

Lecture No. 14: Introduction to Islamic Jurisprudence – I

(Module 1(57): Introduction to Islamic Jurisprudence)

Literal Meaning of Fiqh: Allama Zamhashri has written in Faiq ul Lugha. "الْفِقْهُ حَقِيقَتُهُ الشُّقُّ وَالْفَتْحُ" the truth of jurisprudence is to investigate and discover. The word Fiqh is used in the Qur'an in the sense of "understanding and comprehension". Allah Almighty says:

تُسَبِّحُ لَهُ السَّمَوَاتُ السَّبْعُ وَالْأَرْضُ وَمَنْ فِيهِنَّ وَإِنْ مِنْ شَيْءٍ إِلَّا يُسَبِّحُ بِحَمْدِهِ وَلَكِنْ لَا تَفْقَهُونَ تَسْبِيحَهُمْ إِنَّهُ كَانَ حَلِيمًا غَفُورًا (بنی اسرائیل: 44)

"The seven heavens and the earth and all that exists in them persistently extol the Glory of Allah, and there is not a single object (in the entire universe) but glorifies Him with His Praise. Yet you cannot appreciate their (state of) glorification. He is surely Most Forbearing, Most Forgiving."

In the dictionary, the word jurisprudence is used in the sense of knowing and understanding something; later, it began to be used in the sense of specialized knowledge of religion.

Definition of Fiqh:

1. .الفِقهُ مَعْرِفَةُ النَّفْسِ مَا لَهَا وَ مَا عَلَيْهَا

"Jurisprudence is the name of the knowledge of those things which are beneficial or cause harm to man."

2. .الفِقهُ هُوَ الْعِلْمُ بِالْأَحْكَامِ الشَّرْعِيَّةِ الْعَمَلِيَّةِ مِنْ أَدْلَتِهَا التَّفْصِيلِيَّةِ

"The knowledge of jurisprudence, rules of practical Shariah, which is derived from the detailed arguments."

Two Types of Shariah Rules:

1. The original laws
2. By-laws.

The original laws are those that are related to belief and prescribed deeds, and the by-laws are those that are extracted from the original laws.

There are four sources of laws in Islamic Shariah: Qur'an, Sunnah, Ijmaa, and Qiyas.

Definition of Principles of Jurisprudence: The principles of jurisprudence refer to the principles, rules, and regulations by which a jurist finds out jurisprudential rulings from the Holy Qur'an,

the Sunnah of the Prophet, and other sources of the Sharia and formulates detailed instructions for the practical problems that occur on daily basis.

Difference between Jurisprudence and Principles of Jurisprudence: Knowing the issues of Shariah is Fiqh, while knowing the rules for deriving them from the evidence of Shariah is called principles of jurisprudence.

(Module 2 (58): Importance and Evolution of Jurisprudence)

Humans are social. A man cannot fulfill all the needs of his life alone. Sometimes differences and conflicts arise due to conflicts of interest. All the civilizations of the world and all religions recognize the need for laws to remove differences and conflicts and to establish justice and fairness. Islam is a complete code of human life, so how could it ignore laws? Islam gives laws which are called Shariah and Fiqh.

Compilation of Jurisprudence (Period of Prophet): During the time of the Prophet (PBUH) all matters related to jurisprudence were related to the prophet (PBUH). Jurisprudence was not organized and there was no need for it due to the limited necessities of life. The Messenger of Allah (PBUH) used to perform ablution in front of the Companions and did not explain anything that it is obligatory or recommended. The same was the case with the prayer, i.e., the Companions did not elaborate on the obligatory duties within the prayer, etc., they just saw the Messenger of Allah (PBUH) praying.

Compilation of Jurisprudence (During the time of the Companions of the Prophet):

After the death of the Holy Prophet, the Muslims conquered many new lands. They encountered new civilizations. New problems arose so frequently that Ijtihad became necessary and attention had to be focused on drawing details from the principle.

Addition of Consensus and Reasoning: Ijmaa (consensus) was given a systematic form during the period of the Sahaba. A committee consisting of competent people was formed. As far as possible, they were restricted from going out of Madina. What was not there explicitly in the Quran and Sunnah could have been decided by mutual consultation, and it would acquire the status of law. The Fatwas of Abu Bakr, Umar, Uthman, Ali, Aisha, Abd al-Rahman bin Awf, Abdullah bin Mas'ud, Abi bin Ka'b, Mu'adh bin Jabal, Zayd bin Thabit, and Abu Musa Ash'ari are famous among these companions.

During the period of the Companions, in the wake of a series of Islamic conquests in addition to Medina and Mecca, Kufa, Basra, Syria, Egypt, and Yemen became the center of learning.

The scholars who benefited from these jurisprudence schools and centers were Tabi'in (the successors of the companions). The Tabi'in took guidance for jurisprudence and legislation from hadiths, they recorded works about the actions and speeches of the Messenger of Allah Almighty, along with the ijihad and jurisprudential opinions of the Companions. They also used it a lot.

Compilation of Jurisprudence (During the Period of Tabi'in, the Successors of the Companions): After the companions, their successors took over the responsibilities of teaching. Hasan Basri, Imam Makhool in Syria, Ata Khorasani in Khorasan, and Saeed bin Musayb in Medina. Due to the scholarly efforts of these scholars, jurisprudential schools of thought came into being, and through their ijihad and inference, the compilation of Islamic jurisprudence became possible. During the period of Banu Umayyah, Hazrat Umar bin Abdul Aziz not only encouraged the compilation of hadiths but also founded a council to solve Fiqhi problems, the members of which are called "Fuqha-e-Sab'a, the six jurists. The first book of hadith and jurisprudence "Mawata by Imam Malik" was compiled in this period.

The Following are the Well-known Tabi Jurists of Madinah:

1. Ubaidullah bin Abdullah bin Utbah bin Masoud (عبيدالله بن عبدالله بن عتبة بن مسعود)
2. Urwa bin Zubair bin Al-Awam (عروة بن زبير بن العوام)
3. Qasim bin Muhammad bin Abi Bakr (قاسم بن محمد بن ابي بكر)
4. Saeed bin Al-Musayyib (سعيد بن المسيب)
5. Salman Ibn Yasar (سلمان ابن يسار)
6. Foreign Ibn Zayd (خارجة ابن زيد)
7. Abu Bakr Abdul Rahman bin Harith bin Hisham (ابوبكر عبدالرحمان بن حارث بن هشام)

(Module 3 (59): Compilation of Jurisprudence and Madhahab-e-Arbaa)

From the beginning of the second century of Hijri to the middle of the fourth century of Hijri, there was a period in which jurisprudence became a formal discipline. Four of these jurists are the most famous, and their schools are still practiced. The introduction to these four Imam is as follows:

Imam-e-Azam Abu Hanifa: His name was "Nauman bin Thabit, and his surname was "Abu Hanifa". He belonged to Persian, was born in 80 Hijri, and died in 150 Hijri. The consensus of the ummah is that he was an absolute Mujtahid (The Grand Jurist). Among the four Imams, Imam Abu Hanifah is the only one who has the honor of seeing the companions and learning from Anas (RA) and Abu Tufail (RA). Among his famous teachers were Hazrat Hammad, Imam Shaabi, Udi bin Thabit, Musa bin Aisha, Asim bin Sulaiman, Ata bin Abi Rabah, Hazrat Baqir, and Hazrat Jafar.

Imam Malik: His name was "Malik bin Anas." His grandfather was a companion of the Prophet (PBUH). Imam Malik was born in Madinah in 93 Hijri. He acquired knowledge from the scholars

of Madinah. He started teaching hadith at the age of 17. His famous book "Mowaat'ta" went very popular in his time. He died in 179 AH in Madinah and was buried in Baqi's cemetery.

Imam Shafi'i: His name was "Muhammad" and his surname is "Abu Abdullah". He is known as Shafi'i. He was born in Gaza in 150 Hijri; his father died when he was a child; his mother brought him to Makkah at the age of two; he grew up there; and at the age of thirteen, he came to live with Imam Malik. He made good use of Imam Malik's company. He went to Egypt in 199 Hijri and stayed there till his death; he developed his school of thought. He wrote his books himself and also had his students write them. He died in Egypt in 204 AH.

Imam Ahmad bin Hanbal: His name was "Ahmad" and his surname was "Abu Abdullah". He was titled "Imam Al-Aima", i.e., Imam of Imams. He was born in Baghdad in 164 Hijri. When Imam Shafi'i came to Baghdad, he became associated with him. He was an excellent Muhaddith, an expert of Hadith and its sciences, and had unparalleled ability in jurisprudence. Among his teachers, Yahya bin Qattan, Sufyan bin Ayaina, Imam Shafi'i, etc. are well-known. While Imam Bukhari, Imam Muslim, Abd al-Razzaq, and Wakiy are notable among his students, He died on Friday, 241 AH, in Baghdad; his famous work is "Musnad Ahmad".

(Module 4 (60): First Source of Islamic Jurisprudence: The Holy Quran)

Sources of Islamic Jurisprudence: Literally, source refers to "the place from which something is derived, i.e., the place of derivation or source, i.e., the original basis, source, or source. "The main sources of Islamic law are as follows: Qur'an, Sunnah, and Ijmaa (consensus), Qiyas (Deduction).

Source and Hadith of Mu'adh bin Jabal: It was narrated from Sayyidna Mu'adh bin Jabal that:

أَنَّ رَسُولَ اللَّهِ ﷺ لَمَّا أَرَادَ أَنْ يَبْعَثَ مُعَاذًا إِلَى الْيَمَنِ قَالَ: «كَيْفَ تَقْضِي إِذَا عَرَّضَ لَكَ قَضَاءٌ؟»، قَالَ: أَقْضِي بِكِتَابِ اللَّهِ، قَالَ: «فَإِنْ لَمْ تَجِدْ فِي كِتَابِ اللَّهِ؟»، قَالَ: فَبِسُنَّةِ رَسُولِ اللَّهِ ﷺ، قَالَ: «فَإِنْ لَمْ تَجِدْ فِي سُنَّةِ رَسُولِ اللَّهِ ﷺ، وَلَا فِي كِتَابِ اللَّهِ؟» قَالَ: أَجْتَهِدُ رَأْيِي، وَلَا أُلُو فَضْرَبَ رَسُولُ اللَّهِ ﷺ صَدْرَهُ، وَقَالَ: «الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ اللَّهِ ﷺ لِمَا يُرْضِي رَسُولَ اللَّهِ ﷺ»- [جامع ترمذی : 1238، سنن ابی داؤد 3592)

When the Messenger of Allah (ﷺ) intended to send Mu'adh ibn Jabal to Yemen, he asked: How will you judge when the occasion of deciding a case arises? He replied: I shall judge in accordance with Allah's Book. He asked: (What will you do) if you do not find any guidance in Allah's Book? He replied: (I shall act) in accordance with the Sunnah of the Messenger of Allah (ﷺ). He asked: (What will you do) if you do not find any guidance in the Sunnah of the Messenger of Allah (ﷺ) and in Allah's Book? He replied: I shall do my best to form an opinion and I shall spare no effort. The Messenger of Allah (ﷺ) then patted him on the breast and said: Praise be to Allah Who has helped the messenger of the Messenger of Allah to find something which pleases the Messenger of Allah.

Quran as the source of Islamic law: The first source and basis of Islamic law is the Holy Quran, which is the word of Allah, which was revealed to Muhammad, the Messenger of Allah Almighty, and has been preserved in the book form since then. This is the first basic source of law and guidelines for all human beings. It is clear that the Quran is the source of law as the decree of Allah:

١- كُنْزٌ أَنْزَلْنَاهُ إِلَيْكَ مُبَارَكٌ لِيَدَّبَّرُوا آيَاتِهِ وَ لِيَتَذَكَّرَ أُولُوا الْأَلْبَابِ (ص 29:38)

[This is] a blessed Book which We have revealed to you, [O Muhammad], that they might reflect upon its verses and that those of understanding would be reminded.

٢- إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ- (النساء 105:4)

Indeed, We have revealed to you, [O Muhammad], the Book in truth so you may judge between the people by that which Allah has shown you. And do not be for the deceitful an advocate.

The Main Subjects of the Holy Quran: Shah Wali Allah has categorized the themes of the Holy Quran in the name of five disciplines in his book Al-Fawzul Kabir:

1. The remembrance of the signs of Allah (Signs of God's Power)
2. The remembrance of BiAyamullah (Historical Stories of Quran)
3. The reminder of the Hereafter (the theme of the Resurrection and the Hereafter, Heaven, and Hell, etc.)
4. Mukhaasmaat (Arguments with the Opponents of Islam)
5. Ahkam (Commands and Prohibitions)

The details of the commandments are as follows:

1. Worship (prayer, fasting, zakat, hajj, jihad)
2. Society (family life, marriage, divorce, inheritance)
3. Matters (trade, affidavits, testimonials, and other transactional matters)
4. Politics (Citizenship, Civilization, Justice, Limits and Punishments)

(Module 5 (61): Second and Third Sources of Islamic Jurisprudence: Sunnah of the Prophet (PBUH) and Ijmaa)

Sunnah as a source of Islamic law: The practical interpretation of the Holy Qur'an was presented to the Holy Prophet (PBUH). Along with this, Allah Almighty sent the Holy Prophet (PBUH) not only as a Shariah interpreter but also honored him with the position of a Shariah (lawgiver). Therefore, the commandments given by the Prophet ﷺ are a source of authority to the Ummah and it is important to follow them.

Meaning of Consensus: The meaning of Ijma is "determination, determination and agreement" In the sources of Islamic law, Ijma is on the third level. This consensus can be in all matters related to the welfare of the Ummah, depending on the circumstances and events.

Definition of Consensus: Terminologically, it means that the opinion of the mujtahids (jurists) of the Muslim Ummah agreed on a Shariah issue at some point in time.

Consensus Status: If the mujtahids (jurists) of an era agreed on an issue, then the people of the later era cannot decide against the earlier consensus on that matter.

Beginning of Consensus: In the era of the Prophet (PBUH), whenever a new problem arose, the Companions of the Prophet (PBUH) used to seek the solution to the problem directly from the Prophet PBUH. In that period, there was no need for any third argument in relation to the Shariah rulings, since the Prophet PBUH himself was the guide. but after the death of the Prophet (PBUH), the Muslim Ummah faced new problems and situations, then the principles of consensus and deduction, and analogy were conceived.

There are two types of consensus:

1. Declared Consensus (قولي): If the jurists of a time agree on an issue in such a way as each of them expresses their opinion through their opinion, this is called Ijma Qawli.
2. Silent Consensus (اجماع سكوتي): One of the mujtahids of a certain time issued a fatwa regarding a matter, and this fatwa became known to other jurists and mujtahids, but none of them said anything in opposition or support but kept silent. It is called silent consensus. According to Ahanaf, the silent consensus is also acknowledged as an authority.

Examples of Ijmaa in the Age of Sahaba:

1. If a person denies zakat, then he will be treated in the same way as someone who denies prayer, and whoever denies prayer is out of the realm of Islam. Therefore, the denial of Zakat will also be considered excluded from the circle of Islam. Hazrat Abu Bakr Siddiq launched a jihad against Zakat deniers.
2. Hazrat Umar declared the conquered lands of Syria and Iraq as waqf (trust) instead of dividing them into fighters of jihad, and the companions agreed on this.
3. Hazrat Umar issued his order regarding 20 Rakat Taraweeh with the consensus and consultation of the great companions. This is also a clear example of the consensus of the companions.

(Module 6 (62): Fourth Source of Islamic Jurisprudence: Presumption)

Deduction: The literal meaning of Qiyas is to estimate, measure, correspond, and equate, thus. **قَاسَ الثَّوْبَ بِالذِّرَاعِ** Meaning of (measured by a cubit of cloth)
Dr. Mahmood Ahmad Ghazi has defined Qiyas in these words: "In the terminology of Sharia and Fiqha, adapting the reason found in the original ruling to another new ruling (called Qiyas).

Qiyas is a special distinction in Islamic jurisprudence. Since the times are changing and every day brings new problems and challenges, Islamic jurisprudence has a special distinction among all other religions in that it seems to provide clear guidance regarding these modern issues. Basis of Qiyas in the Holy Qur'an: Allah Almighty says:

(١) لِيَتَفَقَّهُوا فِي الدِّينِ (التوبة: 36)

“Thorough understanding and insight) of the Din (Religion)”

(٢) فَأَعْتَبِرُوا يَا أُولِيَ الْأَبْصَارِ (الحشر: 2)

“So, learn a lesson (from it), O people of vision!”

Here is the meaning of "atbar". "إِعْتَبِرْ" "رَدَّ الشَّيْءَ إِلَى تَطْبِئِهِ"

To return something to its likeness.

(٣) وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولَى الْأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنْبِطُونَ مِنْهُمْ (النساء: 83)

“Had they referred it to the Messenger (blessings and peace be upon him), or those of them who are in command (instead of making it public)”.

Argument of supposition, from the action of the Prophet (peace be upon him).

1. When the Prophet (PBUH) was sending Hazrat Muadh bin Jabal as the governor of Yemen, he asked: "How will you decide when a case comes before you?" Answered, I will judge according to the book as it is in Allah. Then I asked, "If it is not clearly mentioned in the Book of Allah, then how will you decide? Answered: Then I will decide according to the Sunnah of the Messenger of Allah Almighty. Then she asked, "If it is not clearly mentioned in the Sunnah, then how will you decide? Answered: In such a situation, I will make a decision based on my own opinion."
2. It is known from another tradition that Hazrat Mu'adh Bin Jabal RA and Hazrat Abu Musa Ash'ari RA were sent as Qazis and Governors of different regions of Yemen, and when asked by the Prophet (PBUH), they both replied: "When we do not find a ruling in the Sunnah." So one case will be speculated on in another case, and the decision that is closer to the truth will be followed. On this, the Prophet (peace and blessings of Allah be upon him) said, "The opinion of both of you is correct." [Muhammad bin Umar al-Razi, Al-Mashul fi ilm al-usul, 5/52]
3. A woman from the tribe of Khasham (خشعم) came to the service of the Prophet and said that my father has accepted Islam, and he is very old. He cannot sit on a horse, and Hajj has become obligatory for him. He said, what do you think if your father had a debt? Would you have paid it or not? He said, Yes, I would have paid it. On this, the Prophet (PBUH) said, "Then perform Hajj on their behalf." The saying of the Prophet (PBUH) is: "When a jurist makes a right decision through ijhtihad, he gets a double reward, and if he makes a wrong decision, he gets a single reward." [Sahih Muslim, vol. 5, p. 133]

Components of Deduction:

1. "Original", the proven in Shariah on which deduction is done. for example, the prohibition of alcohol is proven in Shariah. The prohibition of other intoxicant are deducted from it.
2. "Inferred", that what is deducted. for example, all intoxicants are prohibited because they are intoxicants as is alcohol.
3. "Alat,"(علت) the common cause between the original and the inferred. for example, intoxication is the cause between alcohol and other drugs which are intoxicants, which makes them prohibited too.
4. "Ruling," which is proven for the original. And this is the desired order in which the branch is combined with the original. That means sanctity.

(Module 7 - 63: Introduction to "Ijtihad")

Ijtihad (اجتهاد): The literal meaning of Ijtihad is to strive. According to Shariah, "ijtihad" refers to the effort that a mujtahid-level religious scholar makes to find out the ruling on a religious issue on which there is no clear ruling given in the Qur'an or Sunnah.

The Guiding Principles of Ijtihad are:

1. There is no room for ijtihad in an issue in which the ruling of the Holy Quran or the Sunnah of the Prophet (PBUH) is present.
2. If there is no clear ruling in the Qur'an and Sunnah, then the decisions of the previous mujtahids and righteous ones should be followed.
3. If there is no decision of the previous mujtahids and righteous people, then one should do ijtihad with one's own opinion.
4. The meaning of ijtihad from one's own opinion is not to establish an opinion at will. Rather, problems and issues similar to the one under discussion should be found in the Holy Quran, the Sunnah of the Prophet, and the decisions of the past mujtahids, and decisions should be made on new issues through analogy or deduction.

Imam Shatabi gave a very comprehensive and concise definition of a mujtahid: "The status of ijtihad is obtained by a person who possesses these two attributes: the first is that he fully understands the objectives of the Shari'ah, and the second is that he is fully capable of deriving rulings from the source of Shari'ah.

Mujtahid and his qualifications:

1. He should be well-versed in Quran and Sunnah.
2. He should be aware of the issues on which consensus has been done before.
3. He should be an expert in Arabic language and literature and have expertise in its grammar.
4. He should be aware of the abrogation of commands of Quranic verses and hadiths.