

The Primary Sources of Shia Jurisprudence*

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Mohammad Hassan Mozafari

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Inferring the Islamic laws and religious commends from the Quran and the Tradition, throughout history the Muslim jurists used different methods of interpretation. From 1267 (665 AH) onward, among many qualified jurists, the rulers of the Abbasid dynasty decided to execute the opinions of four popular jurists only. Therefore these four 'Fiqh' obtained a special place not only at official and public level but in the schools, text books, and among researchers too. Attention was diverted toward these schools only. As a result, other Sunni and Shia schools of jurisprudence were practically not accessible, and some even forgotten. Today, the Shia jurisprudence, despite its thousand years of existence, is unknown to many Muslims and non-Muslims scholars. Most of the world's largest encyclopedia paid less attention toward Shia opinions on different subjects of the Islamic Jurisprudence. This paper attempts to focus on the Shia primary sources, namely the Quran, tradition, reason (Aql) and Ijma. Furthermore it tries to explain briefly different views of the Sunni and Shia in this regard.

[Key Words: Islamic Jurisprudence, Shia, Sunni, Fiqh, Methodology of Fiqh, Fiqh, Sunnah, Hadith, Ijma, Analogy]

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** HK Professor at the Institute for Mediterranean Studies, Busan University of Foreign Studies, E-mail: mozafarihasan@yahoo.com



I. Introduction

Most of laws and regulations that govern the human life at the individual and social, national and international level have root in collective beliefs, reason, custom, court rulings or lawyers opinion. Since Muslim societies believe in the divine revelation, the Quran and the words of his messenger are considered as the first and most authentic sources of laws, and Muslims should follow them. There are verses in the Quran which indicate that Muslims constantly asked the Prophet many questions in order to find out how to deal with various issues and problems which arose in their life. In this regard, those who lived in the remote areas having no access to the Prophet could ask their questions to the Prophet's envoys or local scholars. The Quran ordered all the Muslims who live in the remote areas, including those people who lived during the early period of Islam and did not have access to the Prophet or Muslim scholars, to choose a few people from their community and send them to the centers for Islamic education and training to receive necessary education and training to meet the needs of their community on their return (Quran, 9:122). Meanwhile, sometimes the Prophet sent some of his companions who were familiar with the commandments and teachings of Islam to certain people here and there. For example, before his migration to Medina he sent Ibn Mas'ud (Quran commentator) to Medina to answer the questions of newly converted Muslims (Balazeri, 16), and when a group of Muslim migrants went to North Africa, he sent some of his prominent companions along with them (A. Ibn Hesham).

After the death of the Prophet Muhammad, the Muslim society was divided into two branches, not only from political prospective but also in religious affairs. For those who followed the Caliphate in all individual and public



aspects of life, the primary sources are the Quran, the Prophetic tradition and the words of his companions including the Caliphs and even the word of the second and third generations who lived with the prophet's companions. For others who believed in Imamate, the Quran, Traditions of the Prophet Muhammad and his household interpretation¹⁾ are the only reliable sources. However, by the passage of time, the first school of the jurisprudence was established as Sunni and the other one Shia.

II. The Primary Sources of Shia Islamic Law (Fiqh)

According to Shia belief, there are four reliable sources, namely the Book (Quran), Tradition (Sunnah), the Consensus and Reason.²⁾ From the authenticity point of view, all these sources are not equal or even at one level. All Muslims believe that the Quran and Sunnah are the main sources for all the Islamic law, rules and regulations (Al-Athimain, 6). Every fatwa must be based on these sources.

1. The Quran

With the revelation of the Quran to the Prophet Mohammad (610 AD.), the history of Islamic jurisprudence emerged. According to the widespread belief

1) The Prophet said, "I am leaving among you two valuable things: Allah's book and my household. These two should never be separated (from each other), till we meet in the day after." There are many reasons why Shia chosen the other line, here is not a proper place for this discussion.

2) The science of the principals of jurisprudence (Usul al-Fiqh) is an instrumental knowledge which talks on the rules, principals and essential methods of obtaining the religious orders. This knowledge also talks in detail on the authenticity and credibility of 'the sources of Islamic law'.



among Muslim Scholars, out of all six thousand six hundred and sixty verses (Ayah) of the Quran on various subjects, about five hundred verses are on religious orders and law (Fiqh). One of the most important tasks of the Prophet and divine religious leaders (the Imams) were to teach “the Book” (Quran) and the wisdom. The Quran says: “He (Allah) raised up among them an apostle from among themselves to recite to them His signs and to purify them, and to teach them the Book and wisdom, and earlier they had indeed been in manifest error” (Quran, 3:164). Similarly, in another verses, it stated: “He is the One Who has dispatched a messenger from the Unlettered [people] among themselves, to recite His verses to them and purify them and teach them the Book and wisdom, even though previously they were in obvious error” (Quran, 62:2). In this direction, under the guidance of the Prophet and the Imams, many Muslims received the necessary teachings. Therefore, they could lead the people and solve the problems of their own community. Elsewhere it mentions, “Yet it is not for the faithful to go forth in masse; but why should not there go forth a group from each of their sections to become learned in religion, and to warn their people when they return to them, so that they may beware” (Quran, 9:122).

From the authenticity and credibility point of view, the Quran is regarded at the highest level among all other sources, but the problem implies with the interpretation and understanding of its meaning. Like any other text, Quran also may have different interpretations. However, if the words and sentences of the Quran are clear and there is no doubt about the meaning, then the apparent meaning of its words is authentic and all have to follow it. Obtaining the methods of the implications of the text (Quran) and understanding its generality and specificity (‘Amm and Khas), exclusion and abrogation (Istethna and Naskh),³⁾ definitiveness and ambiguity (Muhkam and Mutashabe)⁴⁾ is an



important task of a Mujtahid (Farhange Fiqh Ahl Albait, 33).

The Quran is the word of Allah and the first primary source of the legislation in the Islamic law. The clear meanings of the Holy text are definitive document and Allah's orders, but only after a specific systematic study towards a deep understanding of the Quran it makes sure that the text is clear in that specific meaning. At the second stage, a Mujtahid must have a considerable research and study in the Sunnah to find out if there is a general, specific, clear and unclear text on this certain verses. Without this examination and investigation one cannot claim that he has found the clear meanings of the Holy text.

No doubt, syntax and semantics play an important role in fixing the interpretation of the text. So, in case the Quranic text on a subject is completely clear and there is no any reasonable possibility of abrogation, one could claim that this is a "real and actual divine law."⁵⁾ However, any interpretation and individual opinion (Ijtihad) might produce nothing but "apparent law and order," and any interpretation does not have any legal value when it is not based on clear and reliable evidence, or there is no definite reasons or any verses of the Quran or Sunnah to support it. This type of interpretation is strongly forbidden in Shia Islam (Najafi). A Sunni Mujtahid may refer to analogy, Istihsan or his personal opinion, when he does not find any clear and reliable evidence from the Quran and Sunnah. In the early years of Islamic history, Imam Ali criticized the controversial fatwas of some judges on

3) The Quran, 2:107.

4) "It is He who has sent down to you the Book, Parts of it are definitive verses, which are the mother of the Book, while other are metaphorical," (Quran, 3:8).

5) For example, the obligation of the prayer drives from the phrase: "أقيموا الصلاة" (Aqimoo Al- Salah) which is based on two rules of the jurisprudential principles: (1) the verb which is in the command form (Aqimou), meaning "obligation and wujub," and (2) "authenticity of the meaning."



some cases and said, “When a dispute brought to a judge he gives his opinion and issues his verdict, while the same case taken to another judge he issues another judgment opposing the former one. Then all these court’s rulings were taken to the ruler who appointed these judges, he approved all of them! (it is really strange) while their God, the Prophet, and their book are the same.” The question is whether their God commanded them to have different views on one issue and they followed him? Or, God forbade them from dispute but they did not obey? Or God has sent to them an imperfect religion and called them to help him to complete it? Or they are God’s partners and have right to say their views, and God must agree with them? Or God has sent a complete religion but the prophet had some type of shortcoming in delivering the message?! In fact, God said, “We have neglected nothing in the Book (of Our decrees).” God also said that everything clearly stated in this book and every part of the book is confirming the others and there is no any contradiction in it. He said, “If it (Quran) had come from some other source, they would have found a great deal of contradiction in it” (Abduh, 16:53).

Anyhow, throughout Islamic history Muslim scholars with different literary, theological, mystical, philosophical, scientific methods and approaches have written hundreds of books and collections of interpretation on the Quran. On account of these, some of them only focused on jurisprudential verses of the Quran (Ayat al-Ahkam) that either talks about certain rights and obligations or pure light and give guide line to deduce the Islamic law (Hashemi, Da’eratu al-Ma’aref Feqhe Shiah n.d., Vol. 1, 237). A long list of these works including books, articles and journals is available in certain encyclopedia (Hashemi n.d., Vol. 2, 485). Muhammad bin Saibe Kalbi (the companions of Imam Baqir and Imam Sadiq) is the first person who wrote a book on this subject. “Fiqh al-Quran” by Qutbuddin Ravandi, “Kanz al-Irfan fi Marefatul Quran”, “Fadil



Miqdad” and “Zubdatul Bayan fi Ahkamel Quran” written by Muqaddase Ardebili are just a few of such works. The content of these books are categorized either according to the time of the revelation, the chapters of the Quran or the titles of the jurisprudential chapters. For the jurist scholars, all the interpretations and other works about the Quran including ‘Ahkam al-Quran’ are secondary sources.

2. Sunnah

Sunnah has been accepted as the second important source of the Islamic law. By and large, Quran talks on general commandments and Sunnah explained them in details. The sayings and actions of the Prophet Muhammad and the infallible Imams, including their ‘satisfactory silence toward an action which took place front of them (taqrir)⁶ are called Sunnah. Following the Tradition and Sunnah is based on several verses of the Quran like this verse that states: “Take whatever the Apostle gives you and relinquish whatever he forbids you” (Quran, 59:7).⁷ Regarding following the Prophet’s family (Ahl al-Bayt), the Prophet Mohammad also said, “I leave among you two valuable things: the Book of Allah and the ‘Itrat’ (the people of prophet’s house).” This narration is reported both by Sunni and Shia. Following the Prophet’s family has not been just because of their attribution or because of their qualities only. It has been due to some historical and social facts as well. There was no nationwide strong educational system in the past. So, initially every family in process of time should have transferred the traditions and religious education to his family and children. The Prophet’s family had learned the necessary

6) تقریر

7) “وما آتاكم الرسول فخذوه وما نهاكم عنه فانتهوا” (7: القرآن، الحشر)



religious educations and training.⁸⁾ Based on the Quranic teachings, one of the main missions of the Prophet was to teach all the people, especially his own close family members. This is why his eligible family members are the source of the religious order and Sharia.

However, the credibility and authenticity of tradition (sayings and deeds) is due to the belief in the infallibility of the Prophet Muhammad and the Imams. Regarding the Sunnah in the form of action, sometimes the Prophet Muhammad and the Imams have taught the Muslims through their performance. For example, they have performed ablution (Wudu), prayer (Salat) or Hajj, so Muslims have learned from them. In case, they continue to do certain act and did not want to leave it. This means that the work and effort is an obligatory (Wajib) one and it is required to observe it. If they did a specific act from time to time, this means that it is recommended and not an obligatory thing (Sadr, Vol.1:30).

Unlike the Quran, the authenticity and credibility of Sunnah is not certain. The words and acts of the Prophet's companions are not considered as Sunnah, unless they report it as a Sunnah of the infallible person (the prophet or the Imam). The Sunnah must be proved, either through means of certainty or by a reliable tradition (Khabar). Some politicians and rulers who hired the lying narrators and those narrators who did not have good memory generated numerous fake and unreliable traditions. Due to a huge number of false and weak traditions in the Hadith collections, every tradition is not reliable, and in terms of the transmitter's chain, even a top authentic hadith in the best condition is often uncertain. This kind of problems existed even at the time of the Prophet. There is a verse in the Quran that refers to this subject matter and complain in this regard: "Have you considered that Allah sent down provision

8) "And warn thy nearest kinsmen" (Quran, 26:215).



to you, then you made some of it unlawful and some lawful? Say, 'Has Allah permitted you that or do you invent lies against Allah?'" (Quran, 10:59). So, to determine the right from the wrong narratives, a mujtahid should refer to certain methods (Ilmud Drayah). Shaykh Tusi, Sayed Murtada, and Muhaqqiqe Naraqī are the first experts who followed these methods. Later on, the rational and rigidity methods of investigation of few scholars like Ardabil, Hassan ibn Zayn al-Din (known as Saheb Maalem), and Muhammad ibn Ali Aamli (known as Saheb Madaarek) divided the narratives in four categories known as "Correct," "Good," "Reliable," and "Weak" traditions. In conflict between correct traditions (Hadith), the good or reliable one, this group of scholars preferred the correct one only. In the next step, the authenticity of a tradition (hadith) depends on the testimony of two just, and every narrator must be certified by least one just person. Non-Shia narrators are also reliable, as long as they are eligible. This is why the Shiah Ulama unanimously believe in a number of the Sunni narratives in the chain of the narratives such as Ghiath ibn Cloub al-Bajli, Talhat ibn Zaide al-Nahdi al-Shami, Hafs ibn Ghiath Nakha'i, Ismail ibn Abu Ziad al-Skouni al-Shiri⁹⁾(Hashemi, Mowsouatu al-Fiqhu al-Islami, 31).

From the content point of view like every other text, the exact meaning of the narrations sometimes is not clear and might have different meanings and interpretations. Therefore, from this angle, any text was severely examined by the mentioned experts, and in this way, many traditions were excluded from the realm of Sunnah. Then, there was no choice other than referring to the general rules and the absolutes of the Quran, reliable Sunnah and the reason. Excessive reliance on the reason leads to relying on authenticity of any surmise (Zann). In response to these strict methods in adopting the traditions and especially the "tradition with a single transmitter" (Khabar Wahid), a new

9) غياث بن كلوب الجلي، و طلحة بن زيد النهدي الشامي، و حفص بن غياث النخعي، و إسماعيل بن أبي زياد السكوني الشعيري (9)



tendency and movement known as the traditionalist (Akhbariyun) emerged.

In contrast to the rationalist movement, the traditionalist showed tolerance regarding the chain of narrators in the “tradition with a single transmitter” and, in terms of the content, did not abandon it, regardless of improbability. They did great job in gathering and editing large Hadith collections like “Bihar al-Anwar” and “Vasaelu Shiah.” The traditionalists and even some non-traditionalists believe in the authenticity of all four books of narrations, namely Al-Kafi, Man la Yahzuruhul Faqih, Al-Tahzib, and Al-Istibsar. Besides, some of them believed in the narrative to the extent that any interpretation of the Quranic texts which is not based on a Narrative is not reliable. Thus, in this way, they closed down the direct methods of the understanding of the Quran. According to this extremist view, in deduction of the religious law, the Quran is not an independent source. However, it is worth mentioning that among the traditionalists, there are people who had relatively moderate views (Farhange Fiqh Vol.1 2009, 40).

Another important point that should be expressed about the Shia traditions deals with the fact that according to the frequent narratives from the Imams, their sayings are not personal opinions like the fatwas (ijtihad) of other jurists (muftis). Whatever they have said as a family member of the Prophet, they have received from the previous Imams, and finally the transmitter’s chain reaches the Prophet and Gabriel, and finally from Allah Almighty (Kolaini, 53). In a narrative, Imam Baqir (the great, great, great grandson of the prophet) says to his companion, “O Jabir! If we talk to the people on the bases of our personal opinion, we would perish, but we talk to them according to whatever we have received from the Messenger of Allah.” Actually, every Imam inherited the Prophet’s teachings from the previous Imam. We saved the heritage (the traditions) like those who save their gold and silver (Saffar, 299-300).



Therefore, as long as the transmitter's chain of the narratives is correct and reaches one of the Imams, they are authentic Sunnah and reliable tradition.

2) The Narratives (Hadith) Collections

Those books which collected and classified many narratives in different subjects are called 'the Collections' (Al-Jami'a).¹⁰⁾ Some of these collections which date back to the second and third centuries A.H. (8th and 9th AD) are as followed:¹¹⁾

- *Al-Jame Al-Ahadith* by Ahmad ibn Muhammad ibn Abi Nasr Al- Bazanti (221 A.H.). He was one of the companion of the Imam Kazim, Imam Reza and Imam Javad (hawzah, 1386/11/7). He belongs to a group of particular Narrators, known as the companions of the consensus (Ashabe Ijma). His name is in the chain of 788 narratives (Mahdavi Damghani).
- *Al-Jame fi Al-Ahadith* by Abou Taher Varraq Hadrami. He is a great narrator of the third century and a companion of the 7th, 8th and 9th grand sons of the Prophet: the Imam Reza, Imam Javad and Imam Hadi (alaam,tahoor).
- *Al-Jame fi Abvabe Al-Fiqh* by Abu Al-Hassan Ali Ibn Abi Hamza Batayeni.
- *Al-Jam fi Al-Halale va Al-Haram* by Zarif Ibn Al-Naqseh Al-Sharaya Koufi.
- *Al-Jam Al-Kabeer fi Al-Fiqh aw Jamea Al-Asar* by Younus bin Abdu Al - Rahman.
- *Al-Jame fi Al-Fiqh* by Mohammad bin Ali Ibn Al-Mahboub.
- *Al-Jame ul-Kabeer fi Al-Fiqh* by Ibrahim Ibn Muhammad Al-Thaqafi.
- *Al-Jameu Al-Saqeer fi Al-Fiqh* by Ibrahim Ibn Muhammad Al-Thaqafi.

10) الجامع

11) "The companions of the consensus" (Ashabe Ijma- أصحاب إجماع) in "the Science of the Narrators" is a title which has been given to few particular Narrators of the second and third centuries (AH). These great Shia scholars recived their education and training from the Imam Baqir, Imam Sadiq, Imam Kazim and Imam Reza. The dignitaries of the Science of the Narrators have consensus on their authority in jurisprudence other major seventy.



2) The Narratives (Hadith) Collections from the 3rd Century till Today

Since the early third century A.H., based on the above mentioned collections and other sources four larger collections were compiled by three Shia scholars and have been known as the main Shia Hadith sources and used in seminaries till today.

- *Al-Kafi* by Abu Jafar Mohammad bin Yaqoub Al-Kulayni (329 H.) on fundamental and principals, belief and the Shariah,
- *Man La Yahzuruhu Al-Faqih* by Mohammad bin Ali ibn Babevyeh Qomi (Sadouq 381 H),
- *Al-Istebzar fi ma Ikhtalafa fihe Al-Akhbar* by Abu Ja'far Mohammad bin Hassan (Sheykh Toosi 460 H.),
- *Tahzibu Al-Ahkam* by Abu Ja'far Mohammad bin Hassan (Sheykh Toosi 460 H.),

These four collections of narrations known as “the Four Books (al-Kutub al-Arba'ah)” are the first and most important Shia hadith sources. Hereinafter, based on these four books and other sources, the Shia scholars classified the narratives in different methods, under various topics and compiled them in several Hadith collections. Further, the “Was'ailu Al-Shia” by Sheikh Muhammad ibn al-Hassan, known as “Hur 'Ameli” (1104 AH) is regarded as the most famous sources among them. Other important collections are:

- *Al-Vafi* by Mulla Mohsen Faid Kashani (1091 H.) a comprehensive book which has deleted the repeated narratives of the four important resources (*Al-Kafi*, *Al-Istebzar*, *Tahzibu Al-Ahkam*, and *Man La Yahzuruhu Al-Faqih*) and explained the existing problems in these collections,
- *Wasailu Al-Shia* by Al-Shaykh Mohammad bin Hassan Hurr Al-Ameli (1104). He has collected all the Hadiths which exist in the four main resources (*Al-Kafi*, *Al-Istebzar*,



Tahzibu Al-Ahkam, and *Man La Yahzuruhu Al-Faqih*) and the Narratives which were existed in the original and other major seventy books. Years later, Sheikh Mirza Mohammad Hussein Noori (1320 AH,) edited and corrected this collection. To complete this work, he compiled another collection in three large volumes named *Mustadraku Al-wsail*. Many traditions missed by Al-Ameli were collected from various sources, classified in this book. Therefore, it was a considerable complementary attempt which is also used as another source.

- *Biharu Al-Anvar* by Mohammad Baqer Al-Majlisi (1110 AH.). This collection is the most detailed and comprehensive of the Shia's Hadiths on various topics like: history, jurisprudence, moral and belief. This collection has been published in Tehran and Beirut in hundred and ten volumes.
- *Mustadrak Al-vasayel and Mustanbetu Al-Ahkam* by Mirza Hossein Noori (1320 AD.). This book included many Hadiths which dropped from the *vasayel Al-shia*.
- *Avalemu Uloum Va Al-maaref Va Al-Ahvale fe Alayyat Va Al- Akhbare va Alaqfal* by Abdullah bin Noorollah Bahrani (1130 AD.) the disciple of Mohammad Baqer al-Majlisi.
- *Jameu Al-Ahadith Al-shia fi Ahkame Al-shariah* by Hossein Tabatabai Boroujerdi (Collective from the disciples, 1380 AD.). This is the last and the most detailed comprehensive Shia Hadiths on the jurisprudence. It includes all the Hadiths of *Vasayel al-Shia and Mustadrak Al-Vasayel*, in addition to many traditions that these two books missed and all the Verses of the Quran that are on Fiqh. It extracted Hadiths from the old and original sources in a unique organized method.

However, to use these sources, one should have a comprehensive knowledge about the narratives (Ahadith) and differentiate between various types of Ahadith which is mentioned earlier ("Correct," "Good," "Reliable" and "Weak") furthermore, should also completely be familiar with the Science of the Transmitters (Ilmu al-Rijal). No Hadith should be taken as a reliable one without examining its chain of the transmitters.



However, for more than thousand year under the title of Jurisprudence, the jurist scholars have produced hundreds of books, essays and articles on the issue of the authenticity of these four sources. Some of the most important Shia reference books on the Methodology of deducing the Islamic law (Usul al-Fiqh) and the Jurisprudence are as followed:

Some the most important Sources on the Methodology (Usul al-Fiqh) Sources:

- 1) *Al-UddAh fi Usulu al-Fiqh* by Muhammad ibn al-Hassan al-Ttousi.
- 2) *Derasatun fi Ilmu al-Usoul* by Sayyed Abu al-Qasim al-Musawi, Sayyed Ali al-Hashemi al-shahroudi.
- 3) *Usulu al-Fiqh* by Muhammad Reda al-Muzaffar.
- 4) *Istelahatu al-Usoul* by Al-Mirza Ali al-Meshkini.
- 5) *Muhaderatun fi Usulu al-Fiqqh* by Sayyid Abu al-Qasim al-Mousavi al-khouei, Mohammad Ishaq al-Fayyad.
- 6) *Al-Usoulu Al-Ammah* by Sayyed Mohammed Taqi al-Hakim.
- 7) *Buhouthun fi Ilmu al-Usoul* by Sayyed Muhammad Baqir al-Sadr, Sayyed Mahmoud Hashemi al-shahroudi.
- 8) *Durousun fi Ilmu al-Usoul* by Al-shahid al-Sayyed Muhammad Baqir al-Sadr.
- 9) *Al-Maalimu al-Jadidah* by Sayyed Muhammad Baqir al-Sadr.

Some the most important Sources of the Fiqh:

- 1) *Al-Amali* by Muhammad ibn al-Hassan altousi.
- 2) *Al-Amali* by Muhammad ibn Ali ibn al-Husayn ibn Babewayeh al-Qomi, al-Sheikhu al-sadouq.
- 3) *Al-Tebyan* by Muhammad ibn al-Hasan altousi.



- 4) *Al-Muqne* by Muhammad ibn Ali ibn al-Husayn ibn Babewayeh al-Qomi, al-Sheikhu al-sadouq,
- 5) *Ilalu al-Sharaye* by Muhammad ibn Ali ibn al-Husayn ibn Babewayeh al-Qomi, al-Sheikhu al-sadouq,
- 6) *Avaliu al-Llali* by Muhammad Ibn Ali Ibn Ibrahim al-Ihsaei, Ibn Abi Jumhour,
- 7) *Al-Khalaf* by Muhammad ibn al-Hasan al-Tousi,
- 8) *Al-Mabsout* by Muhammad ibn al-Hasan al-Tousi,
- 9) *Al-Nehayah va Nukateha* by Muhammad ibn al-Hasan al-Tousi,
- 10) *Ma'aniu al-Akhbar* by Muhammad bin Ali bin Hussein bin Babewayeh al-Qomi, al-Sheikhu al-Sadouq,
- 11) *Al-Muhazzab* by Abdul al-Aziz bin al-Barraj al-Trablusi,
- 12) *Meftahul al-Karamah* by Al-Sayyed Mohammad Jawad al-Husseini al-Amel,
- 13) *Al-Muqneah* by Muhammad ibn Muhammad ibn al-Nnuman, al-Sheikhu al-Mufid,
- 14) *Majmaul al-Fayedate Va al-Burhan* by Ahmad bin Muhammad, Al-Muqaddase al-Ardabili,
- 15) *Al-Intesar* by Sayyed Ali bin al-Hussein bin Musa, al-Sharifu al- Murtada, Alamul al-Huda,
- 16) *Al-Eljaz fi al-Fraeize Va al-Mawarithe al-Rrasail al-Ashr* by Muhammad ibn al-Hassan al-Tousi,
- 17) *Idahul al-Fawa'id* by Muhammad ibn al-Hasan ibn Yusuf ibn Al-Mutahar al-Helli, Fakhrol al-Muhaqqequeen,
- 18) *Tabseratu al-Muteallmeen* by Hasan ibn Yusuf ibn al-Mutahhar, Al-Allamatu al-Helli,
- 19) *Tazkeratu al-Fuqaha* by Hassan Bin Youssef ibn al-Mutahhar, Al-Allamatu



al-Helli,

- 20) *Mukhtalafu al-Shia* by al-Hassan ibn Yusuf ibn al-Mutahhar,
- 21) *Talkhisu al-Maram* by Hasan ibn Yusuf ibn al-Mutahhar,
- 22) *Muntaha al-Matlab* by Hassan Bin Youssef al-Mutahhar,
- 23) *Nehayatul al-Ahkam* by Hassan Bin Youssef al-Mutahhar,
- 24) *Al-Sraer* by Muhammad ibn Mansur ibn Ahmad ibn Idris al-Helli,
- 25) *Sharayeul al-Islam* by Najmu al-Din al-Hassan bin Jafar, Al-Muhaqqiqu al-Hilli,
- 26) *Al-Mukhtasaru al-Nnafé* by Najm al-Din al-Hasan bin Jafar, Al-Muhaqqiqu al-Hilli,
- 27) *Al-Muatabar by Najm al-Din al-Hasan bin Jafar* by Al-Muhaqqiqu al-Hilli,
- 28) *Al-Masa'elul al-Fiqhiyyah (Rasa'elul al-Muhaqqe'q al-Karaki)* by Ali ibn al-Husayn ibn Abdullah Aali al-karaki, al-Muhaqqe'qu al-Thani,
- 29) *Al-Durousu al-Shariyyah* by Mohammed bin Makki al-Aamel (Al-Shahidu al-Awwal),
- 30) *Tamhidul al-Qawaid* by Zayn al-Din ibn Ali al-Ameli (Al-Shahidu al-Thani),
- 31) *Al-Rawdatu al-Bahyyah* by Zayn al-Din ibn Ali al-Ameli, (Al-Shahidu al-thani),
- 32) *Masaliku al-Afhaam* by Zain al-Din ibn Ali al-Ameli, (Al-Shahidu al-thani),
- 33) *Da'aimu al-Islam* by Al-Nnuaman ibn Muhammad ibn Mansour ibn Ahmad ibn Hayyouna al-Taimimi,
- 34) *Jamiu al-Maqasid* by Ali ibn al-Husayn ibn Abdullah al-Aal al-karaki (Al-Muhaqqiqu al-Thani),
- 35) *Awa'idu al-Ayyam* by Ahmed bin Mohammed Mahdi al-Nnaraqi,
- 36) *Ghaayatu al-Murad* by Mohammed bin Makki al-Aamel, (Al-Shahidu al-Awwal),



- 37) *Al-Qawaid Va al-Fawaid* by Mohammed bin Makki al-Aamel (Al-Shahidu al-Awwal),
- 38) *Ghaayatu al-Maram* by Muflihu al-Saimari al-Bahrani,
- 39) *Ghunyatu al-Nuzoua* by Al-Sayyed Hamzate ibn Ali ibn Zuhreh,
- 40) *Fiqhu al-Quran* by Said bin Hebatu Allah al-Rawandi Qutbu al-Din,
- 41) *Qawaidu al-Ahkam* by Hasan ibn Yusuf ibn al-Mutahhar,
- 42) *Al-Kafi fi al-Fiqh* by Taqi al-Din ibn al-Najmu al-Din ibn Ubaidu Allah, al-Halabi (Abu al-Salah),
- 43) *Kashfu al-Letham* by Muhammad ibn al-Hasan al-, al- Isfehani (Fadailu al-Hendi),
- 44) *Kashfu al-Murad* by Hasan ibn Yusuf ibn al-Mutahhar,
- 45) *Al-Lumatu Al-Dameshqiyyah* by Mohammed bin Macci Al-Amel, (Al-Shahidu Al-Awwal),
- 46) *Kifayatu Al-Ahkam* by Muhammad Baqir ibn Muhammad Mu'min Al-Sabzevari,
- 47) *Al-Khums* by Al-Shaikh Morteza Al-Ansari,
- 48) *Al-Taharah* by Al-Sheikh Morteza Al-Ansari,
- 49) *Al-Makasib* by Al-Sheikh Morteza Al-Ansari,
- 50) *Hashiah Majmau Al-Faidatu Va Al-Burhan* by Mohammad Bagher Al-Vahidu Al-Behbehani,
- 51) *Hashiatu Al-Madarek* by Mohammad Bagher Al-Vahidu Al-Behbehani,
- 52) *Jawahiru Al-Kalam* by Muhammad Hassan Al-Najafi,
- 53) *Al-Urvatu Al-Vusqa* by Al-Sayyed Muhammad Kazim Al-Tabatabaei Al-Yazdi,
- 54) *Mustamsiku Al-Urvatu Al-Vusqa* by Al-Sayyed Muhsin Al-Hakim Al-Tabatabaei,
- 55) *Mustanadu Al-Shiah* by Ahmad ibn Muhammad Mahdi Al-Naraqī,



- 56) *Misbahu Al-Fiqahah* by Al-Sayyid Abu al-Qasim Al-Koei, Mohammed Ali Al-Tawhidi.
- 57) *Menhaju Al-Salehin* by Al-Sayyid Abu al-Qasim Al-Koei.
- 58) *Jamiu Al-Madarik* by Sayed Ahmed Al-Khansari, Muasseseh Ismailiyan.
- 59) *Al-Qavaedu Al-Fiqhiyah* by Sayed Mohammad Hassan Al-Bujnurdi.
- 60) *Al-Qavaedu Al-Fiqhiyah* by Naser Makarem Al-Shirazi.
- 61) *Al-Mustalahatu Al-Fiqhiyah* by Mirza Ali Al-Meshkini.

3. Reason

Indeed, Ijtihad is a full attempt to infer the religious order from the “book” and “tradition,” but it does not mean that a mujtahid has the right to impose his personal opinion (Al-Ray) on the texts (Quran and Sunnah). Therefore, the Shia scholars have unanimously rejected the authenticity of uncertain presumptions and unreliable evidences. Fatwas that are based on analogy (Qiyas) approbate and expediential opinion (Istihsan)¹²⁾ and the discretion in legal matters ‘Masalih Al-Mursalah’ do not have any jurisprudential value. Based on some traditions ‘individual opinion’ (Al-Ray) cannot be regarded as a source of the religious orders and religion could be distorted by the comparison (Al-Mustadrak, n.d., 25 Vol.). These types of methodological reasoning (al-Ray val-Istihsan) for the deduction of Sharia law is strongly prohibited in Shia.

12) In terms of terminology and the definition of ‘Istihsan’ there is disagreement among the scholars and they have presented various meanings. In general they have stated when a Mufti does not find clear evidence on an issue in the Quran and Sunnah, to give a fatwa he says, this particular fatwa (his opinion) is good for this particular case (Al- Haji Al-Kordi, Bohouthun fi Ilm Al-Usul, vol. 1, Al-Maktabatu Al-Shamelah, p. 102). When and how the ‘Istihsan’ should be used? The Hanafi and Maleki’s point of views and the Shafei and Ahle Hadiéh are more close (Zakaria, Ibn Gholam Qader Al- Bakistani, Al- Bayan Al-Mamoul fi Ilmu Al-Usul, vol. 1, Al-Maktabatu Al-shamelah, p. 155-157).



When the Shia discusses the reason as a source of the religious order means that the reason independent or non-independently can issue a rational religious order. In other words, the reason sometimes issues a complementary rule to the ruling (the Fatwa) that we understand from the texts ('Istilzamat Aqliyah') and sometimes independently issues a self-evident practical ruling. But, the self-evident practical rulings are just a few general provisions, so detailed legal provisions cannot be deduced from them. It means that the main sources of evidence which prove the legal Islamic provisions are just the Quran and Sunnah. In the proses of reasoning and obtaining the Islamic rules and regulations, one can use his reason and intellectual perceptions (both practical and theoretical reason), but the Methodology and the Rational order should be certain and without any doubt. However, these types of intellectual rules can never be conceded as criteria and basis to establish any religious laws. The maximum use of the intellectual perceptions in the proses of reasoning and obtaining the Islamic law are to detect the relations between two religious commandments. It means to examine if there is any Contrariety (Ta'dad) and Opposition (Taqabul) or Commitment (Iltezam) and Symmetry (Taqarun), or conflict (Ta'arud) and Mutual Exclusion (Tazahum) between them or to determine a duty and to come to practical solution when there is doubt in a religious order. In terms of the Methodologists (Usouliyouun) view, 'rational practical principals' (al-Usulul Amaliyyeh) includes the Precaution (Ihtiyat), the Acquittal (Bara ah), and Freewill-Choice (Takhyeer) (Hasheni, 32).

4. The Consensus

The consensus (Ijm'aa) means there is a common, unified and popular view on a subject. But the question is whose consensus? Does it mean the



consensus of the whole Muslims Ummah? (al-Jizani, 156-165), or the consensus of the influential people (who settle the disputes and create the contracts, or the consensus of those early Mujtahids who lived after the death of the Prophet (Al-Ethamain n.d., 116), or the consensus of the Mujtahids of every century after the Prophet (Al-Shirazi, 49), or the consensus of the people of the Medina (Al-Shostari n.d.), or unanimity of the Prophet's companions only (Al-Sarakhsi n.d., 279 - 313), or none of these but the consensus which includes the view of an infallible person or the consensus which is based on his view? Although the Shiite jurists have discussed the consensus among the other sources, it is just a formality, and they did not accepted it as an independent source. According the Shia, in order to ensure certainty, the validity of the consensus depends on its exploration of the tradition. The consensus is authentic if only it discovers the sayings of the Infallibles (Ameli, 137). A consensus of the jurists which clearly is based on rational or a narrative reasoning does not have any value other than a scholarly opinion. But the consensus of the early mujtahids (after the Infallibles) on an issue which does not have reason could be authentic because they may have had access to some traditions which later due to some reasons has been lost. This kind of consensus could be valid and authentic. As mentioned, the Sunni, in contrast, believe in consensus as an independent and authentic source even if it opposes the sayings of the Infallibles. This type of consensus is unacceptable among the Shia (Farhange Fiqh vol. 1, 2009, 253).

III. Conclusion

No doubt, it is universally accepted by all the authors of the science of the methodology of the jurisprudence (Usoulu al-Fiqh) of both the Sunni and Shia



that the Quran, Sunnah (tradition), Ijma (Consensus) and reason (Aql)¹³⁾ are the only primary sources of the jurisprudence (Fiqh), from which all the Islamic rules and regulations flow. Academically speaking, the jurisprudence sources are not merely confined to these few sources. From the academic perspective, every book, information, evidence, method, principle, the views of the jurist, and other experts from various fields, their theories, and finally, in one word, whatever help the expert jurists to find the real order - all could be equally the sources of the jurisprudence.

For instance, in the Constitutional Revolution in Iran, the late Sheikh Fazlullah Nuri, as a religious leader and an influential constitutionalist, opposed the absolute monarchy, and, in a protest movement along with other religious scholars, migrated from Tehran to Qom. Then, after collecting more information about the principles of the secular constitution and the intentions of some of the constitutionalists, he changed his mind and insisted on the Islamic Constitution. In another case, after Imam Khomeini obtained political power in Iran (1979) changed his Fatwa on the private ownership of large natural resources like oil and Gas. These cases indicate that, in addition to the four sources of jurisprudence, other Information such as having better understanding of the issues and subjects, the jurisprudential books and the opinions of the authors have an important impact on the Fatwas of the jurists.

The discursive jurisprudential books and the methodology works on the Jurisprudential Rules (Qava'edul Fiqhiyah) also play fundamental role in understanding the Islamic law. From this perspective, the jurisprudential books could be divided into two categories: (1) those books that have collected the relevant verses of the Quran, the narrations on every issue and discussion about them in details, in specific methods and finally issued Fatwa; (2) the

13) Here the Reason means analogy and comparison (Qiyas).



books that normally did not refer to any source and did not provide any argument for their views, though they are based upon original sources. The first category can be considered as a primary sources and the second type of the books are the secondary sources and materials. This is the main difference between this paper and the textbooks that are taught in the religious schools. According to them, the Quran, the Sunnah, Ijma and analogy are the only sources of the Islamic law.

However, to issue a religious order (Fatwa), a Shia religious expert first should refer to the texts (Quran and Sunnah). If he could not find the religious order from the Quran and the Tradition, then should refer to “the Jurisprudential Rules” (Al-Qvaidul Fiqhiyah). Furthermore, if he could not find any clear rules to give a decisive view and issue a fatwa at this stage, he should refer to the “practical principles.”¹⁴⁾ These practical principles were derived from the religious evidences, the Quran and Sunnah (Hasheni, p. 32). In the Sunni schools of Jurisprudence, if a mufti or mujtahid could not find the religious order in the Quran and Sunnah, then he can use Ijma and his personal opinion (Qiyas and Istihsan). In this case, the method of Ijtihad is called ‘the Opinion oriented Ijtihad’ (Ijtihad bi al-Ray)¹⁵⁾ (Al-Sawkani, 250 and 296).

14) Usul al-Amaliyyah (الاصول العملية).

15) الاجتهاد بالرأي



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