CHAPTER : IV
FIQH DISAGREEMENTS AND THEIR SYNTHESIS

Shah Wali-u Allah’s religious thought is extensively devoted to the nature, science and schools of fiqh. His concern with the fiqh owes considerably to his study of the classical literature on the subject and the deep insight into the science of hadith acquired by him while his stay at the Harmain. The significance of fiqh in the broader frame-work of ulûm-i Din (religious sciences), its source methodology and the nature of disagreements among the various fiqhi schools are the main issues treated by Wali-u Allah in his work. Before attempting at the analysis of Shah Wali-u Allah’s synthesis of the fiqhi disagreements in the present chapter, we shall first study the science of fiqh, its sources and the disagreement which took place during the early ages of Islamic history.

Science of Fiqh

Fiqh literally means ‘understanding’ or ‘knowledge’ or intelligence. The


2. His Hujjat Allâh-al-Bâlâigha, Al-Insâf fi Bayân As-bâb al-Ikhtilâf, Al-'lqd: Jid fi Ahkâm-i Ijtihâd wa al- Taqlîd and Izâlat al-Khafa’ an Khilâfat al-Khulafa’; are worth to mention.

Qur'an has it used more than one times in its broader sense⁴. In hadith it depicts the same meaning⁵. In the early period of Islam, fiqh comprises of all-embracing principles and laws of Islam – beliefs, worship and social dealings. At the advent of the influence of the Greek Sciences upon the Muslims, knowledge dealing with beliefs began to be called *ilm al kalām* (science of Beliefs) and Abu Hanifah (d.150/767), called it *fiqh al akbar* (the greater understanding)⁶. The comprehensive nature of fiqh evolved a change to the extent that it was distinguished from *‘ilm*. *‘Ilm* was attributed to knowledge that comes from the authority – God or the Prophet(SAW)⁷. Towards the end of the first century Hijrah, those persons who reported hadith were called as men of *‘ilm* (knowledge) and those who exercised their intelligence and gave legal decisions were known as fuqaha (jurists). As a result of it, fiqh emerged as a specific and independent science⁸. It confined itself in exercising human thinking upon the application of *nasūs* (texts) injunctions and the *furu‘āt* (subsidiary rulings) of the Shari‘ah. The Qur’an

⁴. Al-Qur‘ān, Tauba, 120.

⁵. See the following two hadith of the Prophet (SAW) : “With whom Allah wishes to do good he is granted the understanding of Din (Islam) by Him”. *Bukhari*. “People will come to you (Companions) for attaining the understanding of Din. Whenever they would come for this purpose, I advise you to behave well with them”. *Trimizi* (The citation is from M.T.Amini, *Fiqh Islāmī Ka Tārakhī Passi-i-Manzar*, Islamic Publishers Pvt. Ltd., Lahore, 1986, p.35.


⁷. Ibid; PP.4-5.

⁸. Ibid.
and the Sunnah provide the main principles and the laws for human life. *Furūʿāt* - subsidiary laws for the particular and the new situations of human life which are being operated by the intelligence and judgement of the fuqaha. Nevertheless the broader frame-work of the Qur'an and the Sunnah remain the basis for their judgement. All those who began to write works on this particular science during the early period of Islamic history either arranged hadith of legal rulings or wrote their legal decisions in book-form. ‘Abd Allah ibn. al Mubarak (d.181/797) is reported to have compiled a book entitled ‘ilm having the arrangement of legal topics. From the middle of the second century Hijrah a number of books were written exclusively on fiqh. The descendants of Abu Hanifah (80-150/696-767), Abu Yusuf (d.182/798) and al-Shaybani(d.189/804) wrote works which are described as the first systematic writings on the subject *Al-Muwatta* of Mal-ik(94-179/712-795) is also remarkable for its intermingling of fiqh and hadith. It was, however, al-Shafi‘i (150-205/767-820) who developed the fiqh in a systematic way in two of his works – *Kitāb al Umm*, and *al-Risālah*. The fiqh formulations and methodology is extensively elaborated in these works and have been highly valued by the fuqaha of the successive generations.


The Sources of Fiqh

Fiqh as the science of rulings or laws of the Shari'ah has four sources – the Qur'an, the Sunnah, Ijm'a and qiyas. The Qur'an and the Sunnah are the basic sources while ijma' and qiyas are dependent sources of the Shari'ah12.

The Qur'an

At the very root of Muslim conception, Shari'ah is regarded essentially Divine. Its source is the Divine revelation. The Muslims believe that the Qur'an is the most perfect and the final revelation of God to man and acts as the primary director to human life and the source of law. The Qur'an was revealed in twenty three years to Prophet Muhammad (SAW) and it contains statements and addresses suited to the occasions about which they have been made. The Meccan period of revelation is mainly devoted to the unity of God (Tawhid), beliefs, inculcation of morals (sālihāt) and eradication of evil practices. The Medinan revelation is on the organization of a righteous society of the Muslims. Here the injunctions regarding family life, economy, crime, war, treaties, contracts, etc. are revealed for leading an organised social life13. The Qur'an is,

12. Although 'Shari'ah is the knowledge closely related to the Qur'an and the Sunnah it is sometimes synonymously used with the term fiqh', The latter is to a large extent the product of human endeavour. Cf. Taha jabar al Alwani, Op.Cit., PP.138.

therefore, the code of rulings of general as well as the specific nature. The number of
general verses exceeds to those of specific ones. In it lies the wisdom of Allah, for the
book is meant for all times to come and the general nature of its teachings and rulings
suits to the developing and progressive matrix of human civilization. The fuqaha
(jurists) epitomise the Qur'an as the basic code of human conduct. They categorize its
rulings into two broader classes - the halāl (lawful) and the haram (unlawful). The
categorisation is further extended, in the light of the Qur'an and the Sunnah, to other
legal divisions - mandūb (recommended), mukru (disapproved) and mubah (neutral) –
which widens the scope of fiqh14. All Muslims have consensus on the Qur'an as being
the primary source of the shari'ah for all times. The differences arise in matters of the
interpretation and the application of the rulings of the Qur'an. To resolve the differences
the ulama have formulated certain rules for the interpretation of the laws and regulations
of the Qur'an15. Among them include the knowledge of Arabic lexicon, the nasikh and
the mansukh, the Shan-i nazul and the nazam of the Qur'an16 and their knowledge
makes one to understand the Qur'anic teachings and laws properly vis-à-vis their
application in day to day life.

15. See for example Jalal ud-Din Suyuti, Al-Itiqān fil Ulūm al-Qur’ān and Shah
Wali-u Allah, Fauzal Kabīr fil Usūl-i Tafsir.
16. Some useful points have been also discussed with regard to the Qur'anic
science by Dr.Riaz-ul Hassan Gilani, Op.Cit., under the heading “Rules of
Interpretation”, PP.59-68.
The Sunnah

By the Sunnah is meant the exemplary conduct of Prophet Muhammad(SAW). The Qur'an was revealed to him and it ordains him to interpret and explain its teachings and laws to the people both in word and deed. This characterises the Qur'an as the theoretical model of the Shari'ah and the Prophet as its practical model. Both are, thus, closely interlinked and either of the two cannot be isolated from the other. On the authority of the Qur'an, the Prophet acts as legislator and law-giver of the Shari'ah. His conduct is described as 'the best model' to be followed in toto. It constitutes his own sayings and deeds and the practices of his Companions which attained his approval. His model character is also termed as Hadith. In general sense both convey the same meaning.

The Prophet's sayings, irrespective of their being related to faith or social matters, constitute Sunnah and serve as rulings for the guidance of the community. The sayings can even have the basis on the rulings previously revealed in the Qur'an or serve

18. Ibid., Al-Nisa, 60 and 65.
20. Ahmad Hasan, Op.Cit., P.87. The Sunnah Serves as a source of the Shari'ah in three ways- it collaborates a ruling which originates in the Qur'an, it may consist of an explanation or clarification of the Qur'an and may also consist of rulings on which the Qur'an is silent.
independently to establish legislation. The Qur'anic statements are more in comprehensive *ijmālī* (precise) manner and details and *furu‘āt* (branches) are left to the explanation of the Prophet (SAW). For example, the Qur'an says, "Allah likes those who like to keep themselves pure." It is the Prophet who has explained the details of purity by the practice of *istanja* (cleansing the excretory parts of human body) and *tahārah* (purification). In the Qur'an there is the mention of *jinābah* (impurity after sexual intercourse and seminal emission) in which one cannot offer his prayers. The Prophet explains *jinābah* and circumstances to which it is applicable. The Qur'an contains the instructions of ablution, *salāh*, fasting, *hajj*, inheritance, marriage, *tayyibāt* etc. and the Sunnah explains their details, necessary for human life. Hence Prophet's rulings relating to both faith and social matters called Sunnah and act as the primary source of *fiqh*. The Sahabah were witness to his rulings who heard them, understood them properly and followed them in their practical life. From the Sahabah, the Tabi'un (Successors) received the Sunnah and onwards it became a continued 'practice' with the Tabi’un (successor) and their successors. This consistent adherence to the Prophet among the first two generations of Islam is ordinarily termed as Sunnah by some ulama.

24. Ibid.
The Ijma’

Ijma’ literally means ‘assembling’, ‘setting’ or ‘collecting’\(^\text{26}\). In the fiqh it means concensus or settling of a religious issue. the nature of concensus, however, varies on account of the historical situations. As such there is the concensus (ijma’) of the majority of the community on a religious issue\(^\text{27}\). the another kind of concensus is described as those of the fuqaha of a particular age on the issue in question\(^\text{28}\). The third kind is also discernible where most of the fuqaha agree upon a certain point in question and some disagree with them. In the times of the Sahabah the first kind of ijma’ is found. whenever a new issue arose and they did not find its answer in the nasīs of the Qur’ān and the Sunnah, they resorted to consult the other Sahabah. The pious Khulafā’ used to call upon the Sahabah, had consultations with them on the issues and the opinion they, agreed upon, became the Shari’ah ruling which was followed by the whole community\(^\text{29}\). The appointment of Abu Bakr, as the first Khalifah of Islam and that of ‘Umar and ‘Uthman was also made on the concensus of the community. Their rulings issued from time to time on social affairs do come under this kind of ijma’ as there


\(^{28}\) Ibid.

arose hardly any objection to reject their agreed upon ruling (ijma'). During the times of
the Tabi' un and their Successors the Muslim community extended far and wide and
ijma' in this easy mode of the Sahabah became more or less impossible. The ijma' and
the fuqaha of the local regions settled the religious issues of their people. Their decrees
were at large and acted upon by the local fuqaha of the time and followed by the people.
This mode of ijma' can be described as ijma' of the fuqaha and its evidence is found in
the Iraqi School of fiqh.30 The third mode of ijma' where majority of the fuqaha are in
agreement and a few disagree with opinion or ruling, is also given the status of ijma'
and it is prevalent in the modern times.31

The reference to ijma' is found both in the Qur'an and the Hadith. The Qur'an
exhorts the Muslims to have consultation in their mutual affairs.32 The traditions —
"My Ulmah will never agree on a deviation"33 and "Whatever the Muslims consider
good is also good in the sight of Allah"34 obviously recognize ijma' as the principle of
the Shari'ah. Historically the question of ijma' arose when the Sahabah faced the new
problems and decided to resolve issues by 'consultation'. The fuqaha of the succeeding
ages gave their decrees on the religious problems which is a kind of ijma'-i ijtihad and

30. Ibid., PP. 165-166 and see M.M. Taqi Amini, Fiqh Islami Kā Tārkhi Pass-i
34. Ibid.
the people followed their rulings. All the four Schools of fiqh recognize ijma’ as the source of the Shari’ah. It is assumed that Abu Hanifah was the first jurist who might have discussed ijma’ as the source of fiqh with his pupil, Muhammad Hasan al-Shaybani, as the latter has made an attempt to give an intellectual basis for it. While discussing the usūl (principles) of fiqh, al-Shabani enumerates the Qur’an, the Sunnah, ijma’ and qiyas as its sources. Abu Yusuf (d.182/798) also follows this method, formulated by his teacher. Imam Malik (d.179/795) also recognises ijma’ as the source of fiqh. Imam al-Shafi’i (d.204/819) discusses ijma’ in his al-Risālah and al-Umm where he accepts it as a legal doctrine and a source of fiqh. He, however, bases it on the evidence of the Qur’an, the Sunnah and the practice of the Companions and disagrees with the ijma’ based on ra’y (opinion). The other jurists of his school like al-Mawardi and al-Ghazali accept the ijma’ based on ra’y or istidlal. Ahmad Ibn Hanbal (b.164/780) and the jurists of his school accept ijma’ as a legal doctrine. He has two opinions of ijma’. One is that he recognizes only ijma’ of the Companions and the second is that he views it as mandatory in every age. Later Hanbali jurists like Ibn al-Fara and Ibn Qudamah accept ijma’ a valid authority on fiqh matters. Apart from its

36. Although he is alleged of upholding only the ijma’ of the people of Medina yet there is no evidence of his rejection of the ijma’ of Ummah.
38. Ibid.
minor differences, the classical definition of *ijma'* accepts it as the concensus on the Shari'ah ruling. Due to its technical nature and specially its practice is limited to those who are qualified for *ijtihād* and are called fuqaha and ulama interchangeably while Gazzali and Amidi call them ahl *al hall wa'al aqd.* or mujtahidūn.

**Qiyās**

Qiyās is another dependent source of the Shari'ah. Literally it means 'measuring' or 'adjoining'. In the terminology of the fuqaha it means to resolve the issue in question on the basis of *illah* (effective cause) in the context of previous decree or precedence. The previous decree is either the text (*nass*) of the Qur'an, the Sunnah or the established practice – *ijma*'.

The use of qiyas in fiqh is found right from the times of the Prophet himself. What distinguished the early use of qiyas from that of the successive times is found in its varied terminology and modes. During the time of the Prophet (SAW) and his Sahabah it was termed as *rā'y* (opinion) and exercised for the interpretation and the application of the Qur'an. The Qur'anic verses — "So take heed, o, you who have eyes to see" and "So that (some people) may understand the way of

42. *Ibid.*
Allah⁴⁴ substantiates the exercise of ra’⁴⁵. Those who examine things through their senses, attempt to gain understanding (tafaqq) of Din with hikmah (wisdom) are characterised as the desirable triats by the Qur’an⁴⁵. The Sunnah also recognises the exercises of ra’y in the legislation of laws for new situations. There is ample evidence about the Prophet’s (SAW) exercise of ra’y in the day to day matters of life. His use of it is guarded by Allah and whenever it falls towards error it is corrected by revelation⁴⁶. This renders the ra’y of the Prophet infallible. The two traditions narrated by the two well-known Sahabah of the Prophet (SAW) namely M’adh bin Jabal and Abu Musa Ash’ari propound the exercise of ra’y in legal matters in clear terms⁴⁷. All the four pious Khulafah of Islam resorted to ra’y when they faced the new problems.⁴⁸ They categorically stated that if their opinion comes true it is from Allah yet if wrong it would be from Satan⁴⁹.

⁴⁴ Al-Qur’an, al-Tauba, 122.
⁴⁵ Al-Qur’an, al-Imran, 64 and Al-Baqarah, 269.
⁴⁸ Ibid.
⁴⁹ According to one Tradition of the Prophet the mujtahid is doubly rewarded. If his opinion comes out true he is doubly rewarded. If not so then the jurist will get the single reward for his sincere exertion of thinking to operate the correct ruling of the Shari’ah. Taha Jabir al-Alwani, Op.Cit., P.10.
All the four school of fiqh have systematized ra'y. It gradually took the form of Qiyas\(^{50}\). This is found in the fiqh of Abu Hanifa, Imam Malik, al-Shafi'i and Ibn Hanbal. Abu Hanifah and his students – Abu Yusuf and al-Shaybani – developed the use of Qiyas in their fiqh works. The school also evolved the concept of *istihsān* (public good) in fiqh which is the extensive use of Qiyas taking into consideration the public equity, their social behavior and customs\(^{51}\). Imam Malik also recognizes Qiyas as a source of fiqh and its examples are found in his *al-Mawatta*. Like Abu Hanifa he establishes more comprehensive doctrine called *al-masāliḥ al-mursalah* (general good or interest). It ensures that law remains sufficiently elastic and adaptable to deal with unexpected problem and its main purpose is the welfare of the people\(^{52}\). Al-Shafi'i considers qiyas as a source of fiqh and it is to be applied, according to him, when there is no guidance in the Qur'an, the Sunnah or the ijma'. He confines *ijtihād* to Qiyas (analogical reasoning) and does not recognize its exercise by ra'y\(^{53}\). He has established the principle of *al-istiṣḥāb* (presumption of continuity) in his fiqh which is equivalent to Abu Hanifa's *istihsān* and as such resorts to ra'y, leaving Qiyas aside, in order to concentrate on the equity of the people\(^{54}\). The followers of his school of fiqh like


\(^{52}\) Ibid., P.11.

\(^{53}\) Ibid., P.15.

\(^{54}\) Ibid.
al-Mawardi, al-Ghazali and Al-Amidi, however, accept the exercise of ra’y in deducing legal rulings of the Shari’ah. Ahmad Ibn Hanbal also accepts qiyas as the source of fiqh and considers even ijma’ as the outcome of Qiyas. His followers like Ibn Qudamah, Ibn Taymiyah and Ibn Qaym all recognize qiyas as a source of the Shari’ah and apply it to the legal rulings.

**Ikhtilāf in Fiqh**

*Ikhtilāf* in Arabic means taking a different or dissimilar way or opinion in things, affairs or cases. This suggests that a person can differ from the other in his opinion, utterance or action. In its broader sense *ikhtilāf* does not accept the direct opposition to something. It is because the two opposites are necessarily different from each other whereas two things or opinions that differ are not necessarily opposed or in conflict to each other. Difference implies difference in leading to argumentation and mutual wrangling. The term *ikhtilāf* may, therefore, represent a mere difference of opinion or imply active controversy, discord or schism. The Qur’an makes a mention of *ikhtilāf* (disagreement) in all these three senses. It speaks of Christian sects that differed from one another, of people who held divergent views and positions, of others whose

55. Ibid., P.16.
beliefs and utterances were discordant in relaxation to the truth\textsuperscript{59}, and of God’s eventual judgement of people who differed among themselves; and on the issue on which they differed\textsuperscript{60}. In this way *ikhtilāf* may refer to absolute discordance in beliefs, opinions or attitudes. It could also refer to differences in situations or positions which people may follow\textsuperscript{61}.

With regard to the discipline of fiqh differences (*ikhtilafāt*) are here confined and systematized. Differences imply here the differences of deducing rulings of the Shari’ah. The method of interpretation and derivation of the Shari’ah laws goes with arguments and counter arguments in fiqh. Founding of *madāhib* (schools of law) and the adherence (*itiṣbāh*) to these schools led the emergence of fiqi differences extensively in Islamic history. Shah Wali-u Allah examines these fiqhi difference and attempts at their synthesis. By synthesis is meant his review of the reasons of the differences emerged among the Sahabah, the Taba’un and the fuqaha or *iamah* to approach the possibilities of their reconciliation and moderation on reliable grounds.

**Shah Wali-u Allah’s Approach to the Disagreements During the Sahabah**

In his synthetic approach, Shah Wali-u Allah first finds out the reasons of *ikhtilāf* among the Sahabah and the Tab’un. He believes that the Sahabah were the

\textsuperscript{59} Ibid, 51:8.

\textsuperscript{60} Ibid, 10:93.

people who had very little differences on the legal issues because they avoided them to a great extent. Their differences arose due to the non-availability of the specific hadith, the historical situation and the far fetched interpretations of the Prophet’s practice. They depict little logical and dialectical rigour in their approach to the Shari’ah. Shah Wali-u Allah in his review, enumerates the following reasons of their fiqhi differences.

a) The first reason is stated as the knowledge of the particular hadith or ahadith with which one Sahabah was acquainted and the other had not such advantageous position. The former decided the issue on the basis of it while the latter had to resort to ijtihad. Sometimes the ijtihad of the Sahabah would come out exact to the ruling of the hadith. Abdullah ibn Mas’ud’s ijtihad on the question of mahr of the woman whose husband died before sharing the bed with her, came out true by confirming to Hadith, serves as an example. Ijtihad is left aside when it contradicts to the decision of the Hadith. It is borne out in Abu Harirah’s considering the break in the fasting for one remaining junabi (impure on account of sexual intercourse) upto morning. He secedes from his opinion when he is objected by the pious wives of the Prophet (SAW) whose practice does not justify the former’s opinion. When the hadith does not conform to the Qur’an,

62. Shah Wali-u allah, Al-Insāf fi Bayān Asbāb al-Ikhtilāf (Urdu Tr. by Sadr al-Din Islahi), Ikhtilāfī Masā’il Main I’tidal ki Ray, Markazi Islami, Delhi, 1987, P.10. Henceforth the book will be also cited as Al-Insaf in the present work.
63. Shah Wali-u Allah, Hujjat Allāh al Bāligha, P.341.
64. Shah Wali-u Allah, Al-Insāf, P.16.
65. Ibid.
the Sahabah hardly use it in their fiqh. 'Umar, the second Khalifah of Islam, rejects the Hadith narrated by Fatimah bin Qayas stating that the Prophet neither permitted nafqa (maintenance) to her nor house after she had received three talāqs (divorces). 'Umar rejects it for its being contrary to the text of the Qur'an. Similarly 'Aishah refutes the view of Ibn 'Umar on the question of women's bath by stating that she need not to spread out all her hair to wash on the occasion of bath (ghasal) which, according to 'Aishah, has been approved by the Prophet (SAW).

b) The difference also arise on account of the Sahabah's determining the practice of the Prophet. The Prophet's practice is witnessed by many of them but the interpretation depends on individual's understanding and capacity. Some of them interpret the particular practice of the Prophet as ibādah while others call it mubah (permissible). The Prophet's getting down in the valley of Abtah during his Hajj journey is conceived as ibādah by Abu Hararah and Ibn 'Umar whereas 'Āishah and Ibn Abbas consider it an accidental event and it does not form the part of the Sunnah. Similarly the Sahabah interpret variedly 'reml' (putting

68. Ibid.
forth the body net in walking to show fearlessness) of the Prophet which he did on the occasion of *tawāf* of K'abah⁶⁹.

c) The weak memory or forgetfulness caused the Sahabah to differ on the issues. Ibn 'Umar narrates that the Prophet (SAW) had one 'Umrah in Rajab. 'Aishah differs from him on the issue by saying that Prophet had not any 'Umrah in the month of Rajab⁷⁰.

d) Determining the *illah* of the practice of the Prophet (SAW) also caused the differences among the Sahabah. They interpreted variably the Prophet's standing up when a funeral body of a Jew passed by his side. Some of the Sahabah determined the cause of his standing position as to show honour to the angels who used to be with the *jināzah* of both Muslim and non-Muslim. Others interpreted its cause merely the funeral body of a Jew; when it was carried by the side of the Prophet the latter did not want to be above his head and thus stood up. The second group of the Sahabah, unlike the former, confined the following of the practice only in case of the funeral procession of the non-Muslim⁷¹.

e) The difference arose among the Sahabah on the use of *tatbīq* between a hadith or practices of the Prophet which apparently seem to be contradictory. On the

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69. Ibid. P.20.
70. Ibid. P.22.
71. Ibid. P.23.
occasion of Khaybar war, the Prophet allowed mut'a and later on prohibited. On
the war of Atas the permission for mut'a was resumed again yet was stopped
soon. Ibn Abbas is of the opinion that the permission for mut'a has been granted
because of exigency and when the exigency ceases to exist the permission is
receded although the ruling is there. The majority hold that the Prophet’s
permission of mut'a was a mubah ruling and it was later on forbidden by the
Prophet permanently. They term it abrogated (mansūkh) and do not find any
contradiction between such a hadith on mut'a.

Approach to the Differences Among the Tabi’un and their Successors

Tabi’un were the people who learnt fiqh from the Sahabah when the latter were
either sent to the other provinces of the khilafah as teachers and qadis and spread over
the various places after Uthman’s shahādah- vis-à-vis the consequent political crises in
the Khilafah. Since the Sahabah, says Wali-u Allah, are at variance in their legal
rulings, it is inherited by the Tabi’un. The latter heard the hadith from the Sahabah
preserved their madhahib for using them in their fiqh. They preferred the decision of
one Sahabah to that of the other and sometimes ignored the decree of the Sahabah
hadith. Owing to their adherence to the ‘ijamah - Sahabah and the influence of the

72. Ibid.

73. Supra n. 61, PP.57-58.


75. Ibid.
local situations the tibi’un ulama formed their own madhahib in their local cities. Almost in all the cities of Arabia the madhahib of fiqh started developing on the pattern of the respective i’amah. For example in Medina, people followed S’ad Ibn Musayb (d.94/712) and Salim Ibn Abdullah (d.107/725). In Makka Atta Ibn Abi Rabbah (d.114/732), in Kufah Ibrahim Nakh’i (d. 96/714) and Shabi (d.103/721), in Basrah Hasan Basari (d.110/728), in Yemen Ia’wus Kiasan and Mukhul (d.113/731) in Syria became the i’amah of the people. The others learnt from them hadith, sayings and fatawa (decrees) the Sahabah vis-a-vis their own decisions and sayings on the growing issues of the society.

The period is remarkable for witnessing the early development of fiqh and the two fiqhi schools – of Medina and Kufa – attained the prominence. Both the schools differ in their opinions and methods of operating laws. The school of Medina, led by sa’id Ibn Musaib, based its fiqh on the fatwa and sayings of ‘Umar, Uthman, Abdullah Ibn ‘umar, Aishah and Ibn ‘Abbas. This school decides the matters on the basis of ijma’ of Ulama-i Medina and where ever they found some variance they restored to rā’y. Resorting to rā’y became preferable to them either on its use by the majority of the ulama or on its conforming to the clear deduction from the Qur’an and the Sunnah.

76. Ibid., PP.25-26.
77. Ibid.
78. Ibid., and Supra n. 63, PP.346-347.
80. Ibid.
The school differs from the Kufan school, led by Ibrahim al-Nakh'i on the latters' seeking answers to the legal matters in the fatawa of Abdullh Ibn Mas'ud and 'Ali. According to Wali-u Allah the school preserved the decrees and sayings of their leading ulama and extracted legal rulings from them like those of the ulama of Medina.

During the period of the successors of the Tabi'un the fiqh developed in a systematic way and the differences between the schools are here conspicuously expressed. The ulama among the successors (Taba Tabi'un) became trustees of knowledge, which came through the Tabi'un-ulama and the former learnt from them the ways of ibādah (worship), social dealings vis-a-vis hadith and preserved the decrees of the qaḍīs (jurists) of their respective cities. According to Shah Wali-u Allah the method of the fiqh of these schools represent following outstanding characteristics:

a) They used both musnad (isnad of a hadith, uninterrupted and goes back to the Prophet) and mursal (transmission of a suocessor from the Prophet directly dropping the Companion from the isnad) hadith in their fiqh.

b) They had consensus on this point that they could use the sayings of the Sahabah and the Tabi’un to operate laws of the Shari’ah – as Shar’i istidlāl. Their use of

81. Ibid., P.27.
82. Ibid.
83. Ibid., P.29.
84. Ibid., P.30.
the sayings was based on the two reasons: (1) The sayings could be hadith of the Prophet which they rendered, under the circumstances, in *muqūf* forms (a kind of hadith in which the Sahabah does attribute the content directed by the Prophet to the Companion). When Ibrahim al Nakh'ī and imam Sh'bi was asked about it they replied by saying that they did so to avoid the fear of misquoting the Prophet. To them it is better to quote from the Sahabah than from the Prophet (*marfu* hadith) as the former are reliable source of the Sunnah. The second reason was that the saying could be the ruling which their i'amah had extracted from the Qur'an and the Sunnah by way of *ijitihād*.

c) Whenever they found an inherent contradiction in any hadith they resorted to the sayings of the Sahabah and on the latters' opinion they term it either abrogated (*mansūkh*) or beyond the proper understanding.

d) Whenever they found the difference of opinion between the Sahabah and the Tabi’un on any issue they usually did turn to the *madhab* (legal ruling) of the ulama and the teachers of their local cities. They did so because they considered their master-ulama as fully conscious about the merits and the short-comings of their predecessor *ulama-aslāf*. For this Imam Malik (d. 179/786) maintains that

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85. Ibid.
86. Ibid. P.31.
87. Ibid.
the practice on which people of Madina had consensus could work as hujjah (proof) of the Shari’ah. The people of Kufa, on the other hand, resorted to their own madhab, developed by their local i’amah on the basis of the sayings of Abdullah Ibn Mas’ud, ‘Ali and the decrees of Qadi Sharah, Sha’bi and Ibrahim Nakh’i. This dependence upon their local masalik (fiqhi approaches), led Alqama to raise an objection to Musruq bin al-Ajda’ (d.63/682) on the latter’s preference to follow the saying of Zaid bin Thabit which the people of Madina did follow on the issues of tashrik (lending land for cultivation on share-basis to any other person). It shows that the ulama of this period, according to Shah Wali-u Allah, used to prefer the opinions, decisions or sayings of their local teacher-ulamah, or i’amah on questions of legal import.

**Approach to the differences Among the Popular madhāhib (Schools) of Fiqh**

The fiqhi sayings of the predecessor ulama and i’amah found such a systematic and extensive use after the tabi’un that it finally led to the emergence of several popular madhāhib of fiqh (schools of jurisprudence). Among them four schools attained the world-wide fame and are named after their founders — Maliki, Hanafi, Shafi’i and Hanbali schools. In approaching the differences among the first three schools, Shah Wali-u Allah’s conclusions are little different from those which he draws about the successors of the Tabi’un. The reason is that the i’amah with whom the schools are

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88. Ibid., P.32
89. Ibid., P.33.
associated coincide, at large, with the age of the Tabi’un and the existence of the
difference seems apparent.

According to Wali-u Allah, Maliki school is based on the hadith transmitted
through the predecessor ulama of Madina, on the decisions of ‘umar, ‘Abdullah ibn
‘Umar, ‘Aishah and the other seven famous fuqaha90. It is distinguished for its naqli
(reported) character of a hadith and athar91. The ‘narrations’ and the sayings of Imam
Malik have been collected by his pupils and commented upon critically by them92.
Mawatta of Imam Malik, views the Shah, is a good representation of the fiqh
methodology of this school. The school of Abu Hanifah follows the pattern of Ibrahim
Nakha’i’s line of ulama of the Tabi’un. The differences between Maliki and Hanafi
schools, according to the Shah, are found in their treatment of takhrij (derivation of
legal rulings). The former takes it ordinarily while the latter makes its use extensively.
In the school of Abu Hanifah, it is found that his pupils – Abu Yusuf and Imam
Muhammad ibn Hasan differed from him on certain issues93. On

90. The seven fuqaha (fuqaha Sabb’ah) are S’eed bin Musayb (2) Urwah ibn
Zubair (3) Qasim ibn Muhammad ibn Aby Bakr siddiq (4) Abu Bakr ibn abdul
Rehman Makhzumi (5) Kharijah ibn Zayd ibn Thabit (6) Ubiad ullah ibn
Abdullah ibn Utbah Mas’udi (7) Sulyman ibn Yasar Hilali.

91. Supra n. 79, P. 37.

92. Ibid.

93. Ibid., P.38:
such occasions they leave aside their master’s opinion for its being weak or he prefers it to any other saying of the Kufan alim that seems reliable to him. In the Maliki school of jurisprudence Wali-u Allah hardly draws such kind of differences between the teacher and his pupils.

Imam Shafi’i, however, seems to the Shah as differing from the above mentioned schools of law on many points. These points are of the methodological nature, relating to the use of nusus sources of the Shari’ah. Shah Wali-u Allah refers to the following points about the disagreements between Imam Shafi’i school and those of Abu Hanifah and Imam Malik:

a) Imam Shafi’i objects the other two school’s use of *mursal* (a hadith transmitted by the successor from the Prophet directly dropping the Companion from the isnad) and *munqatah* (an isnad having a single link moving somewhere in the middle, in one place or more) ahadith (Traditions) which admittedly tend to unreliability.

b) Shafi’i does not consider the ijtihadat of the other two Imams as reliable for their ignoring of the tatbiq between the nusus — texts of the Qur’an and the hadith. This is, according to the Shah, illustrative in Shafi’i discussion with Imam Muhammad on the question of the required number of witnesses for legal cases.

94. Ibid., P.40.
and on the issue of wasiyyah (will) to the heir at the time of legator’s approaching death⁹⁵.

c) Shafi’i holds that the Tabi’un ulama had remained unacquainted with many such ahadith which were collected properly by the later scholars of Islam. In presence of an authentic hadith, considers Imam Shafi’i, the ijtihad of the Tabi’un stands unreliable and the former is unequivocally valid. While citing the example of ‘hadith-i-qultain’ and ‘hadith-i Khayr-i majalis’ which remained unaccessible to the Tabi’un and as such could not become the part of Imam Abu Hanifah and Maliki fiqhi rulings⁹⁶.

d) Shafi’i also objects Abu Hanifa’s use of istihsan and considers it a misunderstanding of the difference, between the ra’y and the Qiyas. Shafi’i recognizes qiyas on the basis of the nusus rather than on ra’y⁹⁷.

The Place of Ahl al Hadith and Ahl al ra’y in Fiqh Disagreement

The period that follows soon after the successors of the Taba’un classifies, according to Shah Wali-u Allah, the fiqhi disagreements of the ulama into two broader divisions. One is termed as ahl al hadith (the traditionists) and the other as ahl al ra’y (the rationalists). Although the rudiments of both the schools are found in the earlier

⁹⁵. Ibid., P.41.
⁹⁶. Ibid., P.44.
⁹⁷. Ibid., P.45.
formulations of the fiqh, yet in the course of history they tended towards such a direction that widened the scope of the fiqh remarkably. About the school of ahl al hadith, Shah Wali-u Allah views that it was the aptitude of some of the Sahabah and the Tabi’un to avoid ra’y in their fiqh. They avoided it to guard themselves against falling into error by confusing the lawful (halāl) with the unlawful (harām) or vice versa. Their concern was to operate the legal rulings solely from the nasūs and the athār. The trend continued among the succeeding ulama of the times and it reached the extent that Imam-i Shabi (d. 103/721) had to say that the saying, attributed to the Prophet, only is worth following and the one that comes from a person’s opinion should be avoided.

The group of ahl al hadith made a fresh research in the collections of hadith and simultaneously, took full advantage of them for deciding their legal issues. Their extensive endeavors in collecting the hadith, calling others for its compilation and attempting at the scrutinizing of hadith led to the classification of hadith for their veracity and the degrees of reliability. Such endeavors brought a vast treasure of hadith to light and they became easily accessible to the fuqaha for deciding the matters in a specific way and with reliability.

About the contribution of ahl al hadith to fiqh, Shah Wali-u Allah, makes a mention of their following characteristics:

98. Ibid., P.48.
99. Ibid., P.49.
100. Ibid., P.50.
a) Alial al hadith or the traditionists were the ulama who had been primarily concerned with the science of hadith and they turned to fiqh gradually\textsuperscript{101}.

b) Under the ulama of ahl al hadith the fresh research was made in the collection, scrutiny and the classification of hadith into various degrees – \textit{mursal, munqatah, gharīb, mushūr}, etc. This obviated the doubt about hadith and explored the Shari‘ah rulings with reliability\textsuperscript{102}.

c) The school, for the first time, discouraged the liking for taqlid of a particular imam or ulama of local cities. They did so, because having enough access to the hadith they found some of the decisions of the fuqaha contrary to the hadith. Although they followed the faqhi or their madhahab in certain circumstances but they did not become the strict followers (\textit{muqaladīn}) of the \textit{madhahab}\textsuperscript{103}.

d) Their method of extracting laws of the Shari‘ah was that on any issue when they found clear guidance from the Qur’an, deviation from it was not permissible. On the issue in question in which the commandments of the Qur’an admits more than one interpretation their decisive factor was the Sunnah\textsuperscript{104}.

\begin{itemize}
\item \textsuperscript{101} Ibid. P.53.
\item \textsuperscript{102} Ibid. P.52.
\item \textsuperscript{103} Ibid. P.54.
\item \textsuperscript{104} Ibid.
\end{itemize}
f) When the Qur'an was silent on the issue in question they sought guidance from the Hadith. In such a case they followed Hadith irrespective of its familiarity with the jurists or popularity confined within any family or the Sahabah and the fuqaha's acting upon it. To them ijtihad is of no use in presence of a Hadith.105

g) When, in spite of their deep research, they did not find any Hadith on the issue they resorted to the sayings of the Sahabah and the Tabi'un. Their recourse to such sayings was different from the earlier ulama who sought answers to their local ulama. The ahl al Hadith sought answers from the athar of the majority of the fuqaha and those of the Khulafa al-Rashidun.106

f) Whenever they found the opinions of the fuqaha at variance they used to prefer either of that person who was renowned for his knowledge, piety and memory of Hadith or of the jurist whose saying had gained popularity among the people. In case the saying of both the jurists had equal weight they termed the matter as double-decreed issue and any of the two decrees could be followed.107

g) If none of the conditions, mentioned above was available to guide, then the course which ran closest to the basic principles of the Qur'an and the Sunnah,

105 Ibid.
106 Ibid., P.55.
107 Ibid.
to their subtle allusions and to their demands on the believers, was adopted by the ulama of ahl al Hadith\textsuperscript{108}.

The other school of fiqh called \textit{ahl al ra'\textacute{y}} (rationalists) emerged, according to Wali-u Allah, during the times of Imam Malik and Sufyan Thuri. Its flourishing and popularity in far and near came, however, late in the history. To this group of ulama asking questions on matters was not wrong nor they hesitated in giving decrees on the issues. they held that the fiqh is the basis of \textit{Din} (religion) and to spread its knowledge and science is an important duty. About their method and fiqhi differences with the group of ahl al Hadith, Shah Wali-u Allah observes:

a) The school Al ahl al ra'\textacute{y} hesitated in citing a Hadith directly from the Prophet (SAW) under the fear that any error might be committed by them while narrating or transmitting the Hadith. They wanted to be at safer side and safeguard themselves against attributing any false saying to the Prophet and commit a sin\textsuperscript{109}.

b) Ahl al ra'\textacute{y} group, unlike the traditionists, did not take it their concern that they should collect the \textit{athār} of the various Sahabah and ulama and have critical evaluation and discussions on them\textsuperscript{110}. While ignoring this task they had no access to the enough treasure of fiqhi sayings to decide their legal matters.

\textsuperscript{108} Ibid.

\textsuperscript{109} Ibid., P.67.

\textsuperscript{110} Ibid., P.69.
c) Since enough a Hadith and the athar were not available to the group of ahl al ra'y they had to depend upon the decrees and the sayings of their i'amah whom they regarded as of high status in the field. This developed a deep faith in them about their local ulama and directed towards the adherence of the latters principles and the decrees of fiqh\textsuperscript{111}.

d) Shah Wali-u Allah calls this approach of ahl al ra'y to fiqh a \textit{takhiji} (derivation) process. In it the alim or jurist who propounds ijtihad of his master or imam is well learnt in the latter's fiqh and memorises their sayings, knows the principles of preference of the one saying to the other, etc. to exercise his ijtihad. By this method he could derive legal rulings from the \textit{aqwâl} of his master to resolve the emerging issues of the society\textsuperscript{112}.

e) In its extensive form the \textit{takhrij} method, according to Wali-u Allah, became \textit{takrij dar takhrij} (derivation from derivation) with the group of the ulama of ahl al ra'y. It is found in them when they had no exact decree or saying on the issue and they had to resort to the illah or allusions of the decree to resolve the issues. Here they are at variance with ahl al hadith who neither confined their rulings to the particular i'amah nor practise the \textit{takhrij} method of the relationalists\textsuperscript{113}.

\textsuperscript{111} Ibid.
\textsuperscript{112} Ibid., P.70.
\textsuperscript{113} Ibid., P.71.
According to Shah Wali-u Allah the extensive use of the takhrij method in fiqh by the rationalists tended them towards the confinements of their ijtihad within the particular madhab. He is of the opinion that the emphasis of ahl al ra’y on derivation of the law by a particular alim or on the method of a particular imam or on memorising the mabsūt (recorded sayings) of the master mujtahid, characterizes their ijtihad as ijtihad fil madhab\textsuperscript{114}. Such use of the ijtihad made them little attentive about the Hadith. Unlike ahl al Hadith, their major concentration was on the extensive use of reason rather than on collecting Hadith and applying them to the new situations.

**Synthesis of the Fiqhi Disagreements**

Apart from his review of the emergence and the nature of fiqhi disagreements during the various stages of Islamic history, Shah Wali-u Allah seems much concerned with synthesis and moderation of fiqhi differences in his writings. This synthesis or moderation can be understood at various levels in his religious thought and analyzed briefly as following:

In the first place Shah Wali-u Allah conceives the synthesis of the fiqhi differences as found in its early schools. The differences among these early schools – the Iraqi and the Medina schools – were not in the fundamental principles of the Shar’iah but in furu’āt (subsidiary laws). Nor was there any deliberate attempt from the

\textsuperscript{114} Ibid., P.72.
either school to differ from the other. The differences arose from their exercising of
ijtihad on the particular problems of the society. To the Shah, it is the method of
extracting the Shari’ah rulings adopted by the fuqaha that makes them to differ from one
another in their opinions. The method of the Iraqi school of fiqh which was led by
Ibrahim al Nakh’i, tended more towards istinbāt (the process of extracting laws) from
the Qur’an and the sunnah than to marfu ahadith. In principle the school, never denied
the Hadith marfu and it was, states the Shah, under their fear of attributing a saying to
the Prophet (SAW) that might come out incorrect and led them to commit sin. To
avoid this fear they resorted to muqaf and mursal ahadith in juxtaposition with musnad.
The Medina school of fiqh which was led by Sa’yid ibn Musayb, on the other hand,
concentrated more on the Hadith and the athar than on istinbat. The reason for this was
that the fuqaha of Medina had easy access to the Hadith come down through the
practices of the Sahabah and transmitted by their Successors (Tabi’un). Unlike the
Iraqi school they hardly had the tendency to ignore Hadith; and if they did so it was
for its being abrogated (mansukh) by other Hadith or its reasonable rejection by the
Sahabah. This variance in the methods of the two schools, according to Wali-u Allah,
was never on prejudice or a deliberate opposition but due to certain

115. Ibid., PP.14-15.
116. Ibid., P.30.
117. Ibid., P.32.
circumstances and of superficial character. When taken as a whole, they act as complementary to each other in formulating the comprehensive and the reliable approach to the fiqh. \(^{118}\)

Secondly, Wali-u Allah's synthetic response is found in his approach to the differences of the three madhahib (schools) of fiqh—the Hanafi, the Maliki and the Shafi'i. Like the early schools of fiqh, these schools also do not depict the differences in the basic principles of the Shari'ah but are at variance in \(furu'i\) laws. Although these schools, views the Shah, found their emergence under the particular political and the local circumstances and their main concentration remained on providing Shari'ah guidance and rulings to their societies. Their decrees, \(fatawa\) and fiqhi writings constitute their fiqh which has been explained as well as developed considerably by their pupils and the ulama of their line. \(^{119}\) In this chequered development of the schools of fiqh, Shah Wali-u Allah finds many such elements which act as the moderating principles to all of them. This is discernible in Imam Muhammad, the pupil and the follower of Abu Hanifa, when he leaves aside his master's opinion on its contradicting with that of the majority of the ulama or the authentic Hadith. \(^{120}\) From this it can be drawn out that the Hanafi schools method of fiqh corresponds to that of Imam Malik and Imam-i Shafi'i in a good deal. Imam Shafi'i hardly resorts to qiyas in presence of a

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\(^{118}\) Ibid., P.34, Cf. Supra n.73, PP.57-67.

\(^{119}\) Supra n.117, P.37.

\(^{120}\) Ibid., P.38.
hadith even it is khabr-i wāhid\textsuperscript{121}. In principle Abu Hanifah, according to the Shah, does agree with the former’s method and the ignoring of Hadith by him is found only when it is either unreliable or has not yet come to light\textsuperscript{122}. In such cases Abu Hanifah resorts to qiyas. At the advent of Imam Shafi’i a good number of Hadith had been collected and he considered them vital for the fiqh purposes. While formulating his fiqh both on the nasīs and the qiyās, Imam Shafi’i contributes remarkably towards the synthesis of the principles of istinbūt of the Hanafi school and the traditionalism of the Malki school. It is relevant to mention here that shah wali-i Allah himself inherited the adherence to Hanafi madhab from his father, Shah Abdul Rahim (b.1057/1647), but his studies under some prominent teachers at Haramain influenced him equally with their madhāhib which they followed\textsuperscript{123}. In him the liking was more towards muhadithūn-fuqaha and it did not confine him within the Hanafi school but directed towards the other madhāhib particularly that of Imam Shafi’i\textsuperscript{124}. As such in his practical life Shah wali-u Allah is seen as making adjustment (tal-fiq) between the fiqhi saying of the Hanafi and the Shafi’i schools of fiqh\textsuperscript{125}.

Thirdly, Shah Wali-u Allah conceives of the synthesis of the schools of ahl al Hadith and ahl al ra’y. He is of the opinion that a scholar of the hadith should not be

\textsuperscript{121} Ibid.

\textsuperscript{122} Dr.Mazhar Baqa, Usūl-i Fiqh aur Shah Wali-u Allah, P.24.

\textsuperscript{123} Ibid., PP.25-29.

\textsuperscript{124} Ibid., P.29-30.
extremist on his scholarship of the hadith nor should be he extremist on his particular method of fiqh relating to the use of the hadith and denial of the *qiyaṣ* in his *fiqh*\(^{126}\). It is because his method isn’t authenticated by the *nāsus* in clear terms and cannot be called final. It does not, thinks Wali-u Allah, suit to *ahl al Hadith* to reject any Hadith on the slightest doubt of its being *mursal* or *munqalabah*\(^{127}\). He cites the examples of Ibn Hazm who objects the authenticity of the Hadith, narrated by Imam Bukhari about the unlawfulness of singing and music\(^{128}\). His rejection of the Hadith is merely on this ground that there lies doubt in its having broken chain of the narrators. The principle worth to follow here should be to search out if the Hadith is contradictory to the other Hadith\(^{129}\). The other extremist position of the ulama of *ahl al Hadith*, according to Wali-u Allah, is their restricting the narration of Hadith within a particular person and it boosts them to prefer the narration of the latter to those of others\(^{130}\). Similarly *ahl al ṭarā’īy* should not derive such meaning from the *kalam* or opinion of their master *mujtahid* which may be contrary to its actual meaning. Nor should they create confusions by misunderstanding the *illaḥ* and similitude (*naḍīr*) of their master’s decrees while making *takhrij* from them\(^{131}\). Wali-u Allah’s attempt is at searching out the

\(^{126}\) Supra n.122, .75.

\(^{127}\) Ibid.

\(^{128}\) Ibid.

\(^{129}\) Ibid.

\(^{130}\) Ibid., 75-76.

\(^{131}\) Ibid., P.77.
synthesis of the methods of the two schools to widen the scope of their fiqh. He holds that ahl al Hadith should not take it for granted that their every Hadith is authentic and on such ground reject ijtihad or qiyas of the ahl al ra' y even if it has reliable basis. Ahl al ra' y are, at the same time, directed not to make a free use of takhrīj or qiyas in their fiqh when it is liable to go contrary to the kalam or ijtihad of their master mujtahid. It does not suit to the ulama of ahl al ra' y to reject an authentic Hadith by preferring a qiyas or ra' y to it. The Shah guards against using the two methods of the schools as poles apart but should be harmonized and moderated to such an extent that may enrich and widen the fiqh as a whole. He is of the opinion that the total denial of derivation (takhrij) by the ahl al Hadith may deprive them of its merits of interpretation of the nusus and their application to the new situations. Similarly the rejection off Hadith by the ahl al ra' y may devoid them of the reliability and stability in their fiqh. Moreover the method of takhrīj (derivation) should be used in a moderate way rather than using it in the form of takhrīj dar takhrīj. Shah Wali-u Allah quotes Hasan Basari (d.110/728) appropriately who observes that the truth is that both the processes have their own place and we just cannot do without either. We can neither ignore the Hadith nor can deny the need of 'derivation'. The right course is to make up for the weakness of the one with the strength of the other.

132. Ibid. P.75.

133. Ibid. P.77.

To sum up, Wali-u Allah’s review of the fiqhi disagreements among the Sahabah, Tabi’un, the successors of the Tabi’un and the popular madahib is characteristic of his wide and proper approach to the subject. The differences are of superficial and subsidiary nature, influenced by the diverse individual capacities of the mujtahids, local conditions of the regions and the scholars’ aptitude towards particular methods of formulating of shari’ah rulings. The laws of the shari’ah were interpreted variably by the scholars of Islam and so went on their application to the situations of life. Wali-u Allah’s refutation of aggrandizing the differences and taking the rigid positions of extremism is remarkable otherwise they sustain the factionalism and fanaticism among the Muslims and harm the solidarity of the Ummah. In his description of the subject, Wali-u Allah highlights the ethics of the differences found among the various mujtahids and the schools of the fiqh. It evaluates the ethics and behaviour of the mujtahidin and the ahl al ra’y with regard to their treatment to the formulations of the fiqh. In this way Wali-u Allah works out a synthesis of these fiqh disagreements and obviates the misunderstanding and rigidity that is found among some of the biased followers (muqtidin) of the mujtahids or madahib of fiqh. This trend of moderating the fiqh differences has been given a considerable treatment even by some modern scholars of Islam. Both the Arabian and the scholars of the Indian sub-continent also substantiate to this position of moderation and reconciliation in fiqh. Among them, worth to note are Shiekh Abdur Rehman Jaziri135, Shiekh Abdul Qadir

Awdah\textsuperscript{136} (d.1954), Taha Jabir al ‘Alwani\textsuperscript{137} (b.1935), Sayyid Abdul A’la Mawdudi\textsuperscript{138} (1905-1979), M. Amin Ahsan Islahi\textsuperscript{139}, Mufti Muhammad Shafi\textsuperscript{140} and Qari Muhammad Tayyib\textsuperscript{141}. They do not involve themselves in defensive tangles for supporting any particular mujtahid or school of fiqh and refuted the biased approach to the subject. Their writings are concerned with the objective understanding of the fiqh, highlight its truthfulness and viability to ensure the welfare and the solidarity of the Ummah.

\textsuperscript{136} See his \textit{al Tashri al Janai al Islami}.

\textsuperscript{137} See his \textit{Ethics of Disagreements in Islam}, Herdon, USA (1992).

\textsuperscript{138} See his \textit{Tafhimāt}, Part I and IV, Delhi, (1988) and (1990).

\textsuperscript{139} See his \textit{Juristic Differences and How to Solve Them in an Islamic State}, Delhi (1993).

\textsuperscript{140} See his \textit{Wahdat-i Ummat}, Delhi.

\textsuperscript{141} See his \textit{Maslak-i Ulama’ Deoband}, Deoband, UP, (1989).