. Modarrisī, Sayyid Husayn, *Muqaddamih-yī bar fiqh Shi'a*, trans. by Muhammad Āṣif Fikrat, p. 21.

<sup>26</sup> *Īqā'āt*

<sup>27</sup> Excerpt from Ṭabāṭabā'ī, Sayyid Husayn Mudarrisī, *Muqaddameh-ī bar Fiqh Shi'a*, pp. 25-28.

**A) Acts of Worship:**

- a. The Book of Cleansing (concerning Nijāsah [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 Zakāh<sup>28</sup>
- 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 Anfāl, 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'tikāf*, 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.

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<sup>28</sup> Obligatory alms on livestock

- 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 Wilāyah 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 (*muzāra‘ah*) and a lease of planation for one crop period (*musāqāt*) 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 Mubāra'ah (two kinds of divorce in which the wife redeems herself from the marriage contract on certain grounds)

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

d. The Book of Īlā' (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'ān (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 Tadbīr, Mukātibah, and Istīlād (three ways of manumission of slaves. Tadbīr becomes possible when the owner of the slave dies. Mukātibah is a contract between the owner and the slave. Istīlād 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 Iqrār (issues pertaining the acknowledgement of a person about his debt, his family relationships and as such)

- i. The Book of Ju‘ālah (when a person owes money to another because of his commitment to him)
- j. The Book of Īmān (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 rulings<sup>29</sup> from original sources. Now let us refer to the authentic sources of the Twelvers' fiqh used for deducing ruling:

1. ***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.<sup>30</sup> 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 *Āyāt al-Aḥkām* by Muqaddas Ardebīlī, 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.
2. ***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

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<sup>29</sup> Rulings other than principles of religion

<sup>30</sup> Mohammad Ibrahim Jannāti, *Manābi' Ijtihād az Didigāh Madhāhib Islami*, p. 5.

lies in the issue of revelation.<sup>31</sup> 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.

3. **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, Uṣūlī 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.<sup>32</sup>

4. **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.<sup>33</sup> However, they

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<sup>31</sup> Ibid. p. 75.

<sup>32</sup> Meshkini, Ali, *Iṣṭilāḥāt al-Uṣūl wa Mu'zam Abḥāthihā*, pp. 23 – 24.

<sup>33</sup> Ibn Idrīs, Sarā'ir al-Ḥāwī li Taḥrīr al-Fatāwī, p. 19.

distinguished between the issues of *Mustaqillāt al-Aqlī*<sup>34</sup> 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.<sup>35</sup> Therefore, in religious epistemology, only sound intellect can be used as a source for knowing the religion and its rulings.

## 2. *Uṣūl of Fiqh (Principles of Fiqh)*

Principles of Fiqh, briefly known as *uṣūl*, is “the knowledge of general rules for deducing Islamic rulings from their sources i.e. the Qur’an, Sunnah, reason, and consensus.”<sup>36</sup> The relation between fiqh and usul is like the relation between philosophy and logic.<sup>37</sup>

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 (*fuqahā*) come to a judgment about specific cases concerning *mukallafs*<sup>38</sup> through looking into the primary sources using the general and common rules. This in turn requires a new

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<sup>34</sup> Intellectual Independents

<sup>35</sup> Mohammad Ibrahim Jannāti, *Manābi’ Ijtihād az Didigāh Madhāhib Islami*, p. 243.

<sup>36</sup> Ṣadr, Sayyid Muhammad Bāqir, *‘Ilm Uṣūl (Marhaleh Awwal wa dowwom)*, trans. Naṣrullah Hekmat, p. 30.

<sup>37</sup> Ibid., p. 35.

<sup>38</sup> Those for whom worship is obligatory in Islam

discipline to formulate the rules for jurists to understand jurisprudential issues and eventually deduce the rulings.<sup>39</sup>

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 Uṣūl in Shi‘ism*

Some believe that uṣūl first emerged through Sunni scholars. Ibn Idrīs Shāfi‘ī was the founder and first author of uṣūl;<sup>40</sup> however, history reveals that some topics in uṣūl such as orders, prohibitions, and broad and specific issues were discussed among the Shi‘a before Shāfi‘ī. Existence of some treatises<sup>41</sup> which were written by the companions of the Imams (a) proves that they were already involved in uṣūl and that the discipline of uṣūl 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 uṣūl by teaching its principles and demonstrating to their students how to infer from the Qur’an and Sunnah.<sup>42</sup>

*Sayyid Murtada:* Since the beginning of the Major Occultation, the first scholar who wrote books in uṣūl and whose works were discussed for centuries after him was Sayyid Murtaḍā ‘Allam al-Hudā (d. 436

<sup>39</sup> Ṣadr, Sayyid Muhammad Bāqir, *Al-Ma‘ālim al-Jadīdah*, Collection of Works no. 8, pp. 19 – 22, (Qom: Congress of the Martyr Ṣadr)

<sup>40</sup> Suyūfī, Jalāl al-Dīn, *Al-Wasā’il ilā Ma‘rifah al-Awā’il*, p. 117.

<sup>41</sup> Treatises such as *Al-Alfāz* and *Al-Alfāz Kayf Taṣīh* written by Hishām ibn Ḥakam (d. 179 or 199 AH), *Ikhtilāf al-Ḥadīth wa Mas’alah ‘an Abī al-Ḥasan Mūsā ibn Ja‘far* written by Yūnus ibn ‘Abd al-Raḥmān (d. 183 AH),

<sup>42</sup> Mīr‘Imādī, Sayyid Ahmad, *ibid.*, p. 18.

A.H). He lived in the fourth and fifth centuries and was Sheikh Mufīd's student.<sup>43</sup> His most famous work in usul was *Al-Dharī'ah Ilā Uṣūl al-Shī'ah*.

*Sheikh Tusi*: After Sayyid Murtaḍā, Sheikh Abu Ja'far Ṭūsī (d. 460 A.H) - a student of Sayyid Murtada 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- Uṣūl*', was very well received. Both *Al-Dharī'ah Ilā Uṣūl al-Shī'ah* and '*Uddat al- Uṣūl*' were unmatched in their quality as they were the most influential sources of uṣūl until the end of the 5<sup>th</sup> century.<sup>44</sup> After Sheikh Ṭūsī, the disciplines of fiqh and uṣūl 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 uṣūl al-fiqh had declined and therefore there was no serious debates and discussion happening among the two schools of Islam.<sup>45</sup> However, the promotion of the Seminary of Ḥillah and the scientific endeavors of Ibn Idrīs Ḥillī (d. 543 – 549 A.H) in the seminary steered Shi'a fiqh and uṣūl to a new stage of development. Although Ibn Idrīs did not compose a work on uṣūl, he used the Qur'an, Sunnah, consensus, and reason to eloquently discuss issues in fiqh and uṣūl in his book *Sarā'ir*. He also benefitted from *Barā'ah* (exemption) and *Iḥtīyāṭ* (precaution) as a means of reasoning from time to time.<sup>46</sup>

In the seventh century, uṣūl was reinvigorated through the scientific quality in the works of Najm al-Dīn Ja'far ibn Hasan Hillī,<sup>47</sup> the great Shi'a scholar known as Muḥaqqiq Hillī. He wrote two books in uṣūl: *Ma'ārij al-Uṣūl* and *Nahj al-Wuṣūl ilā Ma'rifah al-'Ilm al-Uṣūl*, the former of which is now available to us. *Ma'ārij al-Uṣūl* is a brief yet

<sup>43</sup> a renowned famous Shi'a kalām (theology) scholar who died in 413 A.H

<sup>44</sup> 'Alipūr, Mahdi, *Dar'āmadi bi Tārīkh 'Ilm Uṣūl*, p. 127.

<sup>45</sup> Ṣadr, Muhammad Baqir, *Al-Ma'ālim al-Jadīdah*, pp. 88 – 89.

<sup>46</sup> 'Alipūr, Ibid., p. 148.

<sup>47</sup> 602 – 672 AH

comprehensive reference for the most important topics in uşul. 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 uşul.<sup>48</sup>

After Muḥaqqiq Hillī, Shi‘a fiqh flourished through his nephew, Jamāl al-Dīn Hasan ibn Yūsuf Hillī<sup>49</sup> known as Allamah Hillī. He was the most prolific author in the history of uşul; some of his books include *Tahdhīb al-Wuşul ilā al-‘Ilm al-Uşul*, *Mabādī al-Wuşul ilā al-‘Ilm al-Uşul*, *Nihāyah al-Wuşul ilā al-‘Ilm al-Uşul*, *Muntaha al-Wuşul ilā al-‘Ilm al-Kalām wa al-Uşul*.

Subsequently, uşul continued its development in the 10<sup>th</sup> and 11<sup>th</sup> centuries, its works including: *Tamhīd al-Qawā’id* written by Zayn al-Dīn ‘Āmilī<sup>50</sup> (or Shahīd al-Thānī). In this book, he discussed the related issues after each principle in uşul. Doing such a comparative practice, he demonstrated the principles of uşul as a prerequisite for fiqh and avoided irrelevant details and discussions.<sup>51</sup>

After Shahīd al-Thānī, Sheikh Hasan ibn Zayn al-Dīn,<sup>52</sup> author of *Ma‘ālim*, was the most eminent figure known to Shi‘a scholars in uşul. His *Ma‘ālim al-Dīn wa Malādh al-Mujtahidīn* was referred to by researchers and was long being taught in seminaries with commentaries written on it for centuries after him, namely: *Hāshīyeh*,<sup>53</sup> *Mullā Sāliḥ Māzandarānī*, *Hāshīyeh-ye Sulṭān al-‘Ulamā* and Sheikh Muhammad Taqī Işfahānī’s *Hidāyah al-Mustashriqīn*.

Among the most important historical challenges faced in uşul was the emergence of the Akhbārī movement in the 11<sup>th</sup> century. Akhbārīs

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<sup>48</sup> Ibid. p. 156.

<sup>49</sup> 648 – 726 AH

<sup>50</sup> 911 – 965 AH

<sup>51</sup> Ibid. p. 183.

<sup>52</sup> 959 – 1011 AH

<sup>53</sup> A type of commentary in the form of notes written in the margins of the original book.

opposed uṣūl 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 ijtihād<sup>54</sup> as a knowledge that created doubt in that referring to uṣūl to derive practical rules was impermissible. They brought many reasons<sup>55</sup> in rejecting it and wrote many critiques regarding the principles of mujtahids to verify their arguments.<sup>56</sup>

Muhammad Baqir Wahid Behbahani<sup>57</sup> strongly rose up against the Akhbārī movement. He had entered the Karbala Seminary when the Akhbārī movement was strongly influential. While teaching uṣūl and ijtihād, he also debated and held discussions with Sheikh Yusuf Baḥrānī, the grand Akhbārī scholar of Karbala Seminary. During these years, he trained outstanding students such as Kāshif al-Ghiṭā', Sayyid Ali Óabāṭabā'ī and Mirza-ye Qummi through whom he revived uṣūl and emphasized on the need for mujtahids. Among his works are: Marginal Notes (*Hāshīyeh*) on *Ma'ālim al-Uṣūl*, Marginal notes (*Hāshīyeh*) on Mirza-ye Qummi's *Qawānīn al-Uṣūl*, critical marginal notes on Fayḍ Kāshānī's *Al-Fawā'id al-Uṣūlīyyah*, and *Al-Fawā'id al-Hā'irīyyah*.

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

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<sup>54</sup> 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'ān, hadiths, and scholarly consensus.

<sup>55</sup> Cf. Astarābādī, Muhammad Amin, *Al-Fawā'id al-Mudunīyyah*, pp. 90 – 120.

<sup>56</sup> Also cf. Mulla Muhsin Fayḍ Kāshānī's *Al-Uṣūl al-Aṣlīyyah*, Sheikh Tusi's *Al-Fawā'id al-Ṭūsīyyah* and Sheikh Ḥurr 'Āmilī's *Al-Fuṣūl al-Muhimmah*.

<sup>57</sup> 1118 – 1205 AH

His deep influence gained him the status of being the founder of a new school in uṣūl.<sup>58</sup> All scholars after him followed his school as there has not been any doctrine that drastically changed this department.<sup>59</sup> In addition to being an uṣūl 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.<sup>60</sup>

Sheikh Murtaḍā Anṣārī's most important work which includes much of his research and innovations in uṣūl is *Farā'id al-Uṣūl*, predominantly known as *Rasā'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 *Hāshīyehs* and commentaries written about it,<sup>61</sup> among which are *Baḥr al-Fawā'id* written by Muhammad Hasan Āshṭīyānī,<sup>62</sup> *Durar al-Fawā'id fī Sharḥ al-Fawā'id* written by Mulla Muhammad Kāẓim Khurāsānī and *Hāshīyeh-ye Rasā'il* written by Muhammad Kāẓim Yazdi.<sup>63</sup>

The most renowned student in Sheikh Murtaḍā Anṣārī's seminary was Mulla Muhammad Kāẓim Khurāsānī<sup>64</sup> who wrote the valued book of *Kifāyah al-Uṣūl*. This book has also been among the collections of works in seminaries from long ago. After the late Mulla Muhammad Kāẓim Khurāsānī (known as Ākhūnd Khurāsānī), there has been an emergence of new perspectives. Currently, its development carries on

<sup>58</sup> Āqā Bozorg Tehrani, *Al-Dharī'ah*, vol. 16, p. 132.

<sup>59</sup> Muṭahharī, Murtaḍā, *Āshnā'ī ba 'Ulūm-e Eslāmī*, vol. 3, p. 23. [trans. as "Understanding Islamic Sciences", ICAS, 2000: London]

<sup>60</sup> 'Alipūr, Mahdi, *Dar'āmadi bi Tārīkh 'Ilm Uṣūl*, p. 366.

<sup>61</sup> Āqā Bozorg Tehrani, *Al-Dharī'ah*, vol. 6, pp. 152 – 162.

<sup>62</sup> 248 – 1319 AH

<sup>63</sup> d. 1337 AH

<sup>64</sup> d. 1328 AH



with the on-going courses and discussions in seminaries that address issues in uṣūl.

### ***Issues in Uṣūl***

Issues in uṣūl are classified into four categories:<sup>65</sup>

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 (*‘āmm* and *khāṣṣ*; general and specific), absolute rules and their specific cases (*muṭlaq* 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 *khobar 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

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<sup>65</sup> Al-Muzaffar, Muhammad Reza, *Uṣūl ul-Fiqh*, p. 8.

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-uṣūl al-'amaliyyah)* study validity and the limits of the validity of practical principles. These practical principles are *barā'ah*,<sup>66</sup> *iḥtīyāt*,<sup>67</sup> *takhyīr*<sup>68</sup> and *istiṣhāb*.<sup>69</sup> These four principles include all cases where the real obligation is not clear.<sup>70</sup> If an instance has a history and its previous state is clear, then according to *istiṣhāb* (continuance), the latest rule must be followed, otherwise, *barā'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 *iḥtīyāt* 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 *takhyīr* (option), he can choose one of the options to fulfil. In the recent Shi'a uṣūl 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.<sup>71</sup>

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<sup>66</sup> Principle of exemption

<sup>67</sup> Principle of precaution

<sup>68</sup> Principle of option

<sup>69</sup> Principle of continuance

<sup>70</sup> As it was mentioned in the Twelvers Shi'a definition of Uṣūl, this discipline helps faqīh drawing up the rules for specific cases from the four major sources of fiqh. However, it is possible that through ijtihād, a faqīh 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."

<sup>71</sup> Mudarrisī, Sayyid Hassan, *Muqaddameh-yī bar Fiqh-e Shi'a*, p. 17.

Further to the four mentioned types of issues, there is another common chapter in the books of uṣūl about *ta'ādul*<sup>72</sup> and *tarājīh*.<sup>73</sup> 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 uṣūl 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 '*ilājīyyah* (remedial) hadiths.'

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

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<sup>72</sup> Balance. This refers to equality of both hadiths in their validity

<sup>73</sup> Preferences. This refers to preferring one hadith because of having more evidence on its side

