

The System of Ijtihad in Shi'ahs

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Some Important Terms

1. Ijtihad literally means "to endeavor, strive, put oneself out, work hard." In Islamic legal terminology it means "the process of deriving the laws of the shari'ah from its sources."
2. Mujtahid means a person who does ijtiḥād or who is an expert of Islamic laws.
3. Fiqh literally means knowledge, and in Islamic terminology it means the science of Islamic laws.
4. Faqih (pl. fuqaha') means the expert of fiqh. The terms "mujtahid" and "faqih" mean the same.

The Importance of Ijtihad

Is ijtiḥād necessary? If Islam is a religion which is to stay till the end of time, then there must always be some people who can guide the Muslims in the changing circumstances of time and of place. After the Prophet of Islam (PBUH), the most ideal persons to guide Muslims were the Imams of Ahlul-Bayt. However, the Present Imam, Muhammad al-Mahdi (a.s.) has gone into the Occultation and will re-appear when Allah (SWT) wishes him to appear. So what is to be done in the mean-time? Are the Shi'ahs to suspend the shari'ah? No, of course, not! Islam is the religion for all times and places.

The Imams of Ahlul-Bayt had foreseen the time of the Occultation and had prepared their followers for the situation in which they will not be in direct contact with their Imam. This preparation was done by training the Shi'ahs in the science of Islamic laws, or in other words, in ijtiḥād. Ijtiḥād is an essential phenomenon for the survival of the Islamic shari'ah during the Occultation of the Imam (a.s.). Without the system of ijtiḥād, we would not be able to apply Islamic laws in the rapidly changing circumstances of human society.

Ijtiḥād is not only permissible, but essential from the Islamic point of view. It is an obligation in Islam to study everything which is necessary for the spiritual development and material well-being of the Muslim community. However, this obligation is of the category which is known as *wajib kifa'i*, meaning "an obligation which is on every member of the community as long as it is unfulfilled; but as soon as some person or persons has fulfilled it, it is no longer an obligation on those who have not fulfilled it."

In the present instance, for example, Islamic society needs experts in the medical sciences, in physics and chemistry, in engineering, education; and as long as there is a lack of expertise in these areas, it is an obligation on the community as a whole to acquire it. This means that a group of Muslims must devote themselves to research so as to benefit the Islamic people. Similarly, an Islamic society without experts in the shari'ah cannot properly consider itself Islamic, and so it is an obligation for a group of persons from this society to devote themselves to the study of the religious sciences to provide proper guidance to all Muslims.

This is such an important obligation that Allah (SWT) has exempted those who go to seek religious knowledge from the duty of jihad. He says: "It is not (right) for the believers to go forth all together (for jihad). So why should not a party from every section of them (the believers) go forth to become learned in the religion, and to warn their people when they return to them-so that haply they may beware?" (Surah at-Tawba, 9:124)

It is clear from many narrations that the Imams of Ahlul-Bayt (a.s.) used to be pleased whenever any of their companions taught religion or gave legal rulings (fatwa) to others. There are several documented cases of Shi'ahs who lived far from Medina asking the Imam of their time to appoint someone in their area to adjudicate between them in religious problems: Zakariyyah ibn Adam al-Qummi and Yunus ibn 'Abdu 'r-Rahman, for example, were named by Imam 'Ali ar-Riza (a.s.), to solve disputes in their own districts. [19

In a famous hadith, 'Umar ibn Hanzalah asked Imam Ja'far as-Sadiq (a.s.) about the legality of two Shi'ahs seeking a verdict from an illegitimate ruler in a dispute over a debt or a legacy. The Imam's answer was that it was absolutely forbidden to do so. Then Ibn Hanzalah asked what the two should do, and the Imam replied: "They must seek out one of your own who narrates our traditions, who is versed in what is permissible and what is forbidden, who is well-acquainted with our laws and ordinances, and accept him as judge and arbiter, for I appoint him as judge over you..."

Besides these ahadith, we have quite a few sayings of the Imams which tell us what to do if we come across two ahadith which are contradictory or semi-contradictory and solving the contradictory ahadith is one of the functions of ijtihad. These types of ahadith are known as al-akhbar al-'ilajiyah, the ahadith which solve the problems in the process of ijtihad. What we have mentioned above clearly shows that ijtihad is necessary for the perpetuity of the Islamic legal system

Was not Ijtihad forbidden in the Early Shi'ah Sources?

There are some sayings of the Shi'ah Imams (a.s.), some writings of their companions and that

of our early 'ulama which severely condemn the use of ijtiḥad. This has created confusion among non-specialist readers and has given rise to the question whether or not ijtiḥad was permitted in Shi'ah Islam.

This confusion can be easily sorted out by studying the changes undergone by the word "ijtiḥad". The word ijtiḥad was used for the first time by a Sunni school of fiqh in the meaning of ra'iy: Ra'iy means "a subjective opinion, an opinion based on one's personal judgement as opposed to that of the Qur'an and the ḥadith." In this sense, "ijtiḥad" was by itself an independent source of the shari'ah laws besides the Qur'an and the sunnah. Abu Hanifah, the founder of the Sunni Hanafi school of fiqh, was the main proponent of this system of ijtiḥad. The term ijtiḥad continued to be used exclusively in the meaning of ra'iy up until the early seventh Islamic century.

In the seventh Islamic century, some of the Shi'ah 'ulama' started using the term ijtiḥad in a different and new meaning. They used the term "ijtiḥad" for "the process of deriving the laws of the shari'ah from its sources". In the first meaning, "ijtiḥad" stands alongside the Qur'an and the sunnah as an independent source of the shari'ah laws; in its new meaning, "ijtiḥad" is a process of deriving the shari'ah laws from the Qur'an and the sunnah. The first Shi'ah scholar to use the term "ijtiḥad" in its new meaning was Muḥaqqiq al-Hilli (d. 676 A.H.) in his al-Ma'arij. Al-Hilli says, "ijtiḥad means to strive for deriving the shari'ah laws from their sources." The change through which the meaning of "ijtiḥad" has undergone clears the confusion about the legality of ijtiḥad: some of the sayings of the Imams (a.s.), the writings of their companions and the early Shi'ah ulama condemn ijtiḥad in its pre-7th century meaning of "ra'iy"; they are not opposing the ijtiḥad in the post-7th century meaning of "the process of deriving the shari'ah laws from their sources". The condemned ijtiḥad is a source of the shari'ah laws, while the recommended ijtiḥad is only the process of deriving the shari'ah laws from their sources.

.The permissibility of ijtiḥad in its post-7th century meaning is beyond any doubt

The Process of Ijtiḥad

The process of deriving the shari'ah laws from their sources is based on two main branches of Islamic sciences: usulu'l-fiqh and fiqh. "Usulu'l-fiqh" is the science of the method of deriving the shari'ah laws -- it is the methodology of ijtiḥad. "Fiqh" is the practice of ijtiḥad -- it is the process of deriving the shari'ah laws. In usulu'l-fiqh, the mujtahid studies the method of ijtiḥad; in fiqh, he uses that method to derive the shari'ah laws. Thus, usulu'l-fiqh is the theory of ijtiḥad whereas fiqh is the practice of ijtiḥad.

In the following pages, I would like to give an outline of usulu'l-fiqh and fiqh to familiarize the

A. Usulu'l-Fiqh

The first and fore-most issue to be discussed in usulu'l-fiqh is about "the binding authority of conviction" (hujjiyyatu'l-qat'). The validity of conviction is determined by intellectual reasoning. This is the corner-stone of ijtiḥad; it means that the main basis of determining a source of shari'ah is to see whether or not one can achieve conviction about the laws derived from that source.

If a mujtahid finds that a particular source for example, the Qur' an, is such that he can achieve conviction about the laws derived from it, then such a source is considered by him as a valid and reliable source for ijtiḥad. This process divides the potential sources of shari'ah laws into .two: convincing and non-convincing

Convincing (Qat'i) & Non-Convincing (Dhanni) Sources:

In examining the potential sources of the shari'ah, a mujtahid may find two kinds of sources: either the source creates conviction about the laws derived from it or not. In the first case, it is known as dalil qat'i – a convincing proof, a cogent proof, a proof which creates conviction about the proven laws. In the second case, the source is named as dalil dhanni-- a presumptive proof, a proof based on mere assumption.

The mujtahid will consider the dalil qat'i (the convincing proof) as a valid source for the shari'ah laws. But he will not consider the dalil dhanni as such because dalil dhanni does not create conviction it just gives rise to assumption. A mujtahid cannot rely on a dhanni proof or source for deriving laws unless the shari'ah itself approves its use for this purpose. Below I will give

examples of two dhanni sources, one approved by the shari'ah and another disapproved by it. The First Example: Among the various categories of ḥadith, there is a category known as khabar wahid thiqah – a ḥadith reported by a single reliable person. Khabar wahid thiqah is a dhanni source. Why? Because a ḥadith reported by a single person does not create conviction about its contents even if the reporter is reliable; there is the chance of forgetting, misunderstanding or unintended misquotation on the part of the truthful, reliable reporter.

However, in spite of being a dhanni source, khabar wahid thiqah is considered by most of Shi'ah mujtahids as a valid source for the shari'ah laws. Why? Because the shari'ah itself has approved it. Verse six of Chapter forty nine (Surah al-Hujuraat, 6:49) says that if a single report (khabar wahid) comes from an unreliable (fasiq) reporter, then it should not be accepted

without further verification. The implication of this verse is that if a single report comes from a reliable (thiqah) reporter, then accept it without any need for further verification. Therefore, the mujtahids accept the single hadith narrated by a reliable reporter as a source for shari'ah laws because the Qur'an has implicitly approved it.

The Second Example: One of the dhanni sources for the shari'ah laws is qiyas. In Islamic laws, qiyas means analogy. In qiyas, you look at a shari'ah law for one issue and then apply it to another issue because of the similarity that exists between the two. Let us suppose that "wine is haram" is a proven law of the shari'ah. You then look at beer and say that 'beer is like wine'; and then you apply the law of wine on beer -- here the prohibition of beer has been proved on basis of qiyas.

Qiyas is a dhanni proof, it does not create conviction because one cannot always know the real reason ('illah in Arabic, ratio legis in Latin) of the shari'ah laws. And since the qat'i sources of the shari'ah have not approved the use of qiyas as a way of deriving Islamic laws, qiyas is not accepted by our mujtahids as a valid source for shari' ah laws.

However, according to most mujtahids, if the shari'ah has explicitly explained the ratio legis ('illah) of a particular law, then the mujtahid can generalize that law for other similar things by the means of qiyas. And in such cases, it is known as qiyas mansusi'l-illah -- an analogy .(based on the ratio legis explicitly explained (by the shari'ah

Legal (Shar'i) & Rational ('Aqli) Proofs:

All sources of the shari'ah, whether qat'i or dhanni, can be of two types: dalil shar'i and dalil 'aqli. Dalil Shar'i means a source which emanates from religious texts; we may translate it as "legal proof". Dalil 'aqli means a source which emanates from intellectual arguments

Dalil Shar'i: .1

Dalil Shar'i or the Legal Proof. The dalil shar'i consists of the Qur' an and the sunnah -- the two main sources of the shari'ah. The dalil shar'i is divided into two: (a) Oral Proof like the Qur'an and the hadith. (b) Non-Oral Proof like the practice of the ma'sum and his 'silent approval' of the action done in his presence. The silent approval of a ma'sum is known as "taqrir". However, even the non-oral proof reaches to us through the oral reports of the witnesses; therefore, for all practical purpose, both the oral and non-oral proofs are on the same level.

In order-to use the Legal Proofs in ijtiḥad, the mujtahid has to study the following issues in :Usulu'l-Fiqh

A) The Linguistic Problems:)

Some of the questions studied in this area are:

- i. Should I take all the words in dalil shar'i in their literal meaning?
- ii. Are metaphorical meanings of any use in dalil shar'i or not?
- iii. What are the imperative forms of words and what are their implications: does a command to do something automatically means the one is forbidden from its opposite?
- iv. What are the implications of the unconditional use of the word: do we generalize its contents?
- v. What is the implication of a conditional sentence: do we restrict its application?
- vi. What are the implications of a nass? (N ass means an oral proof containing a word which has only one meaning.)
- vii. What are the implications of a mujmal? (Mujmal means an oral proof containing a word which has more than one meaning and is used in those meanings equally.)
- viii. How do we use the context of the sentence to understand the mujmal word? For example, the word "yad" is used in the Qur'an in the verses of wudu, tayammum and punishment for theft. The word "yad" means palms, forearm and hand. So how do you interpret the word "yad" in such verses? Well, in the verse of wudu it is simple because we have a context; the verse says that wash your "yad up to the elbows". The context ("up to the elbow") helps us in understanding the meaning of "yad" in the verse of wudu.

B) The Problems of Authenticity:)

The mujtahid has also to study the ways of determining the authenticity of the Legal Proofs. This problem has given rise to the development of two sciences known as 'Ilmu 'r-Rijal and Dirayatu 'l-Hadith.

'Ilmu 'r-Rijal literally means 'knowledge about men,' it deals with the biography and character of the narrators of hadith. On basis of this knowledge, the 'ulama' classify the narrators in different categories; and these categories in turn help in classifying the hadith as authentic or acceptable or weak or fabricated or unreliable, etc. There are at least 38 different classifications of hadith.

Dirayatu 'l-Hadith means the science of hadith, and it deals mostly with the "chain of narration" as a whole instead of the individual narrators. This science helps the mujtahid in classifying certain narrators into groups and expedites their judgement about hadith narrated through those particular channels.

Examples of how a mujtahid comes to know of a Legal Proof:

- i. Tawatur: a narration reported by so many people that the very number of its reporters is enough to create conviction about the truth of its contents. A hadith or an account of a ma'sum's narrated in such a way is known as mutawatir.
- ii. Khabar wahid thiqah: a hadith narrated by a single reliable narrator. We have already mentioned khabar wahid thiqah earlier.
- iii. Siratun mutasharri'ah: the general attitude or practice of the religiously-minded companions of our Imams about a particular issue which is not found in the existing hadith literature. This 'general attitude or practice' is known as siratun mutasharri'ah. This sirah indicates that an oral proof must have existed during their time. For example, if the prominent companions of Imam Ja'far as-Sadiq (a.s.) did not attend the Friday prayers led by persons appointed by the rulers, then their attitude proves that the Friday prayer behind a person appointed by an illegitimate government is not valid otherwise, the Imam would have objected to the actions of his companions.
- iv. Ijma': 'means consensus. In Usulu'l-Fiqh, it refers to the consensus of the early Shi'ah 'ulama' on an issue which is not found in the existing hadith literature. Such an ijma' indicates that an oral proof must have existed in their time on which they based their ruling. In Shi'ah jurisprudence, ijma' is not by itself a source of the shari'ah; instead, it is a means of proving the existence of an oral proof which is now extinct

Dalil 'Aqli: .2

Dalil 'aqli means the intellectual reasoning or rational argument. In Usulu'l-Fiqh, dalil 'aqli means the intellectual prepositions which can be used as a source of deriving shari'ah laws.

However, the scope of intellectual prepositions in shari'ah is limited; it is not like ijthad bi 'r-ra'iy (application of independent opinion). The intellectual prepositions are only used for deriving the details of the shari'ah laws which exist. For example, one such intellectual preposition says, "If an act is made obligatory (wajib) by the shari'ah, then it automatically follows that its essential preliminaries are also wajib." This intellectual preposition is known in Arabic as "muqaddimatu 'l-wajib, wajibun", So if the shari'ah says, "Hajj is wajib," then the mujtahid can use the above mentioned intellectual preposition and derive the following laws: to travel to Mecca is wajib; to acquire the means of transportation is wajib, and to apply for a passport is wajib -- because without these preliminaries, hajj would be not be possible.

The intellectual prepositions which are used in ijthad are formed by studying, among other

things, the following relationships between the shari'ah laws:

- i. The relationship between haram (forbidden) and batil (invalid): if an act is haram, is it automatically batil also?
- ii. The relationship between haram (forbidden) and sahih (valid): can an act be valid but haram at the same time?
- iii. The relationship between legislation of a law (ja'l) and its application on an individual (fi'liyyah).
- iv. The relationship between the laws and those on whom they are to be applied.
- v. The relationship between laws and its essential preliminaries as explained in the example of .hajj

The Procedural Rules (Al-Usulu'l-'Amaliyyah)

After defining the sources of the shari'ah, the mujtahid has to set up a mechanism to solve the problems which have not been mentioned in the Qur'an and the sunnah. For example, when a mujtahid looks into his sources for the ruling on smoking, he does not find anything specific on it. In Usulu 'l-Fiqh, the mujtahid establishes some "procedural rules" or "practical principles" which he will use in such cases. These rules or principles are known as "al-usulu 'l-'amaliyyah". The Usulu 'l-'Amaliyyah are four: asalatu 'l-istishab; asalatu 'l-bara'ah; asalatu 'l-ihtiyat; and asalatu 't-takhyir.

- i. Asalatu 'l-Istishab means the principle or rule of continuity. This principle is used in a case in which a person has "a previous certainty" and "a present doubt" about the same thing. For example, there is a glass of water on my table. I am sure that it was ritually pure (tahir) in the morning, but now I doubt in its ritual purity. The principle of istishab says that act on your previous certainty and ignore your present doubt because doubt cannot over-ride certainty. This procedural rule has been taken from the following hadith of Imam Ja'far as-Sadiq (a.s.) who said in the answer to Zurarah that "doubt cannot over-ride certainty; it can be over-ridden only by another certainty."
- ii. Asalatu 'l-Bara'ah means the principle of exoneration. This procedural rule is applied in a case which has not been mentioned, explicitly or implicitly, in the sources of the shari'ah. Asalatu 'l-Bara'ah says that since the shari'ah has no opinion in this issue, the Muslims are free to do whatever they like. For example, when dealing with the question of smoking, the mujtahid does not find any opinion about it in the sources of shari'ah. In such a case, he would apply the principle of exoneration and say that "Smoking is not haram."
- iii. Asalatu 'l-Ihtiyat means the principle of precaution. This principle is applied in a case where

there is only partial knowledge about the law; that is, in cases of al-'ilmu 'l-ijmali -- where there is a semi-doubt and a semi-certainty. In such cases, the shari'ah expects us to act precautionarily. A most familiar example where this principle is applied is the case of Friday prayer during the major occultation of the Present Imam. We know that on Fridays, one of the two prayers -either Friday prayer or noon prayer- is definitely wajib, but we do not know which one. Application of asalatu 'l-ihtiyat in this case would mean that it is precautionarily better to pray both prayers to ensure that we have performed what was expected of us.

iv. The last procedural rule is known as Asalatu 't-Takhyir. Asalatu 't-Takhyir which means the principle of choice. This principle is applied in cases similar to that of asalatu 'l-ihtiyat, that is, semi-doubt and semi certainty. However, the principle of choice is applied where it is not possible to act on both sides of the issue. For example, when dealing with the noon or Friday prayer issue, some mujtahids may conclude that saying both prayers is not practical and specifying one without a clear evidence is not correct -- therefore, they apply the principle of .choice and say that one can say either Friday prayer or noon prayer

The Problem of Contradiction

The last topic to be discussed in Usulu 'l-Fiqh deals with the problem of contradiction in the proofs of the shari'ah. The mujtahid has to layout a mechanism which he will use in case he comes upon contradiction in his sources. Our Imams have given quite a few guidelines to solve such problems; as mentioned earlier, the ahadith dealing with these problems are known as al-akhbaru 'l-ilajiyyah.

The contradiction between the proofs can be found in different forms and has to be solved in different ways: (a) The contradiction between two oral-proofs can occur in following ways:

(a) The contradiction between two oral-proofs can occur in following ways:

i. A nass and a hadith with an "apparent" meaning: the former is preferred over the latter. For example, one hadith says, "Pray (salli) the mid-night prayer;" and another hadith says, "Mid-night prayer is recommended (mustahab)." The first example is of a hadith with an "apparent" meaning: it contains the word "pray" in imperative form which is used both for obligatory acts as well as for recommendation. The second example is of a hadith which is a nass: it contains the words "recommended" which only means that the act is recommended and not wajib. In this case, the nass will be preferred and used as a qualifier for the "apparent" hadith.

ii. One is of a general nature and the other is conditional: the conditional proof curbs the generalization of the former. For example, one hadith says, "If you break your oath, then you must free a slave;" whereas another hadith says, "If you break your oath, then you must free a

Muslim slave." The second hadith will be preferred and used to curb the general implication of the first hadith.

iii. One deals with the legislation of laws and the other restricts its application on certain individuals: the later over-rides the former. For example, one hadith says, "Respect the 'ulama;" while another hadith says, "Do not respect the fasiq 'ulama." The latter hadith limits the application of the former hadith.

(b) If two authentic ahadith contradict each other in such a way that it is not possible to reconcile them together, then both are to be discarded.

(c) If the contradiction is between "convincing oralproof" and an non-oral, non-convincing proof, then the former is preferred.

(d) If there is contradiction between a convincing proof and a dhanni proof on the one hand and a procedural rule on the other, then the former is accepted because the latter is applied only when there is no proof at all.

(e) If there is a contradiction between the principles of bara'ah and of istishab, then the latter is preferred.

B. Fiqh

In fiqh, the mujtahid derives the shari'ah laws from the sources determined by him in Usulu 'l-Fiqh.

All the issues discussed in fiqh are traditionally classified into four main groups. This classification was made by Muhaqqiq al-Hilli (d. 676 A.H.) in his famous work of jurisprudence Sharaya'u 'l-Islam, The following is a list of the subjects discussed in fiqh according to the traditional classification

Group One: 'Ibadat -- the Acts of Worship:

- Cleanliness
- Prayers
- Fasting
- Wealth Tax
- Annual Tax
- Pilgrimage
- Jihad
- Bidding the good and forbidding the evil

Group Two: 'Uqud --Mutual Contracts:

- Business transaction (bay')
- Mortgage (rahn)
- Bankruptcy (muflis)
- Limitation of one's legal competence (hajr)
 - Liability (ziman)
- Compromise in financial disputes (sulh)
- Partnership (shirkah)
- Silent Partnership in trade (mudarabah)
- Silent Partnership in agriculture (muzara'ah & musaqat)
 - Trusts (wadi'ah)
 - Lending ('ariyah)
 - Hiring (ijarah)
- Representing Others (wikalah)
 - Endowments (waqf)
 - Deeds of Gifts (hibah)
- Making of Wills (wisayah)
- Marriage (nikah)

Group Three: 'Iyqa'at --Unilateral Instigations:

- Divorce (talaq)
- Marital Disputes (khul', mubarat, dhihar, ly'an, iyla')
 - Emancipation of slaves (itq)
- Confessions in legal matters (iqrar)
 - Reward (ja'alah)
 - Vows (yamin)

Group Four: Ahkam -- Miscellaneous:

- Hunting and Slaughtering (sayd and dhibahah)
- Eating and Drinking (at'imah and ashribah)
- Misappropriation (ghasb)
- Neighbour's and Partner's first right to buy (shaf'ih)
- Revival of virgin land (ihya'u 'l-mawat)

- Inheritance (irth)
- Arbitration (qada)
- Testimony (shahadah)
- Punishment (hudud)
- Retaliation (qisas)
- Blood-money or indemnity for bodily injury (diyah).

This was the old classification which has been used with slight changes till the present time. Here I would like to present a modern classification of fiqhi issues done by the late Sayyid Muhammad Baqir as-Sadr in his al-Fatawa al-Wadihah. Ayatullah as-Sadr of Najaf, Iraq was a shining star among the new generation mujtahids; unfortunately the Shi'ah world was deprived of his knowledge and leadership when he was tortured and killed by Saddam's regime in 1981. According to his classification, which we hope will be adopted by the fiqhi circles of our time all the shari'ah laws are divided into four groups

Group One: 'Ibadat -- the Acts of Worship:

- Cleanliness
- Prayers
- Fasting
- Pilgrimage to Mecca

Group Two: Financial Laws:

(a) On Social Level:

- Zakat
- Khums
- Land Tax (khiraj)
- Tax on the non-Muslims under the protection of an Islamic government (jaziyyah)
- Spoils of war (anfal).

(b) On Individual Level:

- The laws about the means of possession:
 - o revival of virgin land
 - o hunting
 - o by-products of one's own property
 - o inheritance

- o loan
- o mortgage
- o deeds of gifts
- o etc.
- The laws about the use of possessions:
 - o Business transactions
 - o Exchange of commodities based on compromise
 - o Partnership
 - o Endowment
 - o Legacy
 - .o etc

Group Three: Personal Laws:

- Marriage
- Divorce
- Marital affairs
 - Eating
 - Drinking
 - Dressing
 - Vows
 - Oaths
 - Hunting
- Slaughtering
- Bidding good and forbidding evil
- .· etc

Group Four: Social Laws:

- Governance
 - Judiciary
 - Penal Code
 - Jihad
 - etc.

We may add in the list of "social laws" the new chapter started by Ayatullah al-Khu'i known as

Kitabu 'l-Mushtarikat (the Book of Public Property)' which deals with the laws about public .road, mosques, schools, welfare homes, rivers and streams, lakes and oceans, and mines

A Look into the Future of Ijtihad

The sciences of usulu 'l-fiqh and fiqh, like any other science, have evolved and expanded with the passage of time. But during the last hundred years, especially since the emergence of Shaykh Murtaza al-Ansari (1214-1281 A.H.), these two sciences have expanded greatly and rapidly. In light of this positive development, an idea has been floating among the experts of fiqh since the death of Ayatullah Husayn Burujardi about compartmentalization of ijtiḥād.

The first person who raised this issue was Shaykh 'Abdu 'l-Karim Ha'iri Yazdi (1276-1355 A.H.), who has the credit of revitalizing the Hawza 'lmiyyah of Qum. Shaykh Ha'iri's student, Shahid Murtaza Mutahhari brought this idea in a public forum for the first time in a speech at the seminar organized after the demise of Ayatullah Burujardi in early sixties. He says, "It is better that fiqh be divided into different compartments, and that each group, after attaining the general ability of ijtiḥād, should specialize in one particular area of fiqh."

This idea is very noble. But two recent developments in the Shi'ah world have made this idea into a necessity. First, the Islamic revolution in Iran has availed an unprecedented opportunity for the Shi'ah mujtahids to work on political, economic, social and moral problems which the Shi'ah community faces in Iran. Second, the large scale migration of Muslims to the West has given rise to issues and problems which were unheard of before. Expecting a single person to fully and comprehensively provide guidance for all problems is asking for too much. The only solution for the future of the shari'ah is nothing but the compartmentalization of ijtiḥād.

However, this is not something which can emerge or be created overnight; it has to take its due course. After a couple of generations, hopefully, we might have mujtahids specializing in four different areas of fiqh: 1. Acts of worship ('ibadat); 2. Economic problems; 3. Personal laws; 4. Social and Political issues. And the Shi'ahs of that time will be doing taqliq of either four different mujtahids or of a council of ijtiḥād composed of mujtahids specializing in their respective fields.

In short, the dynamic spirit inherited by the Shi'ah 'ulama from their Imams will keep the light of .ijtiḥād shining in one form or another. The future, al-hamdulillah, is bright

Note:

[1] Al-'Amili, Shaykh Hurr, Wasa'ilu 'sh-Shi'ah, vol. 18 (Beirut: Dar Ihyai 't-Turathi 'l-Islami,

