

Lecture No. 15: Introduction to Islamic Jurisprudence – II

(Module 1- 64: Distinctions of Islamic Jurisprudence)

Comprehensiveness: Human needs have been given special consideration in Islamic law. It includes all the rules and regulations that are necessary for the benefit of the society.

Permanence: Islamic laws are permanent in nature. The change of time can never affect it. However, if there is no ruling in a context, there is room for *ijtihad* (اجتهاد) in the light of its laws.

Equality: Among all the religions of the world, only Islam has the privilege of presenting the concept of human equality.

إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَاهُ (الحجرات:13)

“Surely, the most honorable amongst you in the sight of Allah is he who fears Allah the most”.

Applicability: The distinction of Islamic law lies in its applicability to and flexibility for every person and in every situation, for all times. For example, in the command of prayer, if someone cannot offer it while standing due to some compulsion, then he is allowed to say it in the sitting position, if he is unable to sit, he can say it lying down. In the same way, Hajj and Zakat are among the obligations, but it has been declared they are for the ones who can afford to offer them.

Nature of Islamic Jurisprudence: Non-Haraj: The meaning of Haraj is "hardship".

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ (الحج 78:22).

and has not placed upon you in the religion any difficulty.

يُرِيدُ اللَّهُ بِكُمُ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ (البقرة 2:185)

Allah intends for you ease and does not intend for you hardship

Shortness of breath:

لَا يَكْلِفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا (البقرة 2:286)

Allah does not charge a soul except [with that within] its capacity.

For example, Jihad is not obligatory to a blind, lame or sick person, similarly, it is not obligatory to pay Zakat and Hajj unless one can afford them to offer.

Graduality: Gradual means that the commands of the Holy Quran were not revealed all at once, but there is a principle of graduality that is, they were revealed one by one according to the need and situation.

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقْرَبُوا الصَّلَاةَ وَأَنْتُمْ سُكَرَى (النساء 4:43)

O you who have believed, do not approach prayer while you are intoxicated

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَ مَنَافِعُ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا (البقرة 2:219)

They ask you about wine and gambling. Say, "In them is great sin and [yet, some] benefit for people. But their sin is greater than their benefit."

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَزْلَامُ رَجَسٌ مِّنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ (المائدة: 90)

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.

(Module 2(65): Nature and Reasons of Fiqh Disagreement (1)

How did different schools of thought come into existence despite the common source laws?

All Imams of Fiqh agree on the basic beliefs, motives, requirements, and obedience to Allah and the Messenger of Allah. According to every one of them, the main source of Sharia is the Qur'an and Sunnah. The difference is in the interpretation of the Shariah and its rulings. Imams of Fiqh, when they differ in the investigation of a minor problem, they do not excommunicate others, but leave it to the Muslim masses to accept or reject whichever opinion they like. This difference is called a minor difference.

Differences in Recitations of the Holy Quran:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قُمْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَامْسَحُوا بِرُءُوسِكُمْ وَأَرْجُلَكُمْ إِلَى الْكَعْبَيْنِ. (المائدة، 6: 5)

“O believers! When you (intend to) stand for Prayer, then, (for ablution,) wash your faces and hands up to the elbows, and pass your wet hands over your heads and (also wash) your feet up to the ankles”.

Regarding this verse, two readings are transmitted one is Arjulakum and the second is Arjulimkim. The former means that along with the face and hands, the feet will be washed too, and the second means that Masah will be applied to the head and feet. The scholars reconciled both as when feet are covered under socks, the Masah is applied and feet are bare they must be washed.

Disagreement or Forgetfulness: All the Companions were not always present with the Messenger of Allah (PBUH). Some of them could meet him only once. That is why all the Companions did not have the same knowledge of the situations and events and the commands of the Messenger of Allah (PBUH).

1. When the problem of share of grandmother in inheritance came up, Hazrat Abu Bakr did not know the hadith about it. Mugheera bin Shuba and Muhammad bin Muslimah testified that the Prophet (PBUH) gave the grandmother one-sixth share.
2. Hazrat Umar did not know the method of seeking permission (saying salam three times) as prescribed in the sunnah of the prophet. Hazrat Abu Musa Ash'ari R.A. provided the testimony of the Ansar on it.
3. On the issue of plague, Hazrat Abd al-Rahman bin Auf (RA) clarified the matter by referring to the Hadith.

Doubt in the Proof of Hadiths: A hadith may be proved authentic according to the research of one Imam and may not be in the research of another. Thus, the difference in the proof of the

authentication of traditions also caused the difference between Imams. For example, the case of Tayammum. In case of no water or no power to use it. The opinion of Hazrat Umar and Ibn Masoud was that in a state of greater impurity (Janabat) if there is no water, one can do tayammum, but he cannot pray. Presenting the hadith by Hazrat Ammar bin Yasir.

While I was with 'Umar, a man came to him and said: We live at a place (where water is not found) for a month or two (what should we do if we are sexually defiled). 'Umar said: So far as I am concerned, I do not pray until I find water. 'Ammar said: Commanded of the faithful, do you not remember when I and you were among the camels (For tending them)? There we became sexually defiled. I rolled down on the ground. We then came to the Prophet (ﷺ) and I mentioned that to him. He said: It was enough for you to do so. Then he struck the ground with both his hands. He then blew over them and wiped his face and both hands by means of them up to half the arms. 'Umar said: 'Ammar, fear Allah. He said: Commander of the faithful if you want, I will never narrate it. 'Umar said: Nay, by Allah, we shall turn you from that towards which you turned (i.e., you have your choice). (Abu Dawud, 322)

(Module 3 (66): Nature and Reasons of Fiqh Disagreement (2)

Differences in Understanding and Interpretation of the Text: Sometimes there is a difference between the jurists in understanding the meaning, mood, and spirit of a commandment in the Book of Allah or the Sunnah of the Prophet ﷺ. In this case, an Imam adopts the meaning that he finds closer to the objectives of the Shariah. For example: On the day of Ahzab, the Messenger of Allah (PBUH) said: None of you Muslims should offer Asr prayer before he reached the place of Banu Qurayzah. On the way, Asr prayer became due. Some of them said that they would not pray until they reached the place of Banu Qurayzah, while some others said, "No, we will pray at that place because the Messenger of Allah (PBUH) did not mean to miss the prayer." Later, it was mentioned to the Messenger of Allah (PBUH) and he did refute either of them. (Bukhari: 4119)

Sharing Meaning: There are some words that have more than one meaning, for example, the word 'Ain' (عين) in Arabic has multiple meanings including eye, everything that exists, a favorite thing, gold, and girl. Similarly, the word 'Qara' is spoken for both for the state of purity and impurity (menstrual cycle). Therefore, the sharing of meaning in words is also the cause of disagreement among the jurists.

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ (البقرة: 228)

“And the divorced women shall hold themselves back till three menstrual cycles. And it is not lawful for them to conceal what Allah may have created in their wombs if they believe in Allah and the Last Day”.

(Module 4(67): Importance of Unity and Prohibition of Sectarianism)

Importance of Similarity: Sectarianism is a negative attitude based on groupthink in which people of one creed or religion do not respect others. One tries to assert one's position by treating the followers of the opposite religion and faction with hatred and prejudice. Such a mood or attitude is called sectarianism. Where there is no balance and moderation, there is cruelty and brutality and brutality is a sign of cruelty and inhumanity.

مِنَ الَّذِينَ فَرَّقُوا دِينَهُمْ وَكَانُوا شِيعًا كُلُّ حِزْبٍ بِمَا لَدَيْهِمْ فَرِحُونَ (الروم 30:32)

“(Also be not) of those (Jews and Christians) who divided up their religion and became sects and sub-sects every sect rejoicing over what is with them”.

وَاعْتَصِمُوا بِحَبْلِ اللَّهِ جَمِيعًا وَلَا تَفَرَّقُوا (آل عمران 103:3)

“And hold fast to the rope of Allah, all of you together, and do not generate dissension and factions”.

وَ أَنْ يَذَّا صِرَاطِي مُسْتَقِيمًا فَاتَّبِعُوهُ ۚ وَلَا تَتَّبِعُوا السُّبُلَ فَتَفَرَّقَ بِكُمْ عَنْ سَبِيلِهِ ذَلِكُمْ وَضَعُ لَكُمْ لَعَلَّكُمْ تُتَّقُونَ (الانعام، 153:6)

“And that this (Islamic law) is my straight path. So, follow it and do not follow (other) paths, because they (the other paths) will move you away from Allah's path. This is what He has enjoined you strictly so that you may become God-fearing”.

Causes of Sectarianism: There are many causes of sectarianism in Pakistan, some of which are internal and some are external.

External Causes of Sectarianism: External causes include the Iran-Saudi Arabia conflict, the situation in the Middle East, the Americans' attack on Iraq and Afghanistan, The Arab-Israeli war, the Iran-Iraq conflict, the situation in Syria and Yemen, but above all, the conflict between Russia and the United States, etc. But the matter is not so simple that we ignore the facts by declaring sectarianism as an external conspiracy.

Internal Causes: There is a long list of internal causes, but they can be divided into three categories.

State Causes:

- The state has always protected communal organizations by using them for political purposes.
- There is no effective legislation against sectarian organizations. Anyone can create an organization or institution whenever they want.
- There is no effective policy or institution to stop the motivational means of spreading sectarianism and extremism, especially magazines and social media.
- There is no check and balance on the meetings of certain political and religious leaders in Saudi Arabia and Iran embassies or its related institutions.
- No special training has been organized for law enforcement agencies to deal with communal conflicts.

- The rule of law is an effective tool in preventing communal riots, which is not being used.

Religious Causes of Sectarianism:

There are many religious causes of sectarianism, but the most important reason among them is narratives based on sectarianism. Some of these statements are as follows:

1. Shias are kafir because they insult the Caliphs and Companions and believe that the Qur'an has been altered.
2. Barelvis are polytheists, heretics, and worship graves.
3. Deobandis show disrespect to Prophet ﷺ because their elders have written insulting words in their books.
4. Ahl al-Hadith are Kharijis, disrespectful to the Prophet ﷺ the family of the prophet, and to Imams, the great jurists.
5. Our beliefs and creed are true. Besides us all other sects are false.

A possible plan of action for the promotion of unity and brotherhood and the elimination of sectarianism:

- Mutual brotherhood and unity should be promoted by finding common terms of beliefs and actions and ending all differences.
- A positive and non-critical style of preaching should be adopted instead of controversial and critical.
- Real tolerance should be demonstrated in practice and the Quranic philosophy of non-reluctance should be applied in our lives.
- Establishment of joint institutions for religious education should be implemented in order to resolve the misunderstandings found among themselves.
- Modern contemporary education should be organized for scholars so that polemic behavior is eliminated.
- Effective spiritual training should be arranged.