Islamic Law & Jurisprudence

Lecture 05 & 06

Introduction to Islamic Law (Sharia)

- **Definition**: Sharia means "path to the water source," representing a comprehensive legal and ethical system guiding all aspects of a Muslim's life.

- **Purpose**: To guide behavior, ensuring justice, morality, and adherence to God's will.

- **Distinction**: Differences between Sharia (the moral/legal framework) and Fiqh (jurisprudence, the human interpretation of Sharia).

Primary Sources of Islamic Law

- **Quran**: The literal word of God; addresses theology, morality, personal conduct, and law.
  - Provides specific legal injunctions on marriage, inheritance, criminal justice.
- **Hadith**: Accounts of the Prophet's sayings/actions, providing context and details not found in the Quran.
  - Examples: Prophet's judgment on theft and the concept of restitution.

Secondary Sources of Islamic Law

- **Ijma (Consensus)**: Binding agreement among scholars on interpretations not directly covered by the Quran and Hadith.
  - Historically significant in matters like inheritance laws and defining acts of worship.
- **Qiyas (Analogy)**: Using established principles to address new situations, e.g., extending the prohibition of wine to drugs.
- **Ijtihad**: Independent reasoning to adapt Sharia to new circumstances.

Fiqh (Islamic Jurisprudence)

- The human understanding and interpretation of Islamic law (Sharia) for practical application in daily life.

- **Usul al-Fiqh (Principles of Islamic Jurisprudence):**The methodology and principles used to derive and interpret Islamic law (Fiqh) from primary source.

Material of Usul al-Fiqh (Mawad al-Usul)

- **Definition**: The foundational components and elements used in the study and application of Islamic legal principles.
- **Key Materials**:
- **Adillah Naqliyyah (Textual Evidence)**:
  - **Quran**: The primary source of Sharia.
  - **Hadith**: The sayings, actions, and approvals of Prophet Muhammad.
- **Adillah Aqliyyah (Rational Evidence)**:
  - **Ijma (Consensus)**: Agreement of qualified Islamic scholars.
  - **Qiyas (Analogical Reasoning)**: Deriving rulings by analogy to established cases.
- **Principles of Linguistics**:
  - Study of Arabic language, grammar, and semantics to understand texts.

Ahkam (Islamic Rulings)

- **Definition**: The legal rulings or judgments derived from Islamic law (Sharia) that guide a Muslim's actions.

- **Five Categories of Ahkam**:

- **Fard (Obligatory)**: Actions that must be performed (e.g., daily prayers).

- **Mustahabb (Recommended)**: Actions encouraged but not mandatory (e.g., voluntary fasting).

- **Mubah (Permissible)**: Actions that are allowed without reward or punishment (e.g., eating certain foods).

- **Makruh (Discouraged)**: Actions disliked but not sinful (e.g., wasting water).

- **Haram (Prohibited)**: Actions that are strictly forbidden (e.g., theft, alcohol consumption).

Schools of Islamic Jurisprudence (Fiqh)

- **Hanafi**: Emphasizes reason and analogy, widely followed in South Asia, Turkey, Central Asia.

- **Maliki**: Based on the practices of the people of Medina, prevalent in North and West Africa.

- **Shafi'i**: Combines Quran, Hadith, consensus, and analogy, common in East Africa, Southeast Asia.

- **Hanbali**: Strict, emphasizes literal adherence, dominant in Saudi Arabia and the Gulf.

Origin and Development of Usul al-Fiqh

- **1. Early Islamic Era (7th-8th Century)**:

- **Prophet Muhammad's (PBUH) Time**: Legal rulings were directly based on Quranic revelations and the Prophet's guidance.

- **Rashidun Caliphs (R.A)**: Continued using Quran, Hadith, and reasoning (*Ijtihad*) to address new issues.

- **2. Formative Period (8th-9th Century)**:

- **Development of Schools of Thought**: Emergence of major Sunni (Hanafi, Maliki, Shafi'i, Hanbali) and Shia (Ja'fari) schools.

- **Imam al-Shafi'i (d. 820 CE)**: Known as the "Father of Usul al-Fiqh," he systematically defined the principles in his work *Al-Risala*, establishing a structured framework.

- **3. Classical Period (10th-15th Century)**:
- **Expansion and Refinement**: Scholars expanded on Usul al-Fiqh, integrating linguistic, rational, and philosophical elements.
- Detailed works emerged, like those by Al-Ghazali (*Al-Mustasfa*) and Al-Juwayni (*Al-Burhan*).
- **4. Later Period and Modern Times**:
- **Adaptation and Reform**: Efforts to adapt Usul al-Fiqh to contemporary issues while maintaining core principles.
- **Significance**:
- Usul al-Fiqh evolved to provide a systematic methodology for deriving Islamic law from foundational texts.

Objectives of Sharia (Maqasid al-Sharia)

- **Primary Objectives**:
  - Preservation of Religion (Din)
  - Preservation of Life (Nafs)
  - Preservation of Intellect (Aql)
  - Preservation of Lineage (Nasl)
  - Preservation of Property (Mal)
- **Application**: How these objectives influence modern rulings, e.g., health laws during pandemics to protect life.

Categories of Islamic Law

- **Ibadat (Worship)**: Obligations like prayer, fasting, zakat (almsgiving), Hajj.

- **Muamalat (Civil Transactions)**: Contract law, business transactions, family relations.

- **Punishments (Hudud)**: Prescribed for theft, adultery, apostasy, with set conditions for implementation.

Islamic Criminal Law

- **Hudud**: Fixed punishments with strict evidentiary requirements (e.g., theft requires four witnesses).
- **Qisas**: Retribution, allowing victims' families to seek punishment or forgive.
- **Ta'zir**: Discretionary punishments left to a judge's interpretation, e.g., lesser offenses not covered by Hudud.

Islamic Family Law

- **Marriage**: A contractual relationship; mutual consent, dowry (mahr), and responsibilities.

- **Divorce**: Different forms include Talaq (initiated by husband), Khula (initiated by wife), and mutual agreement.

- **Inheritance**: Quranic guidelines ensure specific shares for heirs (2:1 male-to-female ratio in many cases).

Islamic Finance and Economic Principles

- **Riba (Interest)**: Prohibited due to exploitation concerns; focus on equitable transactions.

- **Zakat**: Mandatory almsgiving, promoting wealth distribution and social welfare.

- **Islamic Banking**: Interest-free models (Mudarabah, Musharakah) based on profit/loss sharing.