

**THE FLEXIBILITY OF
SHARIAH (ISLAMIC LAW)
WITH REFERENCE
TO THE IRANIAN EXPERIENCE**

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Abstract

This thesis verifies that no laws in Islam are immutable. Immutability is only applicable to faith, values and ultimate goals in *Shariah*. Those laws which look immutable even in ritual part of the religion are not actually immutable and are subject to change under special circumstances. Islamic laws have been developed out of certain conditions and necessities of the time and space. This flexibility must be known as the essential feature of the Islamic law. The framework for this flexibility and change has been predicted and verified in the main sources of *Shariah* i.e. the *Quran*, the *Sunnah*, *Ijma*, *Qiyas*, *Aql* and *Urf*.

The primary source of the Islamic law (the *Quran*) is, in itself, flexible on the basis of the analysis that the Quranic legislation leaves room for flexibility in the evaluation of its injunctions. The *Quran* is not specific on the precise value of its injunctions, and it leaves open the possibility that a command in the *Quran* may sometimes imply an obligation, a recommendation or a mere permissibility. Commands and prohibitions in the *Quran* are expressed in a variety of forms which are often open to interpretation.

The main devices for change predicted in *Shariah* are *Ijtihad*, *Maslaha* and *Al-ahkam-al-thanaviiah* (secondary rules). Chapter one discusses the concept and development of *Ijtihad*. In chapter two, the role of *Ijtihad* in providing the *shariah* with flexibility will be analysed. Chapter three outlines how in practice *Ijtihad* has been effective in making the Islamic law flexible. Chapter four is devoted to the concept of *Al-ahkam-al-thanaviiah* (secondary rules) as it has been developed by Muslim jurists. Chapter five will deal with the theory of *Maslaha* as a dynamic device in *Shariah*. Finally, in chapter six, the role of *Al-ahkam-al-thanaviiah* and *Maslaha* in Islamic Iranian law will be examined as it has been developed over the years.