The Necessity of the Formation of a Modern *Marjaʿiyah* in Twelver Shia *Marjaʿiyah* Institution

İsnâaşeriyye Şîî Mercîlik Kurumunda Modern Bir Mercîliğin Teşekkülünün Gerekliliği

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Abstract

The institution of *Marjaʿīiyah* in Twelver Shia is considered the highest religious institution that has a long history. Despite the much research that has been done about this institution and even the necessity of its modernization, the concept of "modern *Marjaʿīiyah*" needs to be explained, especially from a juristic point of view. The jurisprudential explanation is necessary because of the jurisprudential nature of this institution. The present article tries to organize this matter. The achievement of the article is that, from the juristic perspective, the modernization of the *Marjaʿīiyah* requires a transformation in three areas: the jurisprudential approach of *Marājiʿ*, the way of issuing *fatwá* and social interaction with the audiences. In the first step, the article discusses the necessity of the transformation in the jurisprudential approach of *Marājiʿ* and based it on the necessity of compatibility between the products of *Marājiʿ* with the rational and scientific achievements of modernity. The second feature is the modern interaction model with society. In the case of issuing Fatwá, it includes an attachment of arguments to enable the imitator to compare various *Fatwás*. This model considers *Marjaʿīiyah* as a social institution that is devoid of special sanctity and holiness. Denying the special holiness means that *Marjaʿ* does not have unique holiness as a position of *Marjaʿ* in addition to the holiness that the possessors of knowledge and piety enjoy. The negation of special sanctity, if it is based on juristic arguments, opens the door for the modernization of this institution. The article concludes that the modern *Marjaʿīiyah* is completely different from the traditional *Marjaʿīiyah* and recommends further studies on the social necessities of this formation through field research.

Keywords: *Shiite*; *Marjaʿīiyah, Modern Marjaʿīiyah, Juristic perspective, Social Model, Society.*

Öz

İsnâaşeriyye Şîîliğinde Merceiyyet kurumu, uzun bir geçmişe sahip en yüksek dini kurum olarak kabul edilmektedir. Bu kurum hakkında yapılan çok sayıda araştırmaya ve hatta modernleşmesinin gerekliliğine rağmen, "modern Merceiyyet" kavramının özellikle fıkhî bir bakış açısıyla açıklanması gerekmektedir. Fıkhî açıklama, bu kurumun fıkhî niteliği nedeniyle gereklidir. Bu makale bu konuyu düzenlemeye çalışmaktadır. Makalenin ulaştığı sonuç, fıkhî açıdan bakıldığında Mercîliğin modernleşmesinin üç alanda bir dönüşümü gerektirdiğidir: Mercîliğin fıkhî yaklaşımı, fetva verme biçimi ve dinleyicilerle sosyal etkileşim. İlk adımda makale, Mercîlik fıkıh yaklaşımındaki dönüşümün gerekliliğini tartışmakta ve bunu Mercîliğin ürünleri ile modernitenin rasyonel ve bilimsel kazanımları arasındaki uyumun gerekliliğine dayandırmaktadır. İkinci özellik ise toplumla modern etkileşim modelidir. Fetva verme durumunda, taklitçinin çeşitli fetvaları karşılaştırmasını sağlamak için bir argümanlar ekini içerir. Bu model, Merceiyyet'i özel bir kutsallık ve kutsiyetten yoksun sosyal bir kurum olarak görmektedir. Özel kutsallığın inkârı, bilgi ve takva sahiplerinin sahip olduğu kutsallığa ek olarak, Mercîliğin konumu olarak eşsiz bir kutsallığa sahip olmadığı anlamına gelir. Özel kutsallığın yadsınması, eğer hukuksal argümanlara dayanıyorsa, bu kurumun modernleşmesine kapı açmaktadır. Makale, modern Merceiyyet'in geleneksel Merceiyyet'den tamamen farklı olduğu sonucuna varmakta ve saha araştırması yoluyla bu oluşumun toplumsal gereklilikleri üzerine daha fazla çalışma yapılmasını önermektedir.

Anahtar Kelimeler: Şîîlik, Mercîlik, Modern Mercîlik, Fıkhî Yaklaşım, Sosyal Model, Toplum.

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Introduction

In compliance with the Twelver Shiites, jurists serve as the reference of religious rules in the absence of the Twelfth *Imām.*[1] Accordingly, amongst different juristic positions, some are accepted by Shiite jurists,[2] namely, the positions of the proprietor of explaining the religious rules (*Al-Iftāʾ*) and judging among people (*Al-Qiḍāwah*).[3] In addition, we deal with the title of *Al-Umūr al-Ḥisbīyah* which refers to necessary issues while a particular one is not appointed to conduct them. The jurist is introduced as someone who can definitely (*Al-Qadr al-Mutiyaqqan*) be in the charge of these duties.[4]

Giving credence to the above-mentioned responsibilities for jurists led to the emergence of the institution of *Marjaʿīyah.* The advent of the term imitation (*Taqlīd*) in the literature of *Uṣūl al-Fiqh* dates back to the fourth century AH.[5] From the starting point of the absence of the Twelfth *Imām,* Shiite jurists have acted as references for Shiites. Despite their common regional authority, some jurists, such as *Shaykh Muḥammad ibn al-Ḥasan al-Ṭūsī* (995- 460), gained general authority. The advent of the new structure in *Marjaʿīyah* is ascribed to the Safavid era.[6] Examples of *Marjaʿīyah* in the form of today's structure are recognizable from the middle of the *Qājār* era with jurists such as *Shaykh Murtaḍá Anṣārī* (1781–1864) and *Mīrzā Muḥammad Ḥasan Shīrazī* (1815 –1895).

Due to the emergence of a new structure in *Marjaʿīyah,* this institute was no longer limited to explaining the rules of *Sharīʿah,* but a kind of leadership of the Shiite community. The intervention in the Iranian constitutional revolution (1905-1911) which divided *Najaf's Marājiʿ* into two groups, the supporters and opponents of the revolution, and the leadership of the Islamic revolution (1979) by the Shiite *Marjaʿīyah* can be considered as the most obvious examples of the emergence of *Marjaʿīyah* in the role of the Shia leadership.

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[1] Muḥammad ibn ʿAlī ibn Babawayh al-Qummī, *Kamāl al-Dīn wa Tamām al-Niʿmah*, 2 vols., vol. 2 (Tehran: Dār al-Kutub al-Islamīyah, 1975), 484; Muḥammad ibn al-Ḥasan al-Ḥurr al-ʿĀmilī, *Tafṣīl al-Wasāʾil al-Shīʿah ilá Taḥṣīl al-Masāʾil al-Sharīʿah*, 30 vols., vol. 27 (Qum: Āl-al-bayt Institute, 1988), 131.

[2] Murtaḍá al-Anṣārī, *Al-Makāsib*, 6 vols., vol. 5 (Qum: World Congress of Shaykh Anṣārī, 1995), 553.

[3] Ibid.

[4] Jawād Tabrīzī, *Ṣirāṭ al-Nijāt*, 7 vols, vol 3 (Qum: Dār al-Ṣidīqah al-Shahīdah, 2006), 358.

[5] Abū al-Qāsim Gurjī, *Adwār Uṣūl Al-Fiqh* (Tehran: Mīzān Publisher, 2006), 38.

[6] Rasūl Jaʿfarīyān, *New Research on Safavid Times* (Qum: Adīyān Publications, 2005), 25.

The political and social developments in recent decades raised the question that what the future holds for this important Shia institution. Much descriptive research was conducted in this area to predict the future of this institution.

Considering the significance of the future of the Shiite *Marjaʿīiyah*, many studies have been conducted in this area. However, most of these studies investigated the *Marjaʿīiyah* from two perspectives, namely, the political perspective and the perspective of the complexities that have arisen in the selection of the *Marjaʿ*, especially after the Iranian revolution in 1979.

An example of these studies is the one by Khalid Sindawi on the *Marjaʿīiyah* discourse in the twentieth century[7] and another one by Rula Jurdi Abisaab.[8] The study of Saskia Gieling on the choice of *Marjaʿ* in proportion to the future[9] and the study by Morgan Clarke on the selection of *Marjaʿ*,[10] are among this line of studies.

In other studies, the subject of *Marjaʿīiyah* and its past and future positions in Twelver Shi'ism is investigated through a general lens. A notable example of this line of research is the one by Ann K. S. Lambton.[11] In this research, the necessity of the development that should take place in this institution is not addressed. Some other studies investigated the future developments of *Marjaʿīiyah* in terms of format and structure. Accordingly, the predicted categories by this study are also based on the perspective. The Book "*Marjaʿīiyah* and the Clergy" is considered one of the earliest research on this issue. The articles "People's expectations from the *Marāji*ʿ" by Mehdi Bazargan, "The main problem in the clergy organization" by Morteza Motahhar, "The Centralism or decentralization" by Sayyid Mahmoud Taleghan, and "The *Fatwá* Council" by Murtaḍá Jazāʾirī were all concerned the subject of future developments of *Marjaʿīiyah*. Nevertheless, all of these studies have considered future developments of *Marjaʿīiyah* regarding style and form. [12]

Discussing a new topic on the necessity of the development of Shiite *Marjaʿīiyah,* this article follows a prescriptive approach and states that the

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[7]   Khalid Sindawi, "Awza Instruction and Its Role in Shaping Modern Shi ʿIte Identity: The Awza S of Al-Najaf and Qumm as a Case Study," *Middle Eastern Studies* 43, no. 6 (2007).

[8]   Rula Jurdi Abisaab, "Lebanese Shiʿites and the Marja'iyya : Polemic in the Late Twentieth Century," *British Journal of Middle Eastern Studies* 36, no. 2 (2009).

[9]   Saskia Gieling, "The "Marja'iya" in Iran and the Nomination of Khamanei in December 1994," *Middle Eastern Studies* 33, no. 4 (1997).

[10]   Morgan Clarke, "After the Ayatollah: Institutionalisation and Succession in the Marja'iyya of Sayyid Muhammad Husayn Fadl Alkah," *Die Welt des Islams* 56, no. 2 (2016).

[11]   K. S. Lambton Ann, "A Reconsideration of the Position of the Marja' Al-Taqlīd and the Religious Institution," *Studia Islamica*, no. 20 (1964).

[12]   Morteza Motahhari Muhammad Husayn Tabataba'i, Mehdi Bazargan, Mahmoud Taleghani, morteza jazayeri, *Marjaʿīiyah and the Clergy* (Tehran: Publishing Joint Stock Company, 1962).

institution of *Shīʿah Marjaʿīiyah* needs to be fundamentally modernized. Here, we define modern *Marjaʿīiyah* and discuss the necessity of this development based on the Shia perspective. The juristic method used in this research in highlighting the necessity of the formation of modern *Marjaʿīiyah* makes it different from the previous studies.

The key contribution of this study is highlighting the need for change in the institution of *Marjaʿīiyah.* Ignoring such a need may strongly result in the disappearance of this institution in the Shiite clergy. To prevent this from happening, this study accurately explains the term modern *Marjaʿīiyah* and distinguishes it from the type of *Marjaʿīiyah* that is altered only in form and appearance. Therefore, as two key contributions, this study highlights the need for a fundamental change and discusses the various aspects of this change.

1. The Necessity of Forming a Modern Juristic Approach in *Marjaʿīiyah*

The juristic approach of modern authority can be discussed regarding its achievements and methodology. First of all, we need to know what we mean by talking about the modern juristic approach. In order to clarify the concept, defining the term modernity seems a necessity. There are various explanations for the term modernity. [13] Using the term 'avant-garde', Irving Sandler states "Modernism can also be viewed broadly as unbounded, multiple, inclusive of every tendency that seems at all "progressive" that is different from what has been".[14] However, in this study, modernity refers to various developments that have taken place in different areas of human life since the Renaissance, the Industrial Revolution, and the Enlightenment periods to this day. Here, modernity refers to a specific period that served as a platform for various post-medieval developments. This era began with science and rationalism and formed the foundations of philosophy, sociology, ethics, and education.[15] Thus, the debate on the differences between modernity and postmodernism and the sequel of the modern era is not the concern of this study, irrespective of its significance.[16] It is noteworthy to mention that the modern era has been the bedrock of various intellectual currents;[17] however, they merge on a common basis. Among them, are

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[13]   Peter Van Der Veer, "The Global History of "Modernity"", *Journal of the Economic and Social History of the Orient* 41, no. 3 (1998): 287.

[14]   Irving Sandler, "Modernism, Revisionism, Pluralism, and Post-Modernism," *Art Journal* 40, no. 1/2 (1980): 346.

[15]   Dhavendra Kumar, "Engaging with Modernity: Need for a Critical Negotiation," *Sociological Bulletin* 57, no. 2 (2008): 243.

[16]   Tina Di Carlo, "Postmodern Modernism," *Log*, no. 24 (2012): 82-4.

[17]   Van Der Veer, 83.

the modern legal and ethical standards agreed upon by modern humans. The formation of modern civilization has been centered on various factors, including rationality, freedom, equality, justice, democracy, homogenization, individualism, autonomy, nationalism, universalism, development, mechanization, and secularization. Despite the criticisms leveled at modernism over postmodernism, standards of modernism continue to play their significant roles in human societies and act as understructures of international conventions, international laws, and modern theories.[18]

Given the aforementioned clarifications of modernity, the meaning of the modern juristic approach of *Marjaʿīiyah* is clarified. Accordingly, the achievements of the *Marjaʿīiyah*, including religious rules, are compatible with the achievements of modernity. In other words, the achievements of modernity are respected in this model. However, it should be noted that not all the achievements of modernity are concerned here. The achievements of modernity can be categorized into two parts. The first part refers to achievements related to scientific ideas or universal human rationality. The second part includes the achievements relevant to the Western lifestyle, or human inclinations. The first part of the achievements of modernity is focused on in the aforementioned approach since the second part does not cover rationality but instinctive desires. Approaches to distinguish the two parts of modernity's achievements were discussed in another study.[19] The current study is focused on the importance of noticing this border, not the methods to distinguish it. Acquainted with the concept of the modern juristic approach, we now talk about the necessity of adopting this approach.

This necessity is based on the fact that this type of achievement of modernity is the result of the common wisdom among human beings that is the basis of the new legal and civilisation systems, regardless of tendencies and affiliations. For example, it can be said that legal equality can be considered as a rational principle accepted by human beings (regardless of affiliations). In this case, juristic inferences must be done with respect to this foundation.

Muslim scholars believe that even verses and traditions are not supposed to contradict the definite human intellect. In case of any contradiction between these statements and the *Sharīʿah* proposition, the statement must be interpreted and justified on a rational-consistent basis; otherwise, it must be renounced (especially in case of any uncertainty or criticism on textual authenticity). This principle is specified in the words of Shaykh al-Anṣārī, the prominent Shiite jurist. He writes:

> The natural and inner intellect, which is not mixed with illusions, is
> always preferred on the religious argument, why not when belief in

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[18]   (Self-identifying reference), 265.

[19]   Ibid, 267-269.

the existence of God is based on lower level intellect's perception that is far below the standard of natural intellect. Most researchers believe that a religious argument *al-naqli* cannot stand against certain rational arguments, and if the appearance of such a conflict is found, it should be justified or put aside.[20]

Interestingly, this principle has not been accepted only by Shiite scholars, but also by Sunnis. For example, Al-Āmidī says 'If a verse of the Qur'an conflicts with a rational statement, the statement is preferred and has supremacy over the verse of the Qur'an'.[21] That is why almost all Muslim scholars have accepted that we can limit the scope of Qur'anic verse in order to exclude the anti-intellect issues (*Al-Takhṣīṣ*).[22]

The second reason is the theological basis of all Shiite jurists that is the well-known theory of good and evil (*Al-Ḥusn wa al-Qubḥ al-ʿAqliyyān*). In brief, the implications of this theory are that some things and some deeds are good in nature and some other things are inherently bad; and human intellect can distinguish the good and bad needless of religious guidance. An example is distinguishing between the goodness of justice and the badness of oppression.[23] On this basis, it is not possible for the *Sharīʿah* to rule cruelly and unjustly. Therefore, the jurist cannot ignore this accepted theological basis in his inferences. He cannot offer a reading of the Qur'an and *Sunnah* that is against justice. There are many examples of such anti-justice inferences in traditional jurisprudence, especially in cases such as Islamic punishment, women's rights, or the rights of religious minorities.

Concerning the existence of various views on the principles of justice and oppression among contemporary humans, the question is 'which view should be considered as a criterion in case of accepting the authority of intellect?' Therefore, an anti-justice inference of a jurist that has been made from the Qur'an and *Sunnah* may be considered as justice from another point of view. The answer is, by the rational achievement of modernity we mean rationality based on the definite common rationality of all human beings. There is a precise criterion for distinguishing it.

[20]   Murtaḍá al-Anṣārī, *Farāʾid al-Uṣūl*, 3 vols., vol. 1 (Qum: Islamic Publishing Corporation 1995), 18.

[21]   Sayf al-dīn al-Āmidī, *Al-Īḥkām Fī Uṣūl Al-Aḥkām*, 4 vols., vol. 2 (Damascus: Al-Maktab al-Islāmī, 1982), 18.

[22]   Aḥmad ibn ʿAlī al-Rāzī al-Jaṣṣāṣ, *al-Fuṣūl fi al-Uṣūl*, 4 vols., vol. 2 (Kuwait: Kuwait Ministry of Awqaf, 1994), 147-7; ʿAlī ibn al-Ḥusayn al-Sharīf al-Murtaḍā, *al-Dharīʿah ilá Uṣūl al-Sharʿah* 2 vols., vol. 1 (Tehran: Tehran University press, 1997), 278.

[23]   Jaʿfar Subḥānī, *Al-Īāhīyāt ʿalá Hudá Al-Kitāb wa Al-Sunnah*, 4 vols. (Qum: World Center for Islamic Sciences, 1992), 232.

If a statement is being accepted by the world wisdom independence of a specific religion, culture, or nationality, it can be considered as definite intellect. To elaborate, homosexual marriage is not a definite intellect since it is strongly influenced by various factors, including culture and religion. To determine the statements that are accepted by world wisdom, Muslim scholars categorize logical statements (*al-Qaḍāyā*) into various groups. According to them, some statements are considered as reason-based and rational, while others are not. Accordingly, in case of any uncertainty about a statement, it can be assessed through a set of logical rules. There are certain statements that are accepted by world wisdom *al-Yaqīnīyyāt*.[24] These certain statements include: (1) Primary statements (*al-Awwalīyyāt)*, which refers to statements that the mind believes them independent of any reason; (2) Observable statements (*al-Mushāhidāt);*[25] (3) Proven statements (*al-Mujarrabāt)*, or statements that are demonstrated by experience;[26] (4) Successive statements (*al-Mutawātirāt)*, or statements that are considered valid since they have been narrated by countless people,[27] (5) Conjectures (*al-Ḥadsīyyāt)*, or statements that formed on the basis of a strong intuition that eliminates any doubt; and (6) Statements rooted in the innate nature of human (*al-Fiṭrīyyāt)*.[28] In addition to *al-Yaqīnīyyāt* statements, there are three categories of intellectually accepted statements. The first category includes generally accepted statements (*al-Mashhūrāt)*.[29] However, not all examples of these statements are accepted by the wise. Some *al-Mashhūrāt* statements are self-evident, including primary statements (*al-Awwalīyyāt)* and innate statements (*al-Fiṭrīyyāt)*, which have been mentioned as instances of *al-Yaqīnīyyāt*. The second category is *al-Taʾdībāt al-Ṣalāḥiyah*, which refers to accepted statements based on a universal benefit (for instance, the virtue of justice). The third type is *al-Musallamāt* or statements that are generally accepted based on science.[30] A large number of modernity's achievements can be categorized into these four types.

To conclude, the achievements of modernity can be identified on the basis of common wisdom among human beings and a precise criterion. A criterion that is proposed and utilized by scholars of Islamic logic. Therefore, *Marjaʿiiyah* is

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24   Ḥusayn ibn ʿAbdillāh ibn Sīnā, *al-Shifāʾ: Natural Sciences*, 3 vols., vol. 2 (Qom: Marʿashi Library, 1984), 79.

25   Al-Jurjānī,ʿAbd al-Qāhir, *al-Taʿrīfāt,* Tehran: Nāsir Khusraw Publisher, 1992, 35.

26   Shahāb al-Dīn Yaḥyá al-Suhrawardī, *Majmūʿah Muṣannafāti Shiykh Ishrāq,* 4 vols., vol 3 (Tehran: Institute for Cultural Studies and Research, 1996), 234.

27   Ibid, 41.

28   Ḥusayn ibn ʿAbdillāh ibn Sīnā, *al-Shifāʾ: Logic*, 3 vols., vol. 2 (Qom: Marʿashi Library, 1984), 79.

29   Ibid, 22.

30   Ibid.

responsible for presenting the *Sharīʿah* rules and cannot ignore such achievements. Whenever there is a moral or legal principle among such achievements, *Marjaʿīiyah* should interpret the holy Islamic sources on this basis, and in case of confronting with an inconsistent scriptural statement (verse of the Qur'an- *Ḥadīth*), it should be reinterpreted concerning intellectual consistency.

2. The Necessity of Forming a Modern Model of Issuing *Fatwá* in *Marjaʿīiyah*

The *Fatwá* model of traditional *Marjaʿīiyah* is not focused on convincing the imitator; hence, the *Marjaʿ*'s *Fatwá* is not based on providing reasons for the imitator but merely presents the result of his research. For this reason, jurisprudential imitation has been defined as 'Acceptance of the opinion of another one (*Marjaʿ*) in religious rulings, unaccompanied by any specific reason for the religious rule in question'.[31] Another definition is 'Accepting another's opinion based on that person's Ijtihād'.[32]

In this model, juristic imitation has a general reason, namely, the need for acting based on *Marjaʿ*'s view. Hence, *Marjaʿ* is not supposed to present his *Fatwá* along with reasons. Instead of employing the elements of convincing and assurance, juristic imitation is focused on compulsion and obedience. This is the reason why the jurists do not consider juristic imitation as prohibited one.[33] For them, prohibited imitation is acting independently of any reason,[34] however, in juristic imitation; there is a general reason for following the jurist which is the necessity of following jurists. In brief, the model of *Fatwá* and imitation in the traditional *Marjaʿīiyah* is based on obedience.

However, in the *Fatwá* model of modern *Marjaʿīiyah*, it is emphasised to convince and reassure the audience. To this end, *Marjaʿ* is supposed to explain the argument related to his *Fatwá* through an understandable discourse for the imitator. This explanation does not include the terms, arguments, criticisms, and details described in the juristic books, but the reason for the *Fatwá*. The advantage of this model is that the imitator can compare *Fatwá*s from a *Marjaʿ* with other *Marāja ʿ* and choose the most convincing one based on his/her intellect. The

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[31]   Muḥammad ibn Makkī al-ʿĀmilī, *Dhikrá al-Shīʿah fī Aḥkām al-Sharīʿah*, 4 vols., vol. 3 (Qum: Āl al-Bayt, 1999), 173; ʿAlī ibn al-Ḥusayn al-Karakī al-ʿĀmilī, *Jāmiʿ al-Maqāṣid fī Sharḥ al-Qawāʿid*, 13 vols., vol. 2 (Qum: Āl al-Bayt institute, 1994), 69; Muhammad Hasan al-Najafī, *Jawāhir al-Kalām fī Sharḥ Sharāʾiʿ al-Islām*, 43 vols., vol. 7 (Beirut: Dār Iḥyāʾ Turāth al-ʿarabī, 1984), 400.

[32]   ʿAlī ibn al-Ḥusayn al-Karakī al-ʿĀmilī, *Jāmiʿ al-Maqāṣid fī Sharḥ al-Qawāʿid*, 13 vols., vol. 2 (Qum: Āl al-Bayt institute, 1994), 69.

[33]   Jaʿfar ibn al-Ḥasan ibn Yaḥyá al-Ḥillī, *Mʿārij al-Uṣūl* (Qum: Āl al-bayt Insitute, 1983), 199.

[34]   Javad ibn Saʿd Al-Kāẓimī, *Masālik al-Afhām ilá Āyāt al-Ahkām*, 4 vols., vol. 4 (Tehran: Ahl al-Bayt (AS) Research and Publication Institute, 1987), 128.

inability of a *Marjaʿ* in presenting reasonable *Fatwá*s is considered as insufficient skill in conveying the content. To clarify the model, we can consider the physician-patient relationship. Physicians convince the uninformed patients by defining the disease, its origin; and its effects, before providing a prescription. Such a model can also be applied in Islamic sciences and the issuance of a *Fatwá*.

In brief, the communication pattern of modern *Marjaʿiiyah* and imitators in the field of *Fatwá* should be based not on obedience but on convincing. For this reason, we call the *Fatwá* model of the traditional *Marjaʿiiyah* "the pure model of *Fatwá*" and the *Fatwá* model of the modern *Marjaʿiiyah* "the argumentative convincing model of *Fatwá*".

The necessity of the new pattern can be explained through several strong reasons.

The first reason: The most important reason for the legitimacy of jurisprudential imitation is that all the wise men in the world refer to a specialist regarding specialised matters. The traditions that recommended imitation of the jurisprudent are all instructive, that is, they suggest people act according to their intellect. Therefore, imitation of the jurist is accepted in a range that is covered by the intellect, which is in line with the wisdom of the world. Accordingly, people act on the expert's view when they are sure about the statements. The example of the physician-patient relationship is clear evidence of this claim. Wise people never act on the words of an expert unless there is a factor of certainty and peace of mind.

The second reason: If there is a possibility of identifying and imitating the most knowledgeable jurists (*Aʿlam*), their high level of knowledge is a factor to confirm and assure their *Fatwá*s. Therefore, this study is not considered this situation. The current study assumes that, at present, identifying the most knowledgeable jurist is not possible. From the juristic point of view, there are three approaches for this identification,[35] one of which is specified to jurisprudential experts who are able to identify the most knowledgeable jurist. This approach is not suitable for ordinary people.[36] Hence, practically, there are two approaches to identifying the most knowledgeable jurist. The first approach believes the jurist is the most knowledgeable one among other jurists, in a way that this belief becomes prevalent. However, it is a rare state when a majority believes in such a privilege for a jurist.[37] In the last hundred years, this fame happened merely to one jurist,

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[35]   Muḥammad Kāẓim al-Yazdī, *al-ʿurwah al-Wuthqá fī-Mā Taʿmmu bi-hi al-Balwá*, 2 vols., vol. 1 (Beirute: the Institute al-Aʿlamī li al-Maṭbūʿāt, 1995), 9.

[36]   Abū al-Qāsim al-Khūʾī, *al-Tanqīḥ fī Sharḥ al-ʿurwah al-Wuthqá*, 6 vols., vol. 1 (Qum: Imām al-Khuʾī Institute, 1993), 208.

[37]   al-Yazdī, 1, 9.

namely, Ayatollah Borujerdi. Therefore, it can be considered as impossible to happen in the future. The reasons can be explained as the scope developments of the juristic issues and debates, the discovery of new and unprecedented topics, the multiplicity of jurists, as well as the formation and development of new means of communication. These new tools have provided a platform for all types of advertising. In the past, majorities formed in specific regions regarding a specific jurist. However, at present, the possibility of the formation of a majority in favor of a particular jurist is not possible concerning today's widespread communication. At the same time, the number of jurists and claimants of *Marjaʿīiyah* was not as developed as it is today. Another important factor is the political and social obstacles to forming a majority that believes in the knowledge of a particular jurist (*Aʿlam*). The second approach to recognizing *Aʿlam* is that two experts confirm him as the most knowledgeable jurist; however, this approach is conditional on that two other experts do not oppose the idea. It is clear that this approach certainly does not happen in our time. Today, as much as some experts believe jurists as *Aʿlam*, some other experts are opposed. Therefore, we need to accept that today; the imitation of *Aʿlam* is not possible for ordinary people. When the imitation of *Aʿlam* is practically impossible, all the *Fatwá*s available to nonprofessionals have the same religious authority, they can act based on any available *Fatwá*. In the meantime, preferring one *Fatwá* to another requires a reason. In order to identify the reason for this preference, there is a need to consider the wisdom of the world. As mentioned above, jurisprudential imitation is based on the procedure wise of the world (*Rujūʿ al-Jāhil ilá-al-ʿĀlim*). In the case of conflicting expert opinions, the wise of the world believes that the superior opinion is the one that can be trusted for any reason. The jurists suggest special solutions for cases where experts' opinions are in conflict with each other, such as drawing lots or combining different opinions in a compatible way and so on.[38] However, these approaches are related to the situation that we are not able to prefer one side to the other. Therefore, *Fatwá*s must be presented along with convincing explanations that enable the imitator to decide between different *Fatwá*s by an intellect-based comparison.

The third reason: The early Shiite jurists encouraged the imitator to gain assurance about the *Fatwá* issued by *Marjaʿ*. Among them is Sayyid Murtaḍá who highlights this necessity, considering two factors: many jurists who do not consider *Ijtihād* and analogya to be valid in jurisprudential inference and also do [39] not allow the practice of non-successive narrations (*Al-Akhbār al-Āḥād*), consider

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[38]   For example see: al-Anṣārī, 5, 405.

[39]   By *Ijtihād* they mean *Ijtihād* among the Sunnis.

imitation permissible merely if it is based on validity and certainty of its content.[40] The first factor is ensuring the validity of the basis of the jurist's inference. Accordingly, the validity of the *Fatwá* cannot be proved based on *qīyās.* The second point (in his speech) is the necessity of assuring the issuance of a *Fatwá* by the jurist (i.e. the attribution of *Fatwá* to the jurist is proven) because Sayyid Murtaḍá does not consider *Al-Akhbār al-Āḥād* to be valid. He considers all *Fatwás* in the form of *Khabar al-Wāḥid* as invalid. He clarifies: "The benefit of referring to a religious expert is evident since according to scientists, it aware of the nonprofessional, or encourages him to search and investigate".[41] In this speech, he entrusts the unprofessional with the responsibility of researching the *Fatwá.* This is in line with other jurists' opinions.[42]

The fourth reason: According to all jurists, ordinary people should not imitate religious beliefs and principles. In this regard, they must consciously choose the principles of religion and beliefs based on research and reasoning. This argument has been made in the speeches of many early Shiite jurists who forbade unreasoned imitation in Islamic law. The most important criticism of this argument is that, regarding the issues of belief, the nonprofessional does not require deep and precise knowledge of professional arguments. Sayyid Murtaḍá responds to this criticism: 'While imitation is forbidden in the principles of religion and beliefs, why it should not be forbidden regarding jurisprudence issues? Achieving certainty and distinguishing correct and incorrect does not require deep arguments and extensive discussions'.[43]

The point to be noted here is that a group of Shiite and Sunni jurists has forbidden imitation for ordinary people.[44] In contrast; the majority of jurists consider imitation to be permissible. The opposition of the majority of Shiite jurists to the first group may lead to the impression that they have accepted uncertain imitation. However, through the lens of the majority group, the first group believes that nonprofessionals should apprehend the *Sharīʿah* ruling. For example, Muḥammad ibn al-Ḥasan al-Ṭūsī, who is among the majority group, writes in the opposite of the first group: 'It is not possible to ask a nonprofessional

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[40]   ʿAlī ibn Ḥusayn al-Sharīf al-Murtaḍā, Jawābāt al-Masāʾil al-Tabānīyāt," in *Rasāʾil al-Sharīf al-Murtaḍā*, ed. Sayyid Mahdī Rajāʾī (Qum: Dār al-Qurʾan al-Karīm, 1985), 42.

[41]   Ibid.

[42]   For example, see: Muḥammad ibn Idrīs al-Ḥillī, *al-Sarāʾir al-Ḥāwī li-Taḥrīr al-Fatāwī*, 3 vols., vol. 3 (Qum: Office of Islamic Publications affiliated with the Qum Seminary Teachers Association, 1990), 652.

[43]   al-Murtaḍā, 43.

[44]   Muḥammad ibn al-Ḥasan al-Ṭūsī, *al-ʿuddah fī al-Uṣūl*, 2 vols., vol. 2 (Qum: Sitarah Publisher, 1997), 729.

to comprehend the *Sharīʿah* ruling by himself'.[45] Al-Muḥaqiq al-Ḥillī adds: 'A nonprofessional cannot comprehend like a jurist since it requires him to spend his life studying science and refrain from monetizing'.[46] Other similar arguments from other jurists illustrate that they have rejected the first group based on the perception that the nonprofessional has to comprehend the *Sharīʿah* ruling by himself. The result is that the belief of the majority of Shiite jurists is stated against the group who forbade imitation; hence, it does not mean that the majority group believes in uncertain imitation.

3. The Necessity of Forming a Modern Social Model of *Marjaʿīyah*

We know that knowledge and piety, as characteristics of *Marjaʿ*, provide a level of respect and spiritual value. Based on Islamic teachings, it is necessary to respect the knowledgeable person and the pious. However, the position of *Marjaʿīyah* does not provide *Marjaʿ* with a higher spiritual rank and he is considered as equal to any other knowledgeable and virtuous person. By denying the special sanctity of the *Marjaʿ*, we mean that he does not have a specific spiritual and sacred rank beyond the possessors of attributes such as knowledge and piety. This means that respect for *Marjaʿ* is at the same level as any other knowledgeable and pious person. Jurists' representation on behalf of the *Imām* (accepting the relevant evidence) means they are assigned with specific duties by *Imām*. This representation does not transfer the sanctity of the *Imām* to them. The situation was the same when *Imām* assigned specific duties to a trustee.

Marjaʿ is an expert in the field of deriving Islamic rulings; accordingly, the behavioural structure of modern *Marjaʿīyah* is explained as the communication of an expert with the questioner. However, in the traditional *Marjaʿīyah*, the *Marjaʿ* is adorned with holiness. His representation of the *Imām*, which is claimed by traditions, means that he has a level of holiness and spirituality of the *Imām*. His imitator is his henchman. Therefore, the behavioural model of his relations with his imitators includes the manifestations of discipleship and devotion. Shiite *Marjaʿīyah* has followed this model throughout history. Evidence of such a procedure (based on the inherent holiness of the institution of *Marjaʿīyah*) can be seen in two areas:

The mere sanctity of *Marjaʿīyah* provides a special value for his comments on political and social issues even if it is the result of the conformity of the *Sharīʿah* law on a specific social or political issue by *Marjaʿ*, but the application of the divine commandments to all complex political and social issues, that requires precise expertise, is beyond his specialty. According to Shia jurists, in principle, the duty

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[45]   Ibid., 730.

[46]   al-Ḥillī, 198.

of a jurist is nothing but to state the *Sharīʿah* rulings and not their application in cases and examples.[47] From the early time of the formation of the *Marjaʿīiyah* institution in its new form, which dates back to the middle of the *Qājār* era, due to the belief in the sanctity of *Marjaʿīiyah*, people absolutely follow their statements. Mīrzā Shīrāzī's famous *Fatwá*, banning tobacco, according to historians, led to its public obedience;[48] the agreement of some *Marājʿ* in *Najaf* with the Iranian Constitutional Movement and the opposition of others, considered by their imitators as a religious duty;[49] the opposition of some *Marājʿ* with some of Reza Shah's reforms that had nothing to do with the Islamic law, such as wearing uniforms for men;[50] and the opposition of the *Marājʿ* with some of the actions of Mohammad Reza Shah Pahlavi, such as land reform and women's suffrage[51] are all the results of the implementation of the rulings on social and political issues by jurists and the mere obedience of people because of *Marājʿ*'s sanctity in their views.

Irrespective of the political and social positions of *Marjaʿīiyah,* the denial of the special sanctity of this institution has another significant social effect, evident in the spending of the properties given to *Marājiʿ* by imitators under the heading of religious funds (*Wujūhāt al-Sharʿīyah).* For instance, half of *khums* is given to the jurist as a share of the *Imām*. As Sayyid Muḥammad Kāẓim Yazdī, the famous Shiite jurist writes: 'Half of *khums* belongs to the *Imām*, but its authority during the absence is given to his deputy, i.e. the jurist, so it is obligatory to be paid to him.[52] The sanctity considered for the *Marjaʿīiyah* causes no supervision over the way of spending this property and the jurist spends it only at his own discretion or with trustees. While, the institution of *Marjaʿīiyah*, like other social institutions, must be held accountable for the money paid. Since piety is not sufficient to prove the accuracy of the expenses, there is a need for an expert. Thus, the experts, out of the institution of *Marjaʿīiyah,* are enabled to audit the accuracy of these expenses.

These two instances (denial of the special credibility of the political and social views of *Marājiʿ*- the need for the supervision and auditing of spending religious

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[47]   Muḥammad Isḥāq al-Fayyāḍ, *Muḥāḍirāt fī Uṣūl al-Fiqh*, vols., 4, vol 1, (Qum: The Foundation for the Revival of the Antiquities of Imam al-Khuʾī), 11.

[48]   For more study read: Ranin Kazemi. "The tobacco protest in nineteenth-century Iran: the view from a provincial town." *Journal of persianate studies* 7, no. 2 (2014): 253-256. Ibrāhīm Taymūrī, *Tobacco boycott: the first negative resistance in Iran*, (Tehran: Amīr Kabīr, 1980), 57.

[49]   Aḥmad Kasrawī, *Constitutional history of Iran*, (Tehran: Nigāh publisher, 2018), 114- 176.

[50]   Houchang E. Chehabi, "Staging The Emperor's New Clothes: Dress Codes and Nation-Building Under Reza Shah" *Iranian Studies* 26, no. 3-4 (1993): 221.

[51]   ʿAlī Dawānī, *Iranian clergies movement*, 11 vols., vol 1 (Tehran: Islamic Revolution Documentation Center, 2015), 123-176.

[52]   Muḥammad Kāẓim al-Yazdī, *al-ʿUrwah al-Wuthqá fī-mā Taʿmmu bi-hi al-Balwá*, 2 vols., vol **2** (Beirut: the Institute al-Aʿlamī li al-Maṭbūʿāt, 1995), 405.

funds or *Al-Wujūhāt al-Sharʿīyah*), along with other examples that deny sanctity for *Marjaʿīyah*, are the developments taking place in the behavioral patterns of modern *Marjaʿīyah*. If we believe that *Marjaʿīyah* has no special sanctity by nature, the institution of *Marjaʿīyah* can be considered as other social institutions. There is a need for change in the social pattern of *Marjaʿ* in society. These changes are impossible unless the belief in the holiness of *Marjaʿ* is modified.

The denial of the special sanctity of *Marjaʿīyah* is possible when the reasons that support the necessity of people's reference to jurists and consequently *Marjaʿīyah* in Shiism are examined to find out whether a particular sanctity is fixed for this institution or not. We took one of the books of Shia jurisprudence dealing with the reasons. Sayyid Riḍā Ṣadr, a contemporary Shiite jurist, argued the proofs of *Marjaʿīyah* in his book.[53] The current study is not sought to evaluate these arguments in terms of accuracy but the focus here is recognizing that if these arguments prove a special sanctity and holiness for the *Marjaʿīyah* or not.

a) The Qur'an

Verse 9: 122, known as the verse of the *Nafr*, states "It is not for the Believers to go forth (all) together: if a contingent from every expedition go forth to devote themselves to studies in religion, and admonish the people when they return to them, that thus they (may learn) to guard themselves (against evil)".[54] This verse, as one of the Qur'anic reasons stated by the jurists, mentions that a jurist is responsible for acquiring knowledge of jurisprudence, warnings the people, and expressing the divine commandments, and people are supposed to accept jurists. This verse does not indicate any special sanctity for *Marjaʿ*.

Verse 16:43 is the second Qur'anic reason of the jurists which says "ask of those who possess the Message".[55] This verse merely indicates the need for referring to a wise.

It is clear that these two verses merely signal the relationship between the propagandist and the audience, unaccompanied by assigning a specific position for the propagandist.

b) Traditions

Traditions are one of the most significant sources to prove the authority of *Marjaʿīyah*. These traditions revolve around different axes, including:

First: Confirming the common practice among Muslims in referring to nonprofessionals as knowledgeable persons. In this regard, four traditions can be

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[53] Sayyid Riḍā Ṣadr, *al-Ijtihād wa al-Taqlīd* (Qum: Publications of the Office of Islamic Propaganda of the Seminary of Qom, 2000), 86-97.

[54] Abdullah Yusuf Ali, *The Holy Qurān Translated* (Median: Dār al-Qurān, 1980), 206.

[55] Ibid., 272.

mentioned: 1- The tradition of Ibrāhīm ibn Hāshim;[56] 2. The tradition of Ḥamrān ibn Aʿyan;[57] 3. The tradition of Samāʿah ibn Mihrān;[58] 4. The tradition of ʿAlī ibn Asbāṭ.[59] These narrations merely confirm the practice of *Marjaʿiiyah* unaccompanied by any reference to the sanctity of the *Fatwá*-giver.

Second: The traditions that indicate issuing *Fatwá* was a common practice among the special companions of the *Imām*s, and besides, referring to religious experts was a common practice among people. The tradition of *Ḥamzah ibn Ḥamrān* on defining the title of *Mustaʾkil bi-al-ʿim* (Livelihoods by knowledge) can be mentioned in this regard.[60] These traditions did not attribute holiness to the narrators.

Third: The traditions that include the definition of *Muftī*, such as the letter (*Mukātibah*) of Aḥmad ibn Ḥātam ibn Māhwayh.[61] These traditions did not attribute holiness to *Muftī*.

Fourth: The Traditions that determine the duties of the Shiites during the absence of Imam, and consider it necessary to refer to the narrators of hadiths. These traditions merely express the need for acquiring religious knowledge[62].

Fifth: The traditions according to which the *Imām*s instructed some of their companions to issue *Fatwá*s, such as the tradition of Imām Bāqir addressed to Abān ibn Taghlib,[63] or the tradition of Muʿādh ibn Muslim al-Naḥwī (narrated from Imām Sādiq) which indicates he received such an instruction.[64] These traditions do not attribute holiness to *Muftī.*

Sixth: The traditions that state the criteria for issuing *Fatwá*s, including the prohibition of *Fatwá* issuance by an uninformed person (stated in the tradition of Ḥadhdhāʾ)[65] or Ibn Shubrumah's tradition about the prohibition of fatwa issuance by analogy (*Qīyās*).[66] These traditions do not mention the sanctity of *Fatwá.*

Seventh: Traditions according to which Shiite *Imām*s sometimes referred some people to some of their companions. Examples are the referral of Aḥmad ibn

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[56]   al-ʿĀmilī, 27, 384.

[57]   Ibid., 386.

[58]   Muḥammad Bāqir Majlisī, *Biḥār al-Anwār al-Jāmiʿah li-Durar Akhbār al-Aʾimmah al-Athār* 110 vols., vol. 2 (Beirut: Dār Ihyāʾ Turāth Al-ʿarabī, 1982), 304.

[59]   al-ʿĀmilī, 27, 115.

[60]   Ibid., 141.

[61]   Ibid., 151.

[62]   Ibid., 140.

[63]   Ibid.,30,291.

[64]   Ibid., 27,148.

[65]   Ibid., 20.

[66]   Muhammad ibn Ya'qūb al-Kuliynī, *al-Kāfī*, 8 vols., vol. 1 (Tehran: Dār al-kutub al-islāmīyyah, 1986), 43.

Isḥāq to Al-ʿAmrī by Imām Hādī,[67] or the referral of ʿAbd Allāh ibn Abī Yaʿfūr to Muḥammad ibn Muslim by Imām Sādiq,[68] and also the referral of Yūnus ibn Yaʿqūb to Hārth ibn Mughayrah al-Baṣrī.[69]

Eighth: The explicit command that the nonprofessionals have to imitate the jurists. This is mentioned in the tradition quoted from Imām Al-ʿAskarī. The tradition states "And as for those who were among the jurists who were self-control, conservative of his religion, contrary to his desires, obedient to the order of his master, the common people have to imitate him".[70] These traditions merely prove the need for the common people in referring to the jurists.

To conclude, since none of the traditions attribute holiness to the position of *Marjaʿīiyah*, there is no religious logic to prove the holiness of *Marjaʿīiyah*. Therefore, this institution can be considered as another customary institutions.

c) *Sīrat al-Mutisharriʿah*

Religious people have always assumed holiness for the position of *Marjaʿīiyah*. This method, called *Sīrat al-Mutisharriʿah*, is considered as one of the juristic logics. The question is whether it is possible to prove the holiness of the position of *Marjaʿīiyah* based on *Sīrat al-Mutisharriʿah*.

First, *Sīrah* is not specific to the Shiites, and all Muslims refer to the jurists in their religious rulings. It can even be said that all people (regardless of their religion) refer to specialists. Therefore, it cannot be considered as a specific religious method (*Sīrat al-Mutisharriʿah*), but a rational (*Sīrat al-ʿUqalāʾīyah*). Second, the *Sīrat al-ʿUqalāʾīyah* must be approved by the Shiite *Imām*s to be valid. *Imām*s merely confirmed referring to religious experts (jurists); however, the model of interaction is not mentioned. This point has been stated by prominent scholars.[71] Therefore, it cannot be said that the common method of establishing holiness for the position of *Marjaʿīiyah* was approved by the *Imām*s.

Conclusion

This article discusses the necessary transformation in Shia Marjaʿīiyah. Despite the previous line of research on the modifications of *Marjaʿīiyah* through a political perspective or the complexities of choosing future *Marjaʿīiyah*, the current study investigates the formation of modern *Marjaʿīiyah* a necessary development in the future.

This study defined modern *Marjaʿīiyah* concerning two main features, namely, the modern juristic approach and the modern behavioral model in society. The

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[67]   al-ʿĀmilī, 27, 138.

[68]   Ibid., 142.

[69]   Ibid., 145.

[70]   Ibid., 91.

[71]   al-Ṭūsī, 2, 730.

first feature, the modern juristic approach, refers to the compatibility of the jurisprudential inferences of *Marjaʿīiyah* with the rational and scientific achievements of modernity. The achievements of modernity were categorized into two types of intellectual (and scientific) achievements and achievements based on the Western lifestyle (and human instincts), and this study was the first category of the achievements of modernity with which the jurisprudential inferences must be consistent. There is a clear and disciplined criterion for distinguishing intellectual achievements from the Western lifestyle. The first feature of modern *Marjaʿīiyah* divides modern *Marjaʿīiyah* into three groups, namely, *Marjaʿīiyah* incompatible with modernity; justifier *Marjaʿīiyah* towards modernity; and *Marjaʿīiyah* compatible with modernity.

The second part of this article introduced the necessity of a change in the behavioural model of *Marjaʿīiyah* and society. Here, the responsibilities of *Marjaʿīiyah* were categorized into two groups, i.e., issuing *Fatwá* and social behavior. In the former case, the modern *Marjaʿīiyah* presents a *Fatwá* accompanied by definitions and reasons to enable the imitator to compare different *Fatwás* with each other. Here, the imitator must become certain about the *Fatwá*. Therefore, the model of issuing *Fatwá* in modern *Marjaʿīiyah* can be considered as a convincing argumentative model in which assurance is replaced by blind obedience.

Regarding the social behaviour between people and modern *Marjaʿīiyah*, this model does not consider special holiness for *Marjaʿīiyah* although *Imām* refers people to jurists. Denying the special sanctity of *Marjaʿīiyah* causes this institution to be considered as another social institution.

The findings of the current article may pave the way for future research in the field of modern *Marjaʿīiyah*. Future studies could prove the necessity of the formation of modern *Marjaʿīiyah* through a sociological lens, and highlight the consequences of ignoring this necessity.

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