



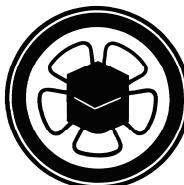
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THE WORLD
FEDERATION
OF KHOJA SHIA ITHNA-ASHERI MUSLIM COMMUNITIES

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In the name of God, the Most Gracious, the Most Merciful

The Importance of Taqlid

From the time a person wakes up until they go to sleep, they find themselves leading ever busy, complex lives. The functions which they are required to carry out to fulfill their basic necessities and the activities which they must engage with in order to address all of them are countless. It is impossible to believe that an average person would be able to become an expert in all areas of life in order to cater to all of their day-to-day needs, let alone even being able to enumerate them all.

On the other hand, a sensible person will ensure that they carry on with their daily routine, based on active choices they make with the sufficient requisite knowledge required to make an informed decision. If they do not have enough necessary information, chances are that they will seek it out – whether online, via their friends or ultimately from experts. Once they get an educated response, then they will press forward in life.

In short, we are constantly engaging with others (the act of *taqlīd*) to fully understand any aspect of life which we are battling before we act – except in very rare circumstances.

When it comes to religious queries, Islam has instructed its followers that they must learn the teachings and practical religious rulings (*ahkām*) so that they do not plunge into wrongdoing and thus, not fall victim to sin – and this is done by studying the sources of Islamic doctrines - the Quran and the teachings of Prophet Muḥammad ﷺ and the Imams ؑ of true guidance.

Just as with examples of daily living in which it is impossible for each one of us to be experts in every single area of life, it is similarly impossible for every Muslim to devote their life to extracting the religious teachings they need on a regular basis. Rather, such an extremely difficult task is only accomplished by a select few. One of the marāji' in Qom quotes a great Jurist (*faqīh*) as saying, “It is easier to dig a well with a needle than to become a Mujtahid!”

Therefore, those Muslims who do not have the expertise to delve into the Quran and the teachings of Prophet Muḥammad ﷺ and the Imams ؑ to extract the required teachings for them to be able to fulfill their religious obligations to Allah ﷺ must refer to those properly qualified experts who have this ability and have done the hard work to fulfill their obligations to Allah ﷺ and have attained the rank of being top authorities in their field.

The permissible form of *taqlīd*, in addition to having its basis in the religious teachings, is, in reality nothing other than the non-

expert following the advice of the expert and this is something completely logical and is seen in the world around us on various levels.

Dangers of Not Having Trained, Pious Scholars to Take Charge of the Community

1. **Foreign Influence:** History has proven that one of the barriers to foreign influence and colonialism to both the religion of Islam and the Muslims has been strict adherence to the wisdom of the well-grounded senior scholars (*mujtahidin*).
2. **Disorder and Confusion:** Another outcome can be the disintegration of the Muslim community and having them fall into disorder and confusion. By resorting to non-experts who themselves do not have the necessary requisites, as they will not be able to find suitable answers to the religious queries, they end up leaving themselves and the masses in a state of confusion or misguidance.
3. **The Spread of Personal Opinions:** We run the risk of each person or group creating their own brand of Islam – with everyone doing and believing whatever suits their taste, allowing impermissible innovations and heretical thoughts to be branded as the teachings of the Divine – potentially distancing people from the pure teachings of Islam.
4. **Invalidation of One's Religious Acts:** The one who does not take his guidance on how to perform religious acts of

worship from an accredited scholar, risks having all of his acts of worship towards Allah ﷺ nullified. In fact it is possible that he may even perform acts which go against the directives of Allah ﷺ as have been deduced by the scholars of Islam and their long years of research.

5. **Missing out on the Benefits of Worship:** All of the commandments of Islam are there for our benefit and the overall goodness of the individual and society. In the same light, all of the prohibitions have been clearly outlined because in their performance, there is harm for the human being and society. Thus, by following the religious injunctions, not only does a person save themselves from sins, but even more than that, they would keep themselves free from all sorts of corruption – thus creating a just, balanced and harmonious society for all.

Despite the clear evidence on necessity of *taqlīd*, there are some queries being raised in some quarters which need to be clarified.

1. There is no Conclusive Evidence for *Taqlīd*

Assertion

There is no strong evidence proving the necessity of *taqlīd*.

Response from STEPS

Based on the in-depth lessons in Islamic Jurisprudence of the late Āyatullāh al-Uz̄mā al-Sayyid Abū al-Qāsim al-Khū'ī ﷺ, the summary of the outcome of his discussions is that the necessity of *taqlīd* (referring to an expert in matters of religion) is perceived intuitively by all rational beings and is witnessed in all human societies – this is what is known as the rationally approvable line of conduct (*al-sīrah al-‘uqalā’iyyah*), and both the Quran and the *ahādīth* approve it and are a reminder (*tadhakkur*) of this basic reality.

We refer to two verses of the Quran for both the permissibility and obligation of *taqlīd* – known by the scholars as the Quranic verses of *nafr* (9:122) and *su’āl* or *dhikr* (21:7).

The first verse states:

﴿وَمَا كَانَ الْمُؤْمِنُونَ لِيَنْفِرُوا كَافَةً فَلَوْلَا نَفَرَ مِنْ كُلِّ فِرْقَةٍ مِّنْهُمْ طَالِبِيَّةً لِّيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ﴾ ١٢٣

Yet it is not for the faithful to go forth en masse.¹ But why should not² there go forth a group from each of their sections³ to become deeply learned in religion, and to warn their people when they return to them, so that they may beware?⁴

This is a verse in which a group of the believers were told that they must not go forth for *jihād* but rather, they needed to stay back and acquire knowledge so that they may be able to safeguard the intellectual frontiers and propagate the teachings of Islam which would be revealed to the Prophet ﷺ at any instance.

¹ That is, it is not feasible or reasonable for all the faithful to set out for Medina, the Prophet's city, for the study of the religious sciences in the presence of the *ma'sūm* ﴿،﴾; or as a second interpretation, when the Prophet ﷺ dispatches an expedition or a group of Muslims to go towards a battle, some people should remain behind with him in Medina. Or, according to a better interpretation by the late 'Allāmah Tābā'ī in *Tafsīr al-Mizān*, the first instance of the usage of *nafr* refers to those who move out for *jihād* and the second instance of the usage of the word *nafr* refers to people going to Medina to learn and return to warn their people. This interpretation goes much better with the context of the verses as remaining behind, as the second interpretation suggests, does not conform with the word *nafr*.

² This statement implies that they must go.

³ This obligation is upon a few, not on all, and thus, to go forth to learn Islamic sciences is what is known as *al-wājib al-kifā'i*. If a sufficient number of people enact this obligation, then the rest of the community is absolved of the responsibility, however if none or if very few carry out this obligation, however more are required, then the entire community are guilty and will be answerable to Allah ﷺ on the Day of Judgement.

⁴ Qur'an, Sūrah al-Tawbah (9), verse 122.

Some commentators of the Quran as well as Muslim jurists (*fuqahā'*) state that this verse proves it is an obligation to engage in *tafaqquh* or *ijithād* and that it also points to the obligation of *taqlīd* since warnings need to be taken seriously and acted upon – that is, to follow the verdicts of a trained scholar.

In regards to the history of revelation, it is mentioned that when the Prophet ﷺ would go forth to the battlefield in times of war, all of the Muslims, with the exception of the hypocrites and those who had valid reasons for why they could not take part, would accompany the Prophet ﷺ. Later on, verses would be revealed critiquing the hypocrites and more specifically those who did not go to the Battle of Tabūk. However in those circumstances, it is noted that the true believers took the responsibility of going to the battlefield even more seriously and were present whenever they were required – even in the battles in which the Prophet ﷺ himself was not able to take part. The historical sources note that all of the believers went forth, leaving the Prophet ﷺ alone in Medina. It was at this juncture that the above verse was revealed which announced to the community that, other than in cases of extreme necessity, it was not advisable that all of the Muslims should go to the battlefield. Rather, a group of them must stay back in Medina and busy themselves with learning the teachings and injunctions of Islam from the Prophet ﷺ directly and so that when their compatriots return from the war, they can be taught and be further guided as to their religious responsibility.

We may look at this verse in a different way as well, as it may not be talking about people of Medina going forth to acquire the religious knowledge. Rather, it can be argued that it is addressing people of other areas who wanted to go forth for *jihād*. If we understand this verse in this light then it is saying that a group of the Muslims who live in other regions (outside of Medina) should go for *jihād* and a group should go to Medina to learn knowledge and go back to their people to teach them. In fact, the verse which follows and reads:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا قاتِلُوا الَّذِينَ يَلْوَنُكُم مِّنَ الْكُفَّارِ وَلْيَجِدُوا فِيْكُمْ غِلْظَةً وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ ﴾١٢٣

O you who have faith! Fight the (aggressive) faithless who are in your vicinity, and let them find severity in you, and know that Allah is with the Godwary.⁵

further adds credence to this opinion as it is an order to the Muslims in all areas to go forth for *jihād* in their region, however, a group must go to Medina to learn.

The second verse which can be extended to understand the necessity of *taqlīd* - that is, approaching those who have greater knowledge in the area of Islamic studies and to base our acts of worship and other areas of life on their in-depth research and understanding is the following:

⁵ Qur'an, Sūrah al-Tawbah (9), verse 123.

﴿وَمَا أَرْسَلْنَا قَبْلَكَ إِلَّا رِجَالًا نُوحِي إِلَيْهِمْ فَسُئَلُوا أَهُمْ أَهْلَ الْذِكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾^⑦

We did not send [any apostles] before you, except as men to whom We revealed⁶. Ask the People of the Reminder (*ahl al-dhikr*) if you do not know.⁷

This verse and the term *ahl al-dhikr* which appears twice in the Quran, in Sūrat al-Nahl (16), verse 43 and Sūrat al-Anbiyā' (21), verse 7, is understood in multiple ways by the commentators of the Quran.

The clear and apparent reading of this verse tells us that the *people of the reminder*, the *ahl al-dhikr*, are the scholars from the *people of The Book* (*ahl al-kitāb*) - the Jews and the Christians and this is specific to the context behind the revelation of this verse.

However, we can extract another meaning of this verse, based on the *ahādīth* which show us that the most excellent instance of the *ahl al-dhikr*, as contained in this verse is that they are exclusively the Ahl al-Bayt ﷺ of the Prophet ﷺ.

There are multiple examples in the supplications (*ad'iyya*) and visitation texts (*ziyārāt*) which point to the Ahl al-Bayt ﷺ as being the best and most perfect manifestation of the *ahl al-dhikr*. This is also seen in various traditions and the following *hadīth* is one example

⁶ This is a response to the doubt raised by the polytheists (mushrikin) as why has God sent a human being as His messenger, instead of an angel?

⁷ Qur'an, Sūrah al-Anbiyā' (21), verse 7.

from the Shī‘ī sources, related by Abā al-Hasan, ‘Alī b. Mūsā al-Ridā


قال سمعت أبا الحسن عليه السلام يقول في قول الله تعالى
 ﴿فَسَأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾ قال: نحن هم.

I heard Aba al-Hasan [Imam ‘Alī ibn Mūsā al-Ridā] peace be upon him, say: ‘In regards to the words of Allah, the Most High, *«So then as the people of the reminder if you do not know»* that he [the Imam ] said: We are they [the *ahl al-dhikr*].’⁸

From the Ahl al-Sunnah sources we see the following tradition:

عن الحارث قال: سألت علياً عن هذه الآية: *﴿فَاسْأَلُوا أَهْلَ الذِّكْرِ...﴾*? فقال: والله إنا لنحن أهل الذكر، نحن أهل العلم، ونحن معدن التأويل والتنزيل، ولقد سمعت رسول الله صلى الله عليه وآله وسلم يقول: أنا مدينة العلم وعلى بابها، فمن أراد العلم فليأتيه من بابه.

Al-Hārith said that, “I asked ‘Alī (ibn Abī Tālib) concerning this verse, *«So then as the people of the reminder if you do not know»*, and he said: “I swear by God that indeed, most

⁸ Baṣā’ir al-Darajāt, pg. 60, trad. 12.

definitely we are the people of the reminder (*ahl al-dhikr*); we are the people of knowledge (*ahl al-'ilm*); we are the source of the esoteric interpretation of the Quran (*al-ta'wil*) and Quranic revelation (*al-tanzil*) and indeed I heard the Messenger of Allah, prayers of Allah be upon him and his family say, “I am city of knowledge (*madīnatul 'ilm*) and 'Ali is its door (*bābuhā*). Thus, whoever desires the knowledge (*al-'ilm*) must seek it from its door.”⁹

In his in-depth discussions on proving the obligation to enact *taqlid* (for those who have not reached to the stage of *ijtihād*), the late Āyatullāh Sayyid Abū al-Qāim al-Khū'i ﷺ refers to both of these verses as proof for the **permissibility** and **obligation** of enacting *taqlid*.¹⁰

Many *ahādīth*, which have been deemed as being *mustafid*¹¹, in fact almost reaching to the level of being considered as *mutawātir*¹², demonstrate the legitimacy and need for *taqlid*. In addition, consensus

⁹ Nayshabūrī, 'Ubayd Allah b. 'Abd Allah b. Alīmad al-Haskani al-, *Shawāhid al-Tanzil li Qawā'id al-Tafdhil*, vol. 1, pg. 334.

¹⁰ Refer to *Mausū'at al-Imam al-Khū'i*, vol. 1, pp. 64-68 for further details.

¹¹ *Al-Mustafid* (Arabic: مُسْتَفِيد) *hadīth* is a type of solitary tradition (any *hadīth* that is not *al-mutawātir*) with at least three narrators in each level of narration.

¹² *Al-Mutawātir* (Arabic: مُتَوَاتِر) *hadīth* is one that has different numerous chains of narrators, such that it is practically impossible for all those chains to collude in giving a false report. Such a *hadīth* gives us an assurance that it was really issued by an infallible ﷺ. Such *hadīth* are reliable both with respect to the principles of beliefs and *fiqh* or rulings of *shari'a*.

(*ijmā'*) has also been invoked as supporting evidence for engaging in *taqlīd*. It should be noted that a minority, especially amongst the *akhbāris*, have opposed *taqlīd* but the *usūlis*¹³ have conclusively rebutted their arguments.

2. The Primary Ḥadīth Permitting Taqlīd is Weak

Assertion

The “famous” tradition which conveys to the Shī'a that they should perform *taqlīd* is weak. This lengthy tradition, found in the commentary (*tafsīr*) of the Quran attributed to Imam Ḥasan ibn ‘Alī al-‘Askarī ﷺ and more specifically the part in RED near to the end of the tradition is the most contentious part of the *hadīth*:

قال الإمام عليه السلام [ثم] قال الله عَزَّوجلَّ: يا مُحَمَّدُ وَ مَنْ هُوَ لَكَ
 اليهودُ أُمِيُّونَ لَا يَقْرَءُونَ [الْكِتَابَ] وَ لَا يَكْتُبُونَ، كَالْأَمْيَانِ
 مَنْسُوبٌ إِلَى أُمَّهِ أَيْ هُوَ كَمَا خَرَجَ مِنْ بَطْنِ أُمِّهِ لَا يَقْرَأً وَ لَا
 يَكْتُبُ لَا يَعْلَمُونَ الْكِتَابَ الْمُنْزَلَ مِنَ السَّمَاءِ وَ لَا الْمُكَذَّبَ

¹³ *Akhbāris* (Arabic: أخباريون) are a group of *Imāmiyya* jurists who take the only source of *fiqh* (the deduction of *shari'a* laws) to be *akhbār* (narrations and *hadīth* by the Prophet ﷺ and the Imams ﷺ). The group emerged in the 11th/17th century and they disallowed the method of *ijtihād* and principles of jurisprudence for the deduction of *shari'a* laws. They were opposed to *Uṣūlī* scholarship who require the method of *ijtihād* and principles of jurisprudence for the deduction of *shari'a* laws.

بِهِ، وَ لَا يُمِيزُونَ بَيْنَهُمَا إِلَّا أَمَانِيًّا أَيْ إِلَّا أَنْ يُقْرَأُ عَلَيْهِمْ وَ يُقَالَ
 لَهُمْ: [إِنَّ] هَذَا كِتَابُ اللَّهِ وَ كَلَامُهُ، لَا يَعْرِفُونَ إِنْ قُرِئَ مِنَ
 الْكِتَابِ خِلَافٌ مَا فِيهِ وَ إِنْ هُمْ إِلَّا يَظْنُونَ أَيْ مَا يَقُولُ لَهُمْ
 رُؤْسَاوُهُمْ - مِنْ تَكْذِيبِ مُحَمَّدٍ ﷺ فِي نُبُوَّتِهِ، وَ إِمَامَةِ عَلِيٍّ عَلَيْهِ السَّلَامُ
 سَيِّدِ عِترَتِهِ، وَ هُمْ يُقْلِدُونَهُمْ مَعَ أَنَّهُ مُحْرَمٌ عَلَيْهِمْ تَقْلِيدُهُمْ.

Imām Ḥasan al-‘Askarī, peace be upon him, said: ‘Then Allah, the Grand and Majestic, said, “O [Prophet] Muḥammad! And among these Jews are “illiterates” who do not know how to read or write just like an ‘*ummī*’, which is actually associated with ‘*umm*’ - that is as if one has just been born and he does not know how to read or write; (who does not know the Book) - the one which has come down from the sky and what it falsifies, and cannot differentiate between the two; (but only lies) – meaning that unless someone reads it for him and says to him that this is the Book of Allah and His Word, he does not know whether that which is being read to him is opposite to what is in the Book or not; (and they do but conjecture) meaning, what these chiefs are saying to him in falsification of Muḥammad, prayers of Allah be upon him and his family, in his prophethood, and the *imamate* of ‘Alī, peace be upon him, the Imam of his progeny,

and they are emulating them (doing *taqlīd* of) although it is forbidden to them to be in their *taqlīd*.

قالَ فَقَالَ رَجُلٌ لِلصَادِقِ عَلَيْهِ السَّلَامُ: فَإِذَا كَانَ هُؤُلَاءِ الْعَوَامُ مِنَ الْيَهُودِ لَا يَعْرِفُونَ الْكِتَابَ إِلَّا مَا يَسْمَعُونَهُ مِنْ عُلَمَائِهِمْ لَا سَيِّلَ لَهُمْ إِلَى غَيْرِهِ، فَكَيْفَ ذَمَّهُمْ بِتَقْلِيدِهِمْ وَالْقَبُولِ مِنْ عُلَمَائِهِمْ وَهُلْ عَوَامُ الْيَهُودِ إِلَّا كَعَوَامًا يُقَلِّدُونَ عُلَمَاءَهُمْ فَإِنْ لَمْ يَجُزْ لِأُولَئِكَ الْقَبُولُ مِنْ عُلَمَائِهِمْ، لَمْ يَجُزْ لِهُؤُلَاءِ الْقَبُولُ مِنْ عُلَمَائِهِمْ.

He [Imam Ḥasan al-‘Askarī, peace be upon him] said: ‘A person said to al-Ṣādiq, peace be upon him: ‘These general people from among the Jews did not know the Book until such time as it was read out to them from their scholars, and they do not have any way other than this, then what is the reason for their condemnation of being in *taqlīd* and accepting (the rulings) of their scholars? Are these laity amongst the Jews not as our people [the Muslims] who also do *taqlīd* of their religious scholars? For if it is not permissible for them (the Jewish people) to accept what they get from their scholars, then it is not permissible for us (the Muslims) to accept what we get from our scholars?’

فَقَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: بَيْنَ عَوَامِنَا وَ عُلَمَائِنَا وَ بَيْنَ عَوَامَ الْيَهُودِ وَ عُلَمَائِهِمْ فَرْقٌ مِنْ جِهَةٍ وَ تَسْوِيَةٌ مِنْ جِهَةٍ، أَمَّا مِنْ حَيْثُ إِنَّهُمْ اسْتَوْهُ، فَإِنَّ اللَّهَ قَدْ ذَمَّ عَوَامَنَا بِتَقْلِيدِهِمْ عُلَمَاءَهُمْ كَمَا [قَدْ] ذَمَّ عَوَامَهُمْ. وَ أَمَّا مِنْ حَيْثُ إِنَّهُمْ افْتَرَقُوا فَلَا.

He [Imam Ḥasan al-Askarī, peace be upon him] said: ‘Between our people and our religious scholars, and the lay Jews and their religious scholars there is a difference as well as a similarity. For what is similar between the two, Allah has also condemned the Muslims for emulating [engaging in their *taqlīd* of] their religious scholars just like their people [the Jews] having been condemned, whether there is a difference between them or not.

قَالَ: بَيْنِ لِي ذَلِكَ يَا ابْنَ رَسُولِ اللَّهِ! قَالَ عَلِيُّ بْنُ أَبِي طَالِبٍ: إِنَّ عَوَامَ الْيَهُودِ كَانُوا قَدْ عَرَفُوا عُلَمَاءَهُمْ بِالْكَذِبِ الصَّرَاحِ، وَ بِأَكْلِ الْحَرَامِ وَ بِالرُّشَا، وَ بِتَغْيِيرِ الْأَحْكَامِ عَنْ وَاجِبِهَا بِالشَّفَاعَاتِ وَ الْعِنَايَاتِ وَ الْمُصَانَعَاتِ. وَ عَرَفُوهُمْ بِالتَّعَصُّبِ الشَّدِيدِ الَّذِي يُفَارِقُونَ بِهِ أَدْيَانَهُمْ وَ أَنَّهُمْ إِذَا تَعَصَّبُوا أَرَأُوا حُقُوقَ مَنْ تَعَصَّبُوا عَلَيْهِ،

وَ أَعْطَوْا مَا لَا يَسْتَحِقُهُ مَنْ تَعَصَّبُوا لَهُ مِنْ أَمْوَالِ غَيْرِهِمْ وَ
ظَلَمُوهُمْ مِنْ أَجْلِهِمْ.

He said: ‘Explain this to me O son of the Messenger of Allah.’ To this, he [the Imam, peace be upon him] said: ‘The lay people of the Jews used to be aware that their religious scholars normally used to lie to them, eat that which is unlawful, take bribes and amend the orders of obligations by someone’s intercession or as a favour to someone. They knew them that they used to be extremely prejudicial against their enemies, and the one that they were prejudicial against, they would disgrace him and deprive him of his rights, and the one they used to be prejudicial for, they would give him wealth that he did not deserve from the wealth of others who they were prejudicial against, and were unjust and oppressive to him.

وَ عَرَفُوهُمْ بِأَنَّهُمْ يُقَارِفُونَ الْمُحَرَّمَاتِ، وَ اضْطُرُّوا بِمَعَارِفِ
قُلُوبِهِمْ إِلَى أَنَّ مَنْ فَعَلَ مَا يَفْعَلُونَهُ فَهُوَ فَاسِقٌ، لَا يَجُوزُ أَنْ
يُصَدِّقَ عَلَى اللَّهِ، وَ لَا عَلَى الْوَسَائِطِ بَيْنَ الْخَلْقِ وَ بَيْنَ اللَّهِ،
فِلِذَلِكَ ذَمَّهُمْ [اللَّهُ] لَمَّا قَلَّدُوا مَنْ قَدْ عَرَفُوا، وَ مَنْ قَدْ عَلِمُوا
أَنَّهُ لَا يَجُوزُ قَبُولُ خَبِيرَةٍ، وَ لَا تَصْدِيقَةٌ فِي حِكَايَاتِهِ، وَ لَا الْعَمَلُ

إِنَّمَا يُؤْدِيْهِ إِلَيْهِمْ عَمَّنْ لَمْ يُشَاهِدُوهُ، وَ وَجَبَ عَلَيْهِمُ النَّظَرُ
 بِأَنْفُسِهِمْ فِي أَمْرِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّدَ اللَّهُ عَلَيْهِ سَلَامٌ إِذْ كَانَتْ دَلَائِلُهُ أَوْضَحَ مِنْ أَنْ
 تَخْفَى، وَ أَشَهَرَ مِنْ أَنْ لَا تَظْهَرَ لَهُمْ.

They knew them that they used to be unlawful in their deeds, and they also knew in their hearts that their deeds are mischievous, and there is no permission for it to be true with Allah, and they did not accept the intermediacy of the Prophet between people and Allah, and that is why they were condemned by Allah when they did *taqlid* even being aware of the (corruption) their scholars as well as that they were not permitted to take news (decrees) from them, nor were they allowed to verify their speech about one whom they had not seen, and it was obligatory for them to see for themselves in the affair of the Messenger of Allah, prayers of Allah be upon him and his family, whether the evidence was clear or deficient, whether it was apparent or not clear to them.

وَ كَذَلِكَ عَوَامٌ أَمْتَنَا إِذَا عَرَفُوا مِنْ فُقَهَائِهِمُ الْفِسْقَ الظَّاهِرَ وَ
 الْعَصِيَّةَ الشَّدِيدَةَ وَ التَّكَالُبَ عَلَى حُطَامِ الدُّنْيَا وَ حَرَامِهَا، وَ
 إِهْلَاكَ مَنْ يَتَعَصَّبُونَ عَلَيْهِ وَ إِنْ كَانَ لِإِصْلَاحٍ أَمْرِهِ مُسْتَحْقًا، وَ
 بِالْتَّرْفِيِّ بِالْبَرِّ وَ الْإِحْسَانِ عَلَى مَنْ تَعَصَّبُوا لَهُ، وَ إِنْ كَانَ لِلْإِذْلَالِ

وَ الْإِهَانَةِ مُسْتَحْقًا. فَمَنْ قَلَدَ مِنْ عَوَامًا [من] مِثْلَ هُؤُلَاءِ
 الْفُقَهَاءِ فَهُمْ مِثْلُ الْيَهُودِ الَّذِينَ ذَمَّهُمُ اللَّهُ تَعَالَى التَّقْلِيدِ
 لِفَسْقَةٍ فُقَهَائِهِمْ.

And it is the same for the people of our nation (the Muslims) when they are aware that their jurists are indulging in open mischief, and are extremely prejudicial and scramble for this world and its prohibition, and destroy those whom they are prejudicial against although he was deserving to be corrected by good advice; and the one they are prejudicial to, they treat him with goodness and favours although he is deserving to be disgraced and punished. Whoever from the people were to do *taqlid* of these kind of jurists are like those Jews who have been condemned by Allah for doing *taqlid* of their mischievous Jurists.

فَأَمَّا مَنْ كَانَ مِنَ الْفُقَهَاءِ صَائِنًا لِنَفْسِهِ، حَافِظًا لِدِينِهِ، مُخَالِفًا
 لِهَوَاهُ، مُطِيعًا لِأَمْرِ مَوْلَاهُ فَلِلْعَوَامِ أَنْ يُقْلِدُوهُ. وَ ذَلِكَ لَا يَكُونُ
 إِلَّا [في] بَعْضِ فُقَهَاءِ الشِّيَعَةِ لَا جَمِيعِهِمْ، فَإِنَّ مَنْ رَكِبَ مِنْ
 الْقَبَائِحِ وَ الْفَوَاحِشِ مَرَاكِبَ فَسَقَةٍ فُقَهَاءِ الْعَامَّةِ فَلَا تَقْبِلُوا
 مِنْهُمْ عَنَّا شَيْئًا، وَ لَا كَرَامَةً لَهُمْ، وَ إِنَّمَا كَثُرَ التَّخْلِيطُ فِيمَا

يَتَحَمَّلُ عَنَا أَهْلَ الْبَيْتِ لِذُلْكَ، لِأَنَّ الْفَسَقَةَ يَتَحَمَّلُونَ عَنَّا، فَهُمْ يُحرِّقُونَهُ بِأَسْرِهِ لِجَهَلِهِمْ، وَ يَضَعُونَ الْأَشْيَاءَ عَلَى غَيْرِ [مَوَاضِعِهَا] وَ [وُجُوهِهَا لِقِلَّةِ مَعْرِفَتِهِمْ وَ آخَرِينَ يَتَعَمَّدُونَ الْكَذِبَ عَلَيْنَا لِيَجْرُوا مِنْ عَرَضِ الدُّنْيَا مَا هُوَ زَادُهُمْ إِلَى نَارِ جَهَنَّمَ.

But whoever from the jurists (*al-fuqahā*) who control his self, protects his religion, opposes his desires, is obedient to the order of his Master, then the people are free to follow him (engage in his *taqlīd*). And this [level] is [something which only] some of the jurists of the Shī'a will attain - not all of them. And those of them, who indulge in ugly deeds and immorality like the mischievous jurists of the general population of the Muslims, do not accept anything from him, nor give him any reverence. There are many of them who have mixed their words with ours, the people of the household (*ahl al-bayt*). When our words reach them, they alter them by their ignorance, and they place them wrongly due to their deficient understanding whilst the others deliberately forge lies against us in order to accumulate from this world, and this will be their provision to the Fire of Hell.

وَ مِنْهُمْ قَوْمٌ نُصَابُ لَا يَقْدِرُونَ عَلَى الْقَدْحِ فِيهَا، يَتَعَلَّمُونَ بَعْضَ عُلُومِنَا الصَّحِيحَةِ فَيَتَوَجَّهُونَ بِهِ عِنْدَ شِيعَتِنَا، وَ

يَنْتَقِصُونَ [بِنَا] عِنْدَ نُصَابِنَا ثُمَّ يُضِيفُونَ إِلَيْهِ أَضْعَافَهُ وَأَضْعَافَ أَضْعَافِهِ مِنَ الْأَكَاذِيبِ عَلَيْنَا الَّتِي نَحْنُ بِرَاءُ مِنْهَا، فَيَتَقَبَّلُهُ [الْمُسْلِمُونَ] الْمُسْتَسِلِمُونَ مِنْ شِيعَتِنَا عَلَى أَنَّهُ مِنْ عُلُومِنَا فَضَلُّوا وَأَضَلُّوْهُمْ وَهُمْ أَضَرُّ عَلَى ضُعَفَائِهِ شِيعَتِنَا مِنْ جَيْشِ يَزِيدَ عَلَى الْحُسَينِ بْنِ عَلَيٍّ عَلَيْهِ السَّلَامُ وَأَصْحَابِهِ فِإِيمُونْ يَسْلُبُونَهُمُ الْأَرْوَاحَ وَالْأُمُوالَ، وَلِلْمُسْلِمِينَ عِنْدَ اللَّهِ أَفْضُلُ الْأَحْوَالِ لِمَا لَحِقَّهُمْ مِنْ أَعْدَائِهِمْ.

And among them is a group of *nāṣibīs* who are not able to malign us. They learn some of our knowledge correctly, and then take it to our *shī'a*. They fault us when they are with those who hate us, then they make additions to it and additions to the additions by attributing lies to us - from which we distance ourselves. The Muslims accept this from them and these lies are accepted by our *shī'a* as being from our knowledge. And so, they go astray and lead others astray. And they damage our weak minded *shī'a* more than the damage that was done by the army of Yazid to al-Husayn bin 'Alī, peace be upon him, and to his companions, for they [Yazid and his army] took their lives and their wealth, and this destruction, with Allah, is greater in condition by the loss of their rights from their enemies.

وَ هُؤلَاءِ عُلَمَاءُ السَّوْءِ النَّاصِبُونَ الْمُشَبِّهُونَ بِأَنَّهُمْ لَنَا مُوَالُونَ،
 وَ لِأَعْدَائِنَا مُعَادُونَ يُدْخِلُونَ الشَّكَ وَ الشُّبُهَةَ عَلَى ضُعْفَاءِ
 شِيَعَتِنَا، فَيُضِلُّونَهُمْ وَ يَمْنَعُونَهُمْ عَنْ قَصْدِ الْحَقِّ الْمُصِيبِ。[لَا
 جَرَمٌ] أَنَّ مَنْ عَلِمَ اللَّهُ مِنْ قَلْبِهِ مِنْ هُؤلَاءِ الْعَوَامِ أَنَّهُ لَا يُرِيدُ
 إِلَّا صِيَانَةَ دِينِهِ وَ تَعْظِيمَ وَلِيِّهِ، لَمْ يَتُرُكْهُ فِي يَدِ هَذَا الْمُلَبِّسِ
 الْكَافِرِ。وَ لِكِنَّهُ يُقْيِضُ لَهُ مُؤْمِنًا يَقْفُ بِهِ عَلَى الصَّوَابِ، ثُمَّ
 يُوْفَقُهُ اللَّهُ تَعَالَى لِلْقَبُولِ مِنْهُ، فَيَجْمَعُ لَهُ بِذِلِّكَ خَيْرَ الدُّنْيَا وَ
 الْآخِرَةِ، وَ يَجْمَعُ عَلَى مَنْ أَضَلَّهُ لَعْنَ الدُّنْيَا وَ عَذَابَ الْآخِرَةِ.

These evils scholars of the *nāṣibīs* who portray themselves as our friends and the enemies of our enemies, create doubts and confusion in our *shī'a* with infirm faith and lead them astray and prevent them from walking on the right path. But, about whom Allah knows what is in their hearts, from these common people, that He does not want anything, except to safeguard his religion and revere His guardian, He does not leave him in the hands of these infidels in disguise. But, He sends to him a believer who shows him the right way, and then Allah inclines him to accept his advice, and then collects for him for this good of this world and the hereafter, and

collects for the one who led him astray, curses in this world and punishment in the hereafter.

ثُمَّ قَالَ عَلَيْهِ السَّلَامُ: [قَالَ] رَسُولُ اللَّهِ عَلَيْهِ السَّلَامُ: شِرَارُ عُلَمَاءِ أُمَّتِنَا الْمُفْضِلُونَ عَنَّا، الْقَاطِعُونَ لِلنُّطُرِ إِلَيْنَا، الْمُسَمُّونَ أَضْدَادَنَا بِأَسْمَائِنَا، الْمُلْقِبُونَ أَضْدَادَنَا بِالْقَابِنَا، يُصَلِّونَ عَلَيْهِمْ وَ هُمْ لِلَّعْنِ مُسْتَحْقُونَ، وَ يَلْعَنُونَا وَ نَحْنُ بِكَرَامَاتِ اللَّهِ مَغْمُورُونَ، وَ يَصَلَّوْاتِ اللَّهِ وَ صَلَوَاتِ مَلَائِكَتِهِ الْمُقَرَّبِينَ عَلَيْنَا عَنْ صَلَوَاتِهِمْ عَلَيْنَا مُسْتَخْنُونَ.

Then he [Imam Ḥasan al-‘Askarī, peace be upon him] said: ‘The Messenger of Allah, prayers of Allah be upon him and his family, said: ‘The most mischievous of scholars is the one who leads people away from us and cuts off from our ways, calls our adversaries with our names, refers to our adversaries with our titles, sends salutations upon them when they are deserving of curses, and curses us when we have been honoured by Allah by the salutations of Allah and the salutations of His angels of proximity on us – and we are unconcerned with their salutations to us.’¹⁴

¹⁴ *Tafsīr of the Qur'an* attributed to Imam Ḥasan al-‘Askarī ﷺ.

Response from STEPS

There are two schools/methodologies of the Shi'i jurists when it comes to *hadīth* validation:

- a) Jurists who validate a *hadīth* solely based on the reliability of the reporter (the method espoused by Sayyid al-Khū'i);
- b) Jurists who validate a *hadīth* by establishing the reliability of the report based on several validating indicators (for example, if *mashhūr* acts on weak *hadīth*).

Even when scholars employ the methodology advocated by Sayyid al-Khū'i and through such rigorous research, weaken any *hadīth*, they still analyze its content because it is valid as corroborative proof, but **not** authoritative proof.

Therefore, in our current discussion, other textual and rational evidence has to be evaluated before a conclusion can be made about types and permissibility of *taqlīd* other than being able to rely on the above quoted tradition.

The late Āyatullāh al-Khū'i posits, in his *Maūsū'at al-Imam al-Khū'i*, vol. 1, pg. 69, that:

الروايات الدالة على جواز العمل بالتقليد و حجية الفتوى في الفروع، وهي كثيرة باللغة حد التواتر الإجمالي وإن لم تكن متواترة مضموناً. وبها يظهر أن الأدلة اللفظية و السيرة و العقل مطبقة على جواز التقليد و حجية فتوى الفقيه

The narrations (*al-riwāyāt*) which prove the permissibility of acting by *taqlīd* and the binding authority of the ruling (*al-fatwā*) in matters of the branches of the religion (*al-furū'* *al-dīn*) are many as to reach to the level of overall *tawātur* [on this issue], though they may not be *mutawātir* in words. Thus, it is clear that the scriptural and *hadīth* texts, authoritative conduct of rational individuals [sanctioned by the *sharī'ah*] and in fact, even logical arguments, conclusively provide the permissibility of acting by *taqlīd* and the binding authority of the *fatwā* in terms of the branches of the religion (*al-furū'* *al-dīn*).

Thus, the above *hadīth* from Imam Ḥasan al-‘Askarī ﷺ even if weak, can still be used as **corroborative** evidence because Āyatullāh al-Khū'i ـ divides the many *hadīth* which speak about *taqlīd* into several groups¹⁵:

- i) Those *hadīth* which guide the *Shī'a* to refer to specific scholars amongst the companions such as Zakariyya b. Adam, Yūnus b. ‘Abd al-Rahmān, ‘Uthmān b. Sa‘id al-‘Amrī and others:

وَ عَنْ مُحَمَّدِ بْنِ عَبْدِ اللَّهِ الْحِمَرِيِّ وَ مُحَمَّدِ بْنِ يَحْيَى
جَمِيعاً عَنْ عَبْدِ اللَّهِ بْنِ جَعْفَرٍ الْحِمَرِيِّ عَنْ أَحْمَدَ بْنِ إِسْحَاقَ

¹⁵ *Maūṣū'at al-Imam al-Khū'i* ـ, vol. 1, pg. 70-72.

عَنْ أَبِي الْحَسَنِ عَلَيْهِ السَّلَامُ قَالَ: سَأَلْتُهُ وَ قُلْتُ مَنْ أُعَامِلُ (وَ عَمَّنْ)
 آخُذُ وَ قَوْلَ مَنْ أَقْبِلُ؟ فَقَالَ: الْعَمْرِيُّ ثِقَتِي فَمَا أَدَى إِلَيْكَ عَنِي
 فَعَنِي يُؤَدِّي وَ مَا قَالَ لَكَ عَنِي فَعَنِي يَقُولُ فَاسْمَعْ لَهُ وَ أَطِعْ
 فَإِنَّهُ الثَّقَةُ الْمَأْمُونُ. قَالَ: وَ سَأَلْتُ أَبَا مُحَمَّدٍ عَلَيْهِ السَّلَامُ عَنْ مِثْلِ
 ذَلِكَ فَقَالَ: الْعَمْرِيُّ وَ ابْنُهُ ثِقَتَانِ فَمَا أَدَى إِلَيْكَ عَنِي فَعَنِي
 يُؤَدِّيَانِ وَ مَا قَالَا لَكَ فَعَنِي يَقُولَانِ فَاسْمَعْ لَهُمَا وَ أَطِعْهُمَا
 فَإِنَّهُمَا الثَّقَتَانِ الْمَأْمُونَانِ

From Muḥammad b. ‘Abdallāh al-Himyarī and Muḥammad b. Yahyā both from ‘Abdallāh b. Ja‘far al-Himyarī who said from Aḥmad b. Ishāq from Abī al-Ḥasan, peace be upon him, that he said: I asked him and said: Whom do I take [Islamic guidance and directives from]? And whose words do I accept? So he [Imam al-Ḥādī, peace be upon him] said to him: Al-‘Amrī is my trustee (*thiqa*), so what he gives you on my behalf then his giving is truly on my behalf, and what he says to you on my behalf, then his saying is truly on my behalf, so listen to him and obey him, for he is both trustworthy (*thiqa*) and reliable. And Abū ‘Alī also informed me that he had asked Abā Muḥammad (al-‘Askarī), peace be upon him, about the same matter, so he said to him: Al-‘Amrī and his son are both trustees (*thiqa*), so what they give to you on my

behalf then their giving is truly on my behalf, and what they say to you on my behalf then their saying is truly on my behalf, so listen to them and obey them, for they are both trustworthy (*thiqā*).¹⁶

- ii) Those *hadīth* which refer the *Shī'a* to generally those who narrate traditions of Ahl al-Bayt ﷺ - those who are the jurists (*fuqahā'*) amongst the companions of Imams ﷺ:

وَ فِي كِتَابِ إِكْمَالِ الدِّينِ وَ إِقْتَامِ النُّعْمَةِ عَنْ مُحَمَّدِ بْنِ مُحَمَّدٍ
 بْنِ عِصَامٍ عَنْ مُحَمَّدِ بْنِ يَعْقُوبَ عَنْ إِسْحَاقَ بْنِ يَعْقُوبَ قَالَ:
 سَأَلْتُ مُحَمَّدَ بْنَ عُثْمَانَ الْعَمْرِيَّ أَنْ يُوَصِّلَ لِي كِتَابًا قَدْ سَأَلْتُ
 فِيهِ عَنْ مَسَائِلِ أَشْكَكْتُ عَلَيَّ فَوَرَدَ التَّوْقِيقُ بِخَطٍّ مَوْلَانَا
 صَاحِبِ الزَّمَانِ فِي حِجَّةِ الْمُهِاجَرَةِ: أَمَّا مَا سَأَلْتَ عَنْهُ أَرْشَدَكَ اللَّهُ وَ شَبَّاكَ
 إِلَى أَنْ قَالَ: وَ أَمَّا الْحَوَادِثُ الْوَاقِعَةُ فَأَرْجِعُوهَا فِيهَا إِلَى رُوَاةِ
 حَدِيثِنَا فَإِنَّهُمْ حُجَّتِي عَلَيْكُمْ وَ أَنَا حُجَّةُ اللَّهِ. وَ أَمَّا مُحَمَّدُ بْنُ
 عُثْمَانَ الْعَمْرِيُّ رَضِيَ اللَّهُ عَنْهُ وَ عَنْ أَئِيمَهِ مِنْ قَبْلِ فَإِنَّهُ ثَقِّيٌّ
 وَ كِتَابُهُ كِتَابِيٌّ.

¹⁶ *Wasa'il al-Shī'a*, v. 27, pg. 138, sec. 11, trad. 33,419.

In the book *Ikmāl al-Dīn wa Itmām al-Ni'mah*, from Muḥammad bin Muḥammad bin Ḥasan from Muḥammad bin Ya'qūb from Ishāq bin Ya'qūb who said: I asked Muḥammad bin 'Uthmān al-'Amrī to write to the Imam [al-Mahdī, may Allah hasten his noble advent] a letter containing questions that were difficult for me. The following reply was sent in the hand writing of my Master, Ṣāḥib al-Zamān: In regard to that which you have asked us about, may Allah guide you, make you steadfast and keep you safe ... But as for the problems which will occur in the future, you must refer to the narrators of our traditions (*hadīth*) for their verdicts as they are my proofs over you, and I am Allah's proof over them. And as for Muḥammad bin 'Uthmān al-'Amrī, may Allah be pleased with him and his father, he is trustworthy and reliable one of mine and his writing is as my writing.¹⁷

- iii) Those *hadīth* which order some companions, such as Abān b. Taghib, to sit in the *masjid* and issue *fatawā*, so that through this, his words become binding on the laity to follow what he says:

اَحْمَدُ بْنُ عَلَيٍّ النَّجَاشِيُّ فِي كِتَابِ الرِّجَالِ، قَالَ سَلَامَةُ بْنُ مُحَمَّدٍ
الْأَرْزَنِيُّ حَدَّثَنَا اَحْمَدُ بْنُ عَلَيٍّ بْنُ اَبَانٍ عَنْ اَحْمَدَ بْنِ مُحَمَّدٍ بْنِ

¹⁷ Ibid., vol. 27, pg .140, sect. 11, trad. 33,424.

عِيسَىٰ عَنْ صَالِحٍ بْنِ السَّنْدِيِّ عَنْ أُمَيَّةَ بْنِ عَلَيٰ عَنْ سُلَيْمَ بْنِ أَبِي حَيَّةَ قَالَ: كُنْتُ عِنْدَ أَبِي عَبْدِ اللَّهِ عَلَيْهِ الْكَفَافُ فَلَمَّا أَرْدَتُ أَنْ أُفَارِقَهُ وَدَعْتُهُ وَ قُلْتُ أُحِبُّ أَنْ تُزَوِّدَنِي. فَقَالَ: أَئْتِ أَبَانَ بْنَ تَغْلِبَ فَإِنَّهُ قَدْ سَمِعَ مِنِّي حَدِيثًا كَثِيرًا فَمَا رَوَى لَكَ فَارِوِهِ عَنِّي: قَالَ: وَ قَالَ لَهُ أَبُو جَعْفَرَ عَلَيْهِ السَّلَامُ: إِجْلِسْ فِي مَسْجِدِ الْمَدِينَةِ وَ أَفْتِ النَّاسَ فَإِنِّي أُحِبُّ أَنْ يُرَىٰ فِي شِيعَتِي مِثْلَكَ

Aḥmad b. ‘Alī al-Najāshī in his book *al-Rijāl* quotes that Salāma b. Muḥammad al-Arzanī narrates to us from Aḥmad b. ‘Alī b. Abān from Aḥmad b. Muḥammad b. ‘Isā from Ṣalīḥ b. al-Sindī from Amiyya b. ‘Alī from Sulaym b. Abī Ḥayyāh that he said: I was with Abī ‘Abdillāh, peace be upon him, and when I wanted to leave and bid him farewell, I said to him, I would love that you give me some more knowledge, to which he replied: Go and see Abān b. Taghlib as he has heard many *hadīth* from me and so he will narrate to you that which I have narrated to him. He said, then Abū Ja‘far [Imam Muḥammad al-Bāqir, peace be upon him] said to him (Abān b. Taghlib): Sit in the *masjid* of Medina and answer the questions of the people (provide rulings to their questions –

issuing *fatwā*), for I do love for it to be seen among my followers (*shī'a*) the likes of you.¹⁸

- iv) Those *hadīth* which prohibit issuing *fatāwā* without proper knowledge or based on personal opinions or using invalid methods of *istihsān*¹⁹, *qiyās* (analogy), etc. In a tradition from the 6th Imam, Ja'far b. Muḥammad al-Ṣādiq  it is stated that:

عَنْ مُحَمَّدِ بْنِ إِسْمَاعِيلَ عَنْ الْفَضْلِ بْنِ شَادَانَ عَنْ صَفَوَانَ

بْنِ يَحْيَى عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْحَجَاجِ عَنْ أَبَانِ بْنِ تَغْلِبٍ

عَنْ أَبِي عَبْدِ اللَّهِ  قَالَ: إِنَّ السُّنْنَةَ لَا تُقَاسُ أَلَا تَرَى أَنَّ

الْمَرْأَةُ تَقْضِيُ صَوْمَهَا وَ لَا تَقْضِيُ صَلَاتَهَا يَا أَبَانُ إِنَّ السُّنْنَةَ

إِذَا قِيسَتْ مُحِقَّ الدِّينُ.

Muḥammad b. Ismā'il from al-Fadl b. Shādhān from Ṣafwān b. Yaḥyā from ‘Abd al-Rahmān b. al-Hajjāj from Abān b. Taghlib from Abī ‘Abdillāh [al-Imam al-Ṣādiq], peace be upon him, that he said: Indeed the *sunnah* cannot be derived by analogy (*al-qiyās*). Do you not see that a woman repays

¹⁸ *Mustadrak al-Wasā'il*, vol. 17, pg. 315, sect. 11, trad. 21,452.

¹⁹ Literally this word means “to approve” or “to sanction”, and in Islamic law, it refers to the discretion of the jurist to determine the best solution to a religious problem that cannot be solved by simply citing sacred texts.

her fasts but does not repay her prayers [that she does not perform during her monthly cycle of the *hayd*]? O Abān! If the *sunna* is derived through analogy (*al-qiyās*), then the religion is destroyed.²⁰

In a second tradition, also from the 6th Imam, Ja'far b. Muḥammad al-Ṣādiq عليه السلام it is stated that:

عَنْ الْحَسِينِ بْنِ مُحَمَّدٍ عَنْ مَعْلَى بْنِ مُحَمَّدٍ عَنْ الْحَسِينِ بْنِ عَلِيٍّ الْوَشَاءِ عَنْ أَبِي عَثْمَانَ عَنْ أَبِي شَيْبَةِ الْخَرَاسَانِيِّ قَالَ: سَمِعْتُ أَبَا عَبْدَ اللَّهِ عَلِيًّا يَقُولُ: إِنَّ أَصْحَابَ الْمَقَايِيسِ طَلَبُوا الْعِلْمَ بِالْمَقَايِيسِ فَلَمْ تَرْدُهُمُ الْمَقَايِيسُ مِنَ الْحَقِّ إِلَّا بُعْدًا وَ إِنَّ دِينَ اللَّهِ لَا يُصَابُ بِالْمَقَايِيسِ.

Al-Ḥusayn b. Muḥammad from Mu'allā b. Muḥammad from al-Ḥasan b. 'Alī al-Washā' from Abān ibn 'Uthmān from Abī Shaybah al-Khurāṣānī who said: I heard Abā 'Abdillāh [al-Imam al-Ṣādiq], peace be upon him, say: The individuals [scholars] who rely upon analogies (*aṣhab al-maqāyīs*) are seeking knowledge (*al-'ilm*) [of this religion and its juristic rulings] through the use of analogies (*al-maqāyīs*). Thus, this usage of analogies (*al-maqāyīs*) will not increase them from the [reaching to the] truth (*al-haqq*) except that they will be

²⁰ *Wasa'il al-Shi'a*, vol. 27, pg. 41, trad. 33,160.

distanced [from it in the amount they wish to gain guidance of the teachings of Islam]. And indeed, the religion (*dīn*) of Allah cannot be attained by the [usage of] analogies (*al-maqāyīs*).”²¹

In conclusion, based on the understanding of the late Sayyid al-Khū’ī ﴿، even if the tradition of Imam al-‘Askarī ﴿ is not accepted based on his strict criteria and thus, cannot be used as primary evidence to validate *taqlīd*, based on the numerous other *ahādīth* which he quoted in his classes on jurisprudence it can be used as corroborative proof. Through the four sections of *ahādīth* which the late al-Khū’ī ﴿ quoted, he showed that the Imams of the Ahl al-Bayt ﴿ not only condoned, but actually encouraged their trusted and trained companions to engage in what, today we call *ijtihād*. He instructed his companions to be available to guide their Shī‘a in the complexities of life during their era in the field of jurisprudential issues. In summary:

1. The Imams of Ahl al-Bayt ﴿ had trust in particular companions and advised others to rely upon them for guidance in religious rulings.
2. The Ahl al-Bayt ﴿ advised certain companions who had built up the trust, credibility and requisite qualifications, to act on their behalf and to be accessible to the people to pass verdicts (*fatāwā*).

²¹ *Wasa'il al-Shī'a*, vol. 27, pg. 43, trad. 33,168.

3. The 12th Imam ع advised that for events which would transpire in the future for which there was no clear verdict already passed, that an individual (and as an extension, he may have been providing general guidance to the Shī‘ā), that they should refer to those who narrate their *hadīth*.
4. The Ahl al-Bayt ع were very clear on the prohibition of deriving verdicts on Islamic rulings by those who lacked the requisite knowledge; those who sought to pass rulings based on personal opinions or by the use of invalid methods such as analogy (*al-qiyās*).

3. Ijtihād is not Required in Past Issues

Assertion

Ijtihād is not required in past issues – it is only essential in newer arising matters as repeated *ijtihād* on age-old issues, such as the basic rules of *ṣalāt*, is a redundant concept, not relevant in our sophisticated age.

Response from STEPS

The only way that competency on dealing with newer issues will develop is by practicing on “old” issues which still need to be implemented, however under newer circumstances.

For example, how do we perform *ṣalāt* while traveling in modern means of mass transportation such as planes, busses, trains, etc. or

even in future modes of transportation such as drones, space crafts or whatever is to come? The only way that rulings can be achieved in these areas is that it is dependent upon the *mujtahid*'s competency to extrapolate the rules of *salāt* which in some of the *aḥādīth* have been mentioned as like prayers while on the ark of Prophet Nūḥ ﷺ to be able to understand how to perform the prayers in future modes of transportation.

Our *marāji'* and other top-ranking scholars in the seminary are dealing with modern issues today in their high-level classes. However for all of these, they need to delve into the past, understand the issue by looking at the verses of the Quran, *aḥādīth*, etc. It is only through their ability to conduct *ijtihād* on “old” issues that they will be able to further advance the faith by providing rulings on contemporary issues, as their rulings cannot be developed in a vacuum.

Each and every verdict for contemporary and future issues needs to be understood by reviewing the general rulings and past issues, however with a “new” analysis. This is something which is currently being undertaken in the seminary by the below scholars and the “new” topics which they are addressing, having already excelled in *ijtihād* on “previous” issues:

1. **Āyatullāh al-Uzma Wahid Khurasani** has been teaching about the *fiqh* of *Qadha* to train judges for the Islamic Courts.
2. **Āyatullāh al-Uzma Nasir Makarim Shirazi** has been discussing topics like: rulings of brain death; dissection of the human body; organ transplantation; artificial embryo

insemination; abortions; birth control; sex change; cryonics – freezing a person in an attempt to preserve enough brain information to permit future revival of the cryopreserved person; marrying close blood relatives while there is a possibility that children from such a union may suffer illnesses or deformities; using medication made from alcohol; using medication made from the bones of animals not slaughtered according to the Islamic process.

3. **Āyatullāh al-Uzmā Nuri Hamadani** has been discussing topics in the area of finance, like: banking system without usury (*ribā*); profits on bank deposits; accumulation of liquidity; market regulation and control; economic downturn; import and export; economic domination of the infidels against the Muslims.
4. **Āyatullāh al-Uzmā Jafar Subhani** has been discussing a wide range of topics under the banner of *Crucial Jurisprudential Issues in the Contemporary Era*.
5. **Āyatullāh al-Uzmā Sayyid Kadhim Hairi** has been dealing with jurisprudential issues on Government and the Jurisprudence of an Islamic Economic System.
6. **Āyatullāh A'rafi**, the current head of the *hawza* of Qom has been discussing the Jurisprudence of *Tarbiyah* (upbringing of children) and the Jurisprudence of Economics.

7. **Āyatullāh Muhsin Araki** has been discussing the Jurisprudence of Culture and also the Jurisprudence of Urban Development.
8. **Āyatullāh Hadavi Tehrani** has been discussing various areas such as Islamic Politics; jurisprudence of the stock market; jurisprudence of contractual rights – ownership and property rights and has been studying these in the light of the teachings of the Sunni and Shī'a jurisprudence and Western laws as well as studying the jurisprudence of the penal code.

Other contemporary scholars have been discussing the jurisprudence of management; family; media; social media; GMO (Genetically Modified Organism); modern technology; Bitcoin (฿) and cryptocurrencies, and much more.

As stated, the only way that they can come to an understanding of what God expects from the believers in these and other issues of our contemporary life is to study the past rulings, and develop the key competencies to perform *ijtihād* on past issues so that they can then tackle the contemporary issues.

In this light, when it comes to a progressive vision of Islamic jurisprudence to be able to understand the future challenges from the correct jurisprudential lens and to provide religiously-based verdicts, the late **Āyatullāh Khumayni** رض advocated the following:

1. I submit that jurisprudence (*fiqh*) must not be forgotten - jurisprudence (*fiqh*) in that shape which it was [in the past and

is a tried and tested method] must remain - it is *fiqh jawāhīrī*²² which must be strengthened.²³

2. I am a firm believer in the *fiqh sunnati*²⁴ and *ijtihād jawāhīrī*²⁵ and I consider it impermissible to divert from this path. *Ijtihād*, through following this path, is the correct way, however this does not mean that the jurisprudence (*fiqh*) of Islam is not

²² This is a term used by the late Āyatullāh Khomeini ﷺ in reference to the *ijtihādī* methodology employed by the author of *Jawāhir al-Kalām fi Sharḥ Sharā'i al-Islām*, the late Muhammad Hasan al-Najafī (d. 1850). This book took the author over 30 years to write and its one of the greatest works of this jurist – rather, it is one of the greatest works in the world of Islam. In regards to this work, the late Āyatullāh Khomeini ﷺ has stated that if today, one hundred scholars were to come together to write something like this, most likely, they would not be able to do so. See footnote 24 for further details.

²³ *Sahīfah Imām*, v. 18, pg. 72, Taken from a speech given to a group of scholars of the Supreme Council of Islamic Propagation (*shūrā-e 'ālī-e tablīghāt islāmī*) on the 2nd of the Iranian month of Shahrivar, 1362 (August 24, 1983).

²⁴ This is a term used by the late Āyatullāh Khomeini ﷺ in reference to the methodology employed to refer to *ijtihād* and the extraction of the religious edicts (*ahkām*) through the traditional method which has been employed by the Shī'ī scholars for the past 1,000+ years and which is detailed in their books of Islamic jurisprudence such as *Jawāhir al-Kalām*, *Masālik al-Afhām*, *al-Makāsib al-Muḥarramah* and in the books of jurisprudence of the late Āyatullah Khomeini ﷺ. It is the process which the infallible Imams of the Ahl al-Bayt ﷺ had taught and which their companions further employed and developed and which then Shī'ī scholars accepted, reflected upon and further built up so that they would be able to use these tools, initially developed over 1,300 years ago to respond to contemporary challenges in life.

²⁵ See footnote 22.

dynamic – rather, both time and place are two determining elements within *ijtihād*.²⁶

It must not be forgotten that in no way must the established, common principles of jurisprudence (*uṣūl al-fiqh*) and the science of jurisprudence (*fiqh*) be violated within the seminaries (*hawzāt*). Of course, while the process of *ijtihād-e jawāhīrī* is clearly and firmly promoted, the benefits of the new methods and sciences required by the Islamic seminaries (*hawzāt*), must also be used.²⁷

4. What are we Responsible to Allah ﷺ for?

Assertion

What are we responsible to Allah ﷺ for? If we “feel” or “know” that the *fatwā* given by the *marjā‘* is “wrong” – do we do what we are obligated to do and follow the ruling of the *marjā‘* to enact *taqlīd*, or do we disregard and disobey his ruling and do what we “feel” or “know” is right? If a person feels that the *fatwā* is not making sense to them, then they are not absolved in following that *fatwā*.

²⁶ Ibid., v. 21, pg. 289, Taken from a message delivered as: The Charter of the Scholars, provided to the scholars, *marāji‘*, instructors and students of the religious sciences and the leaders of both the Friday and the congregational prayers on the 3rd of the Iranian month of Esfand, 1367 (February 22, 1989).

²⁷ Ibid., v. 21, pg. 380, A message to the Managing Council of the Seminary of Qom, 17th of the Iranian month of Ordibehesht, 1368 (May 7, 1989).

Response from STEPS

That which is important to reflect upon right from the outset is that *shari'ah* may sometimes go against the common sense but will never go against definitive rational argument. The reason for this is because common sense may make mistakes, however definitive rational argument do not. In this light, there is a *hadīth* which says:

عَنِ الْكُلَّيْنِيِّ عَنِ الْقَاسِمِ بْنِ الْعَلَاءِ عَنْ إِسْمَاعِيلَ بْنِ عَلَيٍّ عَنِ ابْنِ حُمَيْدٍ
 عَنِ ابْنِ قَيْسٍ عَنِ الشُّمَالِيِّ قَالَ قَالَ عَلَيُّ بْنُ الْحُسَيْنِ عَلَيْهِ السَّلَامُ إِنَّ دِينَ اللَّهِ
 لَا يُصَابُ بِالْعُقُولِ النَّاقِصَةِ وَ الْأَرَاءِ الْبَاطِلَةِ وَ الْمَقَايِيسِ الْفَاسِدَةِ وَ لَا
 يُصَابُ إِلَّا بِالْتَّسْلِيمِ فَمَنْ سَلَمَ لَنَا سَلَمَ وَ مَنْ اهْتَدَى بِنَا هُدِيَ وَ مَنْ
 دَانَ بِالْقِيَاسِ وَ الرَّأْيِ هَلَكَ وَ مَنْ وَجَدَ فِي نَفْسِهِ شَيْئًا مِمَّا نَقُولُهُ أَوْ
 نَقْضِي بِهِ حَرَجًا كَفَرَ بِالَّذِي أَنْزَلَ السَّبْعَ الْمَثَانِيَ وَ الْقُرْآنَ الْعَظِيمَ وَ هُوَ
 لَا يَعْلَمُ.

Narrated to us [Muhammad bin Ya'qūb] al-Kulaynī, narrated to us Qāsim bin 'Alā', narrated to us Ismā'il bin 'Ali from Ibn Humayd from Ibn Qais from al-Thumālī from 'Alī bin al-Husayn, peace be upon him, that he said: The religion of Allah, the Mighty and Sublime, is not obtained through defective intellects (*al-uqūl*), invalid opinions (*al-ārā'i*) and corrupted analogies (*al-maqāyīs*). It is achieved through submission (*al-taslīm*). Thus, there is security for one who submitted

to us; there is guidance for one who followed us. One who resorted to analogy and personal opinion is destroyed; and one who felt unconvinced by our statements and decisions has denied the one who revealed the seven oft-repeated verses and the great Quran and he does not know.²⁸

The problem with *qiyās* (analogies) in determining, in the framework of our discussion, Islamic laws, is that it is based on common sense and there is not enough information which would provide a definitive rational judgment. It is for this reason that submission to the rules of Allah ﷺ must be used in all instances of life.

There is the narrative of the meeting of Abū Ḥanīfa with the 5th Imam, Muḥammad al-Bāqir ؓ which states the following:

Historical sources note that Abū Ḥanīfa met [Imam] Muḥammad al-Bāqir (the great, great grandson of Prophet Muḥammad, prayers of Allah be upon him and his family) at the beginning of his development (as a jurist). They first met in Madina when Abū Ḥanīfa was visiting the city and it is reported that al-Bāqir remarked to him, “Are you the one who changes the *dīn* of my grandfather and his *ḥadīth* by analogy?”

Abū Ḥanīfa replied, “I seek refuge with Allah!”

²⁸ Ṣadūq, Shaykh, *Kamāl al-Dīn wa Tamām al-Ni‘mah*, vol. 1, pg. 324, section 21, tradition 9.

Muhammad [al-Bāqir] said, “You have changed it.”

Abū Ḥanīfa said, “Sit in your place as is your right until I sit by my right. I respect you as your grandfather, may Allah bless him and grant him peace, was respected by his companions when he was alive.” He sat.

Then he (Muhammad al-Bāqir) asked, “Which is more impure: urine or semen?”

“Urine is more impure,” Abū Ḥanīfa replied, and then said, “If I had changed the *dīn* of your grandfather by analogy, I would have ordered a *ghusl* for urine and *wudū'* for seminal discharge. I seek refuge with Allah from changing the *dīn* of your grandfather by analogy.”

Muhammad rose and embraced him and kissed his face to honour him.”

However, in reviewing this discussion, we can ask that: If urine is more impure than semen, as Abū Ḥanīfah postulated, then why is it that for a urine discharge, all that is required is *wudū'* while for a semen discharge, a *ghusl* is required?

This proves that “common sense” is itself not enough to understand the Islamic rulings and that much more is required. Yes it is true that knowledge or intellect is technically “enough”, however the point is that we do not always have access to complete knowledge and so we end up using common sense in place of intellect. In fact,

whereas our intellect is actually telling us that common sense is not enough. As a matter of fact, our intellect is telling us that intellect is not enough. Thus, intellect is the final judge to guide us to submit to the Ma'soom's guidance.

Some argue that we cannot have *fatawā* which are unacceptable to the 'aql, if:

1. It, the *fatawā*, does not respect human dignity, as the Quran mentions that:

﴿وَلَقَدْ كَرَمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِّنْ

﴿الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا﴾

Certainly We have honoured the children of Adam, and carried them over land and sea, and provided them with all the good things, and given them an advantage over many of those We have created with a complete preference.²⁹

﴿يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاهُمْ مِّنْ ذَكَرٍ وَأُنثَىٰ وَجَعَلْنَاهُمْ شُعُورًا

﴿وَقَبَّا إِلَيْلٍ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقْرَبُكُمْ إِنَّ اللَّهَ عَلِيمٌ

﴿خَيْرٌ﴾

O mankind! Indeed We created you from a male and a female, and made you nations and tribes that you may

²⁹ Qur'an, Sūrah al-Isrā' (17), verse 70.

identify yourselves with one another. Indeed the noblest of you in the sight of Allah is the most God conscious among you. Indeed Allah is all-knowing, all-aware.³⁰

Therefore, some state that because Allah ﷺ has spoken of the *kirāmah* of the human being, it does not seem logical that the *marāji'* can pass *fatāwā* which speak of the *najāsat* of the non-*Ahl al-Kitāb kāfir* and as an extension, the impermissibility of marrying them.

Response from STEPS

As we continue to lead more and more complex lives, we must realize that we need to recognize the depth and scope of demonstrative/evidential jurisprudence (*fiqh istidlālī*) as this important branch which is studied, debated and taught in the seminary clearly shows that *fiqh* is evolving with the times.

The ‘*aql* (intellect) of just anybody cannot be accepted as the basis of determining the Divine law because it is a judgment based on incomplete knowledge. Rather, we need to make use of the consensual collective intellect to determine what is truly beneficial or harmful.

For example, all rationally sound people agree that killing an innocent human being without valid justification is injustice and all rationally sound people agree that justice is that, ‘The person who expends money not belonging to him is responsible to pay it back.’

³⁰ Qur'an, Sūrah al-Hujurāt (49), verse 13.

However, sometimes an act has a benefit (*maṣlaḥa*) which is greater than the harm (*mafsada*). For example, should we discipline a poor, misbehaving orphan? The negative side to doing this could be that we would be looked at as committing injustice to a child who has lost their parent(s), hurting this innocent, tender heart, and crushing his feelings, and we may also arouse the anger or hatred of the guardian. If we go ahead and discipline the child, it would be a boon to his training and guidance. Which of these two is more important?

When it comes to the permission to steal from non-Muslim as some have claimed that some scholars had advocated based on their *ijtihād* and how do we respond to such an ‘apparent ruling’ which has made its way into our faith?

Perhaps this verdict, if issued in that wording, was misunderstood or abused and it may have applied to a specific situation which the individual was involved in and had asked the *marja'* for a ruling based on their personal circumstances, because when the consequences of the act are negative, then based on a secondary reason, a ruling can become impermissible (*harām*).

When speaking about this issue, His Eminence, Āyatullah al-Sīstānī, in *A Code of Practice for Muslims in the West*³¹ clearly states that:

It is neither permissible to steal from the private as well as the public property of non-Muslims, nor vandalize it, even if

³¹ See: <http://najaf.org/books/205/?id=33> last accessed on October 1, 2019.

that stealing or vandalizing does not tarnish the image of Islam and Muslims. Such an act is counted as perfidy and violation of the guarantee given to non-Muslims indirectly when one asked permission to enter or reside in that country. And it is forbidden to breach the trust and violate the guarantee in regard to every person irrespective of his religion, citizenship, and beliefs.

Therefore through reviewing such clear rulings, it is evident that the esteemed religious authority requires his followers to respect all of the laws necessary for social order. This includes other laws such as traffic laws, municipal laws, etc. with the following juristic reasoning:

1. **Major premise:** It is obligatory (*wājib*) to preserve social order which is agreed by all people of intellect ('*uqalā'*) as it is necessary to safe-guard the property, honor and life of people;
2. **Minor premise:** The laws set by the state organs, such as the boards of health, the local municipality, etc. are all a part of ensuring the overall social order;

Conclusion: It is not permissible to violate the laws of the state – so long as they do not contradict the sacred teachings of Islam as embodied in the *shari'a*.

Coming to one of the practical examples which was previously cited in the case of marriage with a person from the *Ahl al-Kitāb*, scholars opine that this is an act which is disliked (*makrūh*) however is still permissible; while the majority opinion of the senior scholars

states that marriage with the non-*Ahl al-Kitāb* (*kuffār*) is something impermissible (*ḥarām*).

Based on this verdict, it may seem that the question which has been put forth is valid, after all, God has given the human being *kirāma* - nobility and dignity – so who is the *marja'* to go against such a Divine verdict?

If we look at such an issue merely from the outward perspective, then yes, based on the human dignity factor, we should respect all human beings and so marriage between followers of Islam and the People of the Book or with people of no religion should be allowed.

However, if we reflect on the non-believing woman's role in the marriage as the potential mother of children from a husband who is a practicing Muslim and her responsibility to train her child (who is born, by default, as a Muslim as the father is Muslim), based on the Divine nature (*fitra*), it creates a better understanding of the ruling.

Would a non-Muslim woman who is outside of the fold of following one of the Divinely sent prophets and their teachings (Judaism and Christianity) and does not believe in any tradition stemming from a Divinely-sent prophet, bring up her child to sincerely follow the path of God? Would she strictly adhere to or ensure that her child adheres to the dietary restrictions, strict regimen of prayer and worship and all other salient aspects of the faith?

As we see in the Quran that God says:

﴿وَلَا تُنِكِّحُوا الْمُشْرِكَاتِ حَتَّىٰ يُؤْمِنَنَّ وَلَآمَّهُ مُؤْمِنَةٌ خَيْرٌ مِّنْ
 مُشْرِكَةٍ وَلَوْ أَعْجَبْتُكُمْ وَلَا تُنِكِّحُوا الْمُشْرِكِينَ حَتَّىٰ يُؤْمِنُوا
 وَلَعَبْدٌ مُؤْمِنٌ خَيْرٌ مِّنْ مُشْرِكٍ وَلَوْ أَعْجَبْتُكُمْ أُولَئِكَ يَدْعُونَ إِلَى
 النَّارِ وَاللَّهُ يَدْعُ إِلَى الْجَنَّةِ وَالْمَغْفِرَةِ بِإِذْنِهِ وَيُبَيِّنُ آيَاتِهِ لِلنَّاسِ
 لَعَلَّهُمْ يَتَذَكَّرُونَ ﴾

And marry not an idolatress until she believes; while a believing servant is certainly better than an idolatress even though she may highly please you. And do not give (believing women) in marriage to an idolaters until they believe. And a believing slave is better than a (free) idolater even though he may highly please you. It is they who invite to the Fire [through their misguided lifestyle and world-view], but God calls to the paradise and to the pardon by His command. He makes His Messages clear for the people so that they may take heed.³²

And even if such a mother did maintain all of the rulings of the faith, growing up, the child, may feel it strange that the father is a practicing Muslim, that they (the child) are being brought up to follow faith while their mother is areligious – if the religion is truthful and she follows the outward practices and teaches it to her children and

³² Qur'an, Sūrah al-Baqarah (2), verse 221.

ensures that they are practicing, why does she not commit to the religion? This has the potential to make them drift from Islam when they become of age. In this regards, we see in the Quran that God says:

﴿ضَرَبَ اللَّهُ مَثَلًا لِّلَّذِينَ كَفَرُوا امْرَأَتٌ نُوحٌ وَامْرَأَتٌ لُّوطٌ كَانَتَا تَحْتَ عَبْدَيْنِ مِنْ عِبَادِنَا صَالِحِيْنِ فَخَانَتَاهُمَا فَلَمْ يُغْنِيَا عَنْهُمَا مِنَ الَّهِ شَيْئًا وَقَيْلَ ادْخُلَا النَّارَ مَعَ الدَّاخِلِيْنَ ﴾

God compares those who disbelieve to the wife of Noah (Nūh) and the wife of Lot (Lūt). They were both under (the wedlock of) two of Our righteous servants but acted treacherously towards them both. So they (Noah and Lot) could do nothing to save them from (the punishment of) God. And it was said to them, ‘Enter you both into the (Hell) Fire along with those (of your category) who enter therein.’³³

In the case of the impurity (*najāsat*) of the non-Believer (*kāfir*), if the consensus (*ijmā'iyya*) is there, then it is not necessarily demeaning because we can look at this issue in another light which is that in the period of the occultation (*ghaybah*) of Imam al-Hujjah عليه السلام, we have no greater person than the *marja' taqlīd*, yet when he dies, his body too becomes *najis* until we perform the ghusl of the dead body (*mayyit*)!

³³ Qur'an, Sūrah al-Tahrīm (66), verse 10.

Thus, the *najāsat* of the *kāfir* seems to be precautionary and symbolic for us to avoid making things like *shirk* and *kufr* common place and acceptable within society. We can further appreciate this ruling when we reflect on the symbolic jurisprudential rulings such as the *ramī* of the *Jamarāt* in the *hajj* which is the symbolic hitting of pebbles on the symbolic Satan.

However, this does not preclude Muslims having peaceful and fair dealings with the disbelievers. As Muslims, we are obligated in the Quran, to have cordial relations with the disbelievers (*kuffār*) who are peaceful with us:

﴿لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقْتِلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِّن دِيْرِكُمْ أَن تَبَرُّوهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ ﴾

Allah does not forbid you in regard to those who did not make war against you on account of religion and did not expel you from your homes that you deal with them with kindness and justice. Indeed Allah loves the just.³⁴

This verse shows us that our level of interaction with non-Believers must be one of respect and that as long as they are not belligerent with the Muslims, they are to be respected and afforded kindness and justice.

³⁴ Qur'an, Sūrah al-Mumtahina (60), verse 8.

5. We Need a Consultative Ijtihād System

Assertion

The basic belief is that *taqlīd* of one scholar who issues verdicts devoid of outside information from the experts in the particular field and also without consulting and discussing with other *marāji‘ taqlīd* is an outdated concept, and what we now need is a consultative *ijtihād* effort which takes into account cutting edge research in the secular fields and also deliberations amongst the *marāji‘ taqlīd* and *mujtahidīn* of various levels of their studies.

Response from STEPS

The *marāji‘* do not issue rulings in a vacuum. They utilize a multi-level approach to deal with issues – not only the *Uṣūl al-Fiqh* aspect but also by tapping into experts in the fields in which they are required to make a verdict. For example, Sayyid al-Sistānī sponsors an Astronomy Research Centre in Qom.

In the field of astronomy, Āyatullāh al-Sistānī does take into account Yallop's³⁵ minimum criteria for moon-sighting which include: elongation, illumination and age of the crescent to discredit

³⁵ Dr. Barnard Yallop (1997) developed single parameter empirical model based on 295 observations of lunar crescent. By applying q-test to 295 observations carried out from 1859 to 1996, he divided the visibility types and codes into six regions. The model also deduced the best time for the observation of new crescent by adding factor of 4/9 lag to the sunset time.

the *bayyina* claim of sighting when astronomically, it is impossible or very unlikely for the moon to be seen.

When it comes to other issues for which we require the guidance from experts in their respective field, as people are looking for there to be some sort of symbiosis between the experts in their related field and the *marja'* *taqlid*, when we look at the issue of gender change surgery, Sayyid al-Sistani tackles this sensitive issue by relying on the religious and also the ‘scientific’ aspect. Reflect on the below question³⁶ and his response on this area:

QUESTION: Is it permissible to have a sex-change operation?

ANSWER: If what is meant [by the question] of a sex change [operation] is that surgery is performed so that the man's penis is removed and in place of it, something else is designed to allow for emptying the bladder and in addition, a fabricated [female] sexual organ is positioned in its place, and that by injecting hormones, the signs of a female appear, such as the shedding of facial hair and the protrusion of breasts; or [if what is meant by the question is that] for a woman to undergo a sex change operation to have an artificial penis fixed [and the external female sexual organ is ‘removed’] and also the usage of hormones to shrink the

³⁶ This question and its subsequent answer was posted on <https://www.sistani.org/persian/qa/0863/> - last accessed on October 1, 2019

breasts and to grow facial hair, then it should be noted that these things do not relate to the actual changing of the gender [these are simply external changes to the individual] and the religious rulings for such a person would not change [as the person still remains of the original gender determined by the internal genital organs, thus issues like inheritance, *hijāb*, etc. would all stand based on the gender which one was born with]. In addition, considering the fact that carrying out such an operation would require one to expose their private parts [to a non-*mahram*] and for the doctor to touch the body, such an operation is not permissible.

However, if what is intended [by a “sex change operation”] is to change the internal and external genitalia which is the measure of what differentiates a man and a woman, then this is in and of itself approved of, despite the fact that what is required to carry this out [exposing one’s private parts to a non-*mahram* and the touching involved] is impermissible (*harām*), however it is not a problem [to have such an operation]. But so far this [ability and medical know-how] has not been achieved, and to date, all that has been achieved [by medical science], is merely the change of appearance [of the external genitalia of the male to a female or vice versa], and that [type of operation] has no effect on the change of the [religious] ruling [of the individual undergoing such a transformation].

Of course, for those born with such malformations in the genitalia [such that] the penis may be concealed [the medical experts refer to this as ‘buried penis’ in which the penis is wrapped in a sheath of skin, such as beneath the fat inside the lower part of the belly] or a man [may be born] and has [a portion of] the female genitalia outwardly, but does not have the internal genitalia; or in contrast, a woman may be born with [something which resembles] a penis outwardly, however she has the internal sexual organs of a woman, then in such a scenario, there is no inherent problem [in undergoing surgery to ‘repair’ this] and as such, this has nothing to do with a ‘sex change’. Of course, if it requires a forbidden look or touch [of the private parts], it would only be permissible if it is necessary [to undertake such an operation – such as on medical grounds] or if not undergoing such a surgery would lead to severe aggravation [in the persons’ life].

In this example we see that His Eminence Sayyid al-Sistani has reflected on various aspects of a ‘sex change’ surgery by not only stating the traditional permissible vs impermissible [*halāl* vs *harām*] verdict, but rather, has gone a step further and reviewed the issue from various medical aspects.

His response shows that he has definitely spoken to the medical experts before coming to the conclusion he has by providing various scenarios.

The fact that he said that medical science has not yet reached to such a level of being able to ‘change’ BOTH the internal and external genitalia shows that he has done his due diligence in reviewing this aspect by relying on the experts in the medical field. Thus, he has clearly employed and advocates for a consultative *ijtihād* model.

Moving forward, if we take the consultative *ijithād* model to be a reference to opinions which scholars like the late Shaheed Murtadha Mutahhari *✉* had spoken about which the Islamic Seminary (*hawza ilmiyya*) and its scholars have not yet taken up, which is defined as a consultative *marja'iyyah* platform in which people take from one *Supreme Fatwa Council* rather than ONE specific *marja' taqlid*, then we need to clarify that this is an approach which past scholars had spoken about, however there was no framework or structure as to how it would practically work AND that this is still an ongoing discussion in the *hawza*. It was a proposed theory with no structure.

However, with that said, in a booklet authored by Āyatullāh Nasir Makarim Shirazi, published in Farsi and Arabic as *Crucial Issues Regarding the New Crescent Moon Sighting* (p. 7-9), he lays down his approach as to how such a council of jurists (*fuqahā'*) and experts would operate, as follows:

“There is a clear way here that can end these differences [in regards to the new crescent moon sighting for the start of the Islamic month] and, at least for one country, they can take a unified path and maintain the grandeur of these Islamic programs [such as Ramadān]. In this approach, they need to create a

Crescent-Sighting Council in which both the [scientific] experts in this field as well as the representatives of the *marāji‘* work together to gather all information about crescent sighting from any way in which it can be collected - either via the use of objective witnesses or the astronomical scientists - whose views may be used to support one another - and all of this evidence is then presented in a gathering.

It is possible that some may say that anytime the members of the *Crescent-Sighting Council* do not have a unanimous opinion whether due to *criticism and praise* [this is a technical term used in the *hadīth* sciences concerning the evaluation and criteria of the reliability and unreliability of the transmitters of *hadīth* however in this instance it is used in regards to the individuals who make up the *Crescent-Sighting Committee*], then what should be done?

The answer is that the opinion of the majority can be the criterion because it will be more reassuring for most people; certainty (*yaqīn*) [in such a circumstance] is ‘closest to the reality’; and because, as mentioned, since in this issue, it is a matter of recognizing the issue rather than recognizing the ruling, this does not bring about any further concerns.

Another question that may be raised is that sometimes the *marāji‘* have some variations in their *fatāwā* in regards to the moon sighting which will affect the issue. However, in our opinion, this

does not pose a significant problem either, and we have found a solution to this – which is outside of the scope of this brief outline.

In any case, legally from the Islamic point of view, we can accept and trust the majority opinion of the *Crescent-Sighting Council* which has been issued with complete certitude.

Surely Imam al-Asr, may our souls be sacrificed for him, is not pleased in such an important matter, that his followers are divided – not only in one city, but even in one household and through which, their power and strength are weakened and they are presented as fragmented in the face of their enemies.

When the Imams of the Ahl al-Bayt عليهم السلام allow their followers to take part in the congregational prayers of the Ahl al-Sunnah community in order to preserve the greatness of the Muslims – despite the fact that there are many differences in the practical actions of the prayers between the Shi'a and Sunni, how can the Imams of the Ahl al-Bayt عليهم السلام be pleased to see the issue of the sighting of the new crescent moon leading to disputes amongst their followers – especially given the world of today in which news rapidly moves from point to point.

And with all of that, one of the most astounding things of today is that because we lack a precise, centralized council to observe the moon and who have trust in unknown witnesses, for years on end, people have been observing the holy month of *Ramadān* for

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29 days and very few remember the 30-day fast (except in very rare cases). This is scientifically impossible to happen, and so, it is unclear who is responsible for this [travesty]?

It is hoped that the scholars will reflect more on the issue of the *Crescent-Sighting Council* and clarify its solutions.”