

LESSON THREE: Learning Fiqh

1. The Islamic Ruling on Learning Fiqh

✓ **In the first case, the ruling is obligatory:** The fiqh distinguishes **two** sortes of duties ***an individual duty*** covers the duties which every person must perform such as the five daily prayers, fasting, pilgrimage.

○ *The evidence:*

The prophet Muhammad *peace be upon him*, said in one of his most famous statements that ‘*seeking knowledge is an obligation upon every Muslim*’, meaning both men and women.

Collective duty is the duty that must be undertaken by the community but does not necessarily include every laible person, Example includes the **fatwa**.

(i.e an obligation that if observed by some members of a community the remainder of the community will be absolved of the obligation.)

✓ **In the second case, the ruling is desirable:** the knowledge of jurisprudence is desirable if the muslim wants to learn the rulings that exceed him such as dividing the legacy of the dead.

2. The Virtue of Learning Fiqh

- Ibn Abbas *may Allah be pleased with him* reported that the messenger of Allah stated, ‘***One faqeeh (knowledgeable man) is harder upon Shaytan than a thousand worshippers***’ (narrated by Tirmidhi and Ibn Majah).
- One of the main virtue of the science of Islamic jurisprudence is to help us understand the scriptures of our religion, it also shows us the path to correct worship.

LESSON THREE: The Main Sources of Fiqh (Jurisprudence)

❖ *Part One: Primary Sources*

1. The Holy Qur'an:

- The revelation
- Mecca, 610 AD
- Prophet Muhammad (ﷺ)
- Archangel Gabriel (جبريل)

Qur'an is the book which Allah revealed in His speech to His Prophet Muhammad *peace be upon him* in Arabic, and this has been transmitted to us by continuous testimony or (تواتر).

The larger part of the Qur'an was revealed in Mecca and the rest in Madinah. The Mecca revelations mostly deal with beliefs, disputation with unbelievers and their invitation to Islam. But the Madinah verses deal with legal rules regarding family, society, politics, economics, etc. The **chapter** is considered Meccan if its revelation started in Mecca, even if it contains Madinan period verses. The information regarded which one is Makki or Madani are based on the sayings of companions (الصحابة) or following generation.

Qur'an consists of 114 chapters of unequal length, is also contained in about 6348 verses according to various estimates. **Example of Qur'an:**

- a. **Chapter (سورة)**
Surat Al-Fatihah (the Opening)

*In the Name of Allah, Most Gracious, Most Merciful **

*Praise Be To Allah, The Lord Of The Worlds * The Beneficent The Merciful * Owner Of The Day Of Judgement * Thee (Alone) We Worship Thee Alone We Ask For Help * Show Us The Straight Path * The Path Of Those You Have Blessed, Not Of Those Against Whom There Is Anger, Nor Of Those Who Are Misguided*.*

- b. **verse (آية)**
« *And We Have Not Sent You, (O Muhammad), Except As Mercy To The Worlds* ».
Qur'an (21:107)

2. Sunnah:

The Sunnah is the next important source and commonly defined as “ tradition and custom, the way of the Prophet ” or “ words, actions, and silent assertions of him”. It includes the everyday sayings, utterances and deeds of Muhammad *peace be upon him*; his acts, his tacit consent and acknowledgements of statements and activities.

Hadith, tradition relating to the sayings and doings of Muhammad. Hadith collections are important tools for determining the Sunnah by all traditional schools of jurisprudence.

Example of hadith:

Yahya related to me from Malik from Abu’ r-Rijal Muhammad ibn abd ar-Rahman ibn Haritha from his mother, Amra bint Abd ar-Rahman that the Messenger of Allah. May Allah bless him and grant him peace.

A chain of.. (إسناد)

Said: ”If the palm trees are sold after they have been pollinated, the fruit belongs to the seller unless the buyer makes a stipulation about its inclusion ”

Text of hadith (متن)

Structure of hadith

- Chain of hadith (citations).
- The text of the hadith (the saying or doing itself).

Validity of hadith

The scholars categorized literally millions of hadith as authentic, agreeable, weak narrated by a weak source, etc. There are two well-known collection of authentic hadith:

- Sahih muslim
- Sahih bukhari.

❖ **Part Two: Secondary Sources**

1. IJMA’ (Consensus of Legal Opinion)

➤ **Definition**

- Literal meaning:
Consensus, determination, resolution and agreement upon something.
- Technical meaning:
“The agreement of the jurists from among community of Muhammad *peace be upon him* after his death in a certain period of time upon a rule of Islamic law.”

➤ **Conditions for the Validity of Ijma’**

1. The agreement must take place among mujtahids. (Mujtahid is a person who is qualified to exercise ijtiḥad).
2. The agreement must be among the mujtahids of one period, even though some mujtahids of subsequent periods may differ from them.

3. The agreement must be unanimous.
4. The jurists must belong to the Islamic community.
5. The agreement of jurists must be held after the death of Allah's Messenger *peace be upon him*.
6. The agreement should be held on a rule of Islamic law (in legal matter).

➤ **Types of Ijma'.** There are two types of Ijma':

a) **Explicit Ijma' (إجماع صريح):**

- "One in which the legal opinions of all the mujtahids of one period converge in relation to legal issue, and each one of them states his opinion explicitly."
- This is realized sometimes by their meeting in one place and examining an issue in question and finally they express an unanimous opinion.
- It may also take place when an issue occurred and every mujtahids give the same legal opinion.

b) **Silent or tacit Ijma' (إجماع سكوتي):**

- It takes place when some jurists, one or more, give a legal opinion with regard to specific rule about a particular legal issue, then the rest of them are informed of this opinion and they keep silent and they neither acknowledge it nor object to it.

➤ **Proof and Justification of Ijma' as a Source of Islamic Law.**

It is established by the Qur'an and the Sunnah.

• **The Qur'an;**

"O you who believe! Obey Allah and Obey the Messenger and those charged with authority among you....." (al-Nisa'(4):58).

The word (أولي الأمر) means scholars (العلماء) of the community. Thus the agreement of the mujtahids is bound to follow.

• **The Sunnah;**

There are many Sunnahs indicated that the Muslim community is infallible in their agreement and Ijma' is obligatory on the Muslims. The prophet Muhammad *peace be upon him*, said:

"My community will not agree on mistake."

"Allah's hand is over the community."

2. QIYAS (Analogical Reasoning)

➤ **Definition**

○ **Literal meaning:**

- a. measurement i.e. measuring something with another.
- b. Comparison i.e. comparing something with another.
- c. Equation.

○ **Technical meaning:**

- a. "Applying a case whose rule is not found by the text to a case whose rule is found in the text on account of equation of both cases in respect of effective cause of the rule."

- b. "Equating a case, whose rule is not mentioned explicitly in the text, with a case whose rule is mentioned, on the basis of the equality between effective causes found in the two cases."

➤ **Essential Elements of Qiyas**

- Original case (الأصل)
- Legal ruling of original case (حكم الأصل)
- New or parallel case (الفرع)
- Effective cause (العلة)

➤ **Examples of Qiyas**

Example (1)

- New Cases, (**Toddy, Drug**).
- Effective Cause, (**Intoxication**).
- Original Case, (**Wine**).
- Legal Ruling of Original Case (**Prohibition**), (al-Ma'idah(5):90).

Example (2)

- New Case, (**Wife with postnatal blood**).
- Effective cause, (**Hurt/Causing harm**).
- Original Case, (**Wife with menstruation**).
- Legal Ruling of Original Case, (**Prohibition of Approaching**), (al-Baqarah(2):222).

Example (3)

- **Killer of the testator** (Parallel case).
- **Hastening a thing before its time** (Effective cause).
- **Killer of the legator** (Original case).
- **Disentitlement to inheritance** (Legal Ruling), The Sunnah.

➤ **Types of Qiyas**

There are many types of Qiyas:

1. **Qiyas of Higher Order (القياس الأعلى)**: The effective cause in the parallel case is of higher order than the effective cause in the original case. E.g.

- _ Saying 'uff' to parent, (Original case) _ Prohibition, (Legal Ruling), (al-Isra'(17):23).
- _ Torment, (Effective cause)
- _ Cursing/Beating parent, (Parallel case).

2. **Qiyas of an Equivalent Order (القياس المساوي)**: The effective cause in parallel case is of the same strength with the effective cause in the original case. E.g.

- _ Consumption of orphan's property, (Original Case)
- _ Destruction of orphan's property, (Effective cause)
- _ Damaging of orphan's property (Parallel case)
- _ Prohibition, (Legal Ruling), (al-Nisa'(4):10).

3. **Qiyas of a Lower Order (القياس الأدنى)**: The effective cause in parallel case is of a lower order than the effective cause found in original case. E.g:

- _ Wine, (Original case) _ Prohibition (Legal Ruling) (al-Ma'idah(5):90).
- _ Intoxication, (Effective cause)
- _ Toddy, (Parallel case)

➤ **Justification of Qiyas as a Source of Islamic Law**

- The majority of Muslim jurists are of the view that Qiyas is a source of Islamic law. It is relied upon in deriving legal rules.
- Muslims are obliged to follow the legal ruling which is validly derived from qiyas.

*The justification of Qiyas as a source of Islamic law is established by the **Qur'an** and **Sunnah**:*

a. The Qur'an;

*“ O you who believe! Obey Allah and Obey the Messenger and those charged with authority among you. **If you differ in anything among yourselves, refer it to Allah and His Messenger...**” (al-Nisa’(4):58)*

- The argument is that Allah has commanded after that (i.e. after obeying Allah, His Messenger and those in authority) to refer the disputed matters to Him and His Messenger.
- Referring the disputes to Allah and His Messenger signify referring them to the Qur'an and Sunnah. That will be by means of drawing conclusion from them by **analogy**.
- This is because **analogy means referring the new case to the original case and applying to it its rule**. In other words, referring the disputed case i.e. a case for which no rule has been provided in the text to a case for which a rule has been provided in the text.

b. The Sunnah;

There are many cases in which the Messenger of Allah *peace be upon him* in response to queries of the Companions tried to give answers in a form that was supposed to train them in legal thinking and in many such cases the method is quite similar to analogy.

For example,

➤ *“A woman came to the Messenger of Allah *peace be upon him* requesting him to give her legal opinion (fatwa). She said: Messenger of Allah my father has died and performance of hajj was due to him. May I perform the hajj on his behalf? Allah’s Messenger said: Tell me if your father owed a debt and you paid it, would that benefit him? She replied: yes. The Messenger of Allah *peace be upon him*. said: Perform the hajj on his behalf, the debt due to Allah deserves most to be paid.” (It is reported by al-Bukhari and al-Nasa’i)*

➤ *“The Messenger of Allah *peace be upon him* said to Umar Ibn al-Khattab when he asked him about kissing the wife by one who was fasting: Tell me if you rinse your mouth with water then eject it, what will you do? Umar said: It doesn’t matter. The Messenger of Allah said: It is all right.” (It is reported by Abu Dawood).*

Lesson 04: Commands / Prohibitions / and Abrogation

1. Commands:

A command is defined as a verbal demand to do something from a position of superiority to an inferior. It is mostly be used in the imperative mood.

A Quranic command may be conveyed as promise of reward or punishment (Al-Nisa: 13-14).

What is primary a command ?

- It may sometimes mean permissibility; for instance when the Quran says: ‘eat and drink’ (Al-A’raf: 29).
- A command may indicate a threat; i.e advise to desist from doing a particular thing. (Al-Nor: 33).
- It may convey a recommendation; in some cases (Al-Baqarah: 281).
- A command mostly means obligation.

2. Prohibitions:

Prohibition is the opposit of command and it is a demand to avoid doing something.

- Prohibition may occur in the form of statement.
- In the form of an order not to do something (Al-Jumuah: 9).
- It may convey total prohibition (تحریم) or guidance (إرشاد) or reprimand (تأديب).
 - **Prohibition which implies reprehension** may be seen in Quran (5: 87); ‘*O you who have believed, do not prohibit the good things which allah made lawful to you...*’
 - **Prohibition which conveys moral guidance** may be seen in (6: 104); ‘*Enlightening Proofs came to you from your lord; so whoever observes, it is for his own good; and whoever is blind, it is for his own harm...*’

3. Abrogation:

Abrogation has been defined as the suspension or replacement of one shariah ruling by another. It operates only in law not in beliefs.

Abrogation operates only when:

- _ Two evidence are of equal strength.
- _ They are present in two separate texts.

There are two types of abrogation by Immam Shafii:

- _ Abrogation of Quran by Quran.
- _ Abrogation of Sunnah by Sunnah.