

FAST

ISLAMIC & RELIGIOUS STUDIES

LECTURE NO 10
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USUL UL FIQH ISLAMIC JURISPRUDENCE

SOME PRELIMINARY POINTS

- Islamic law is a religious law based on the texts of Qur'an and Sunnah
- The discipline that tells us how this law is derived from these texts, and how it is classified, understood and applied is called *Usul al fiqh (Islamic Jurisprudence)*
- The term is broken up into its two components; *Usul & Fiqh*
- According to the method preferred by jurists, the following terms must be explained prior



THE MEANING OF USUL UL FIQH

- The term Usul ul Fiqh has been translated as Islamic Jurisprudence.
- The term comprises of two components
- The literal meaning of the term “asl” is something from which another thing originates or something upon which another thing is built.
- Technically, the term refers to Principles “Qawa`id”
- The principles used for the interpretation of the texts of Qur`an and the Sunnah



THE MEANING OF USUL UL FIQH

- Thus , the term Usul denotes to the principles of interpretation used to derive the knowledge of the legal rules of conduct from the specific evidences.
- Therefore, the Muslim jurists defined the term Usul ul Fiqh as:
“the body of principles by the help of which, the mujtahid is able to derive the law (الحكم الشرعي) by detailed evidences of Shariah”



SOURCES OF ISLAMIC LAW

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graph TD; A[SOURCES OF ISLAMIC LAW] --> B[PRIMARY]; A --> C[SECONDARY]; B --> D[QURAN]; B --> E[SUNNAH]; B --> F[IJMA']; C --> G[QIYAS]; C --> H[Istihsan]; C --> I[Maslihah]; C --> J[Maqasid al Shariah]
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PRIMARY

QURAN

SUNNAH

IJMA'

SECONDARY

QIYAS

Istihsan

Maslihah

Maqasid al Shariah



SOURCES OF ISLAMIC LAW

- The primary sources are those that are unanimously agreed upon by all jurists.
- The primary sources are transmitted sources, while secondary sources are mostly rational sources.
- Primary sources are definitive sources, while secondary sources are probable
- Laws discovered through the primary sources may be extended through the rational/secondary sources.
- This grading can be further emphasized by the letter, written by Umar Ibn e Khattab to the famous Qadhi Shuraih in which he said



When you are faced with an issue, decide through what is laid down in the book of Allah. If the issue you face relates to what is not in the book of Allah, then decide by what is in the Sunnah of the messenger of Allah.

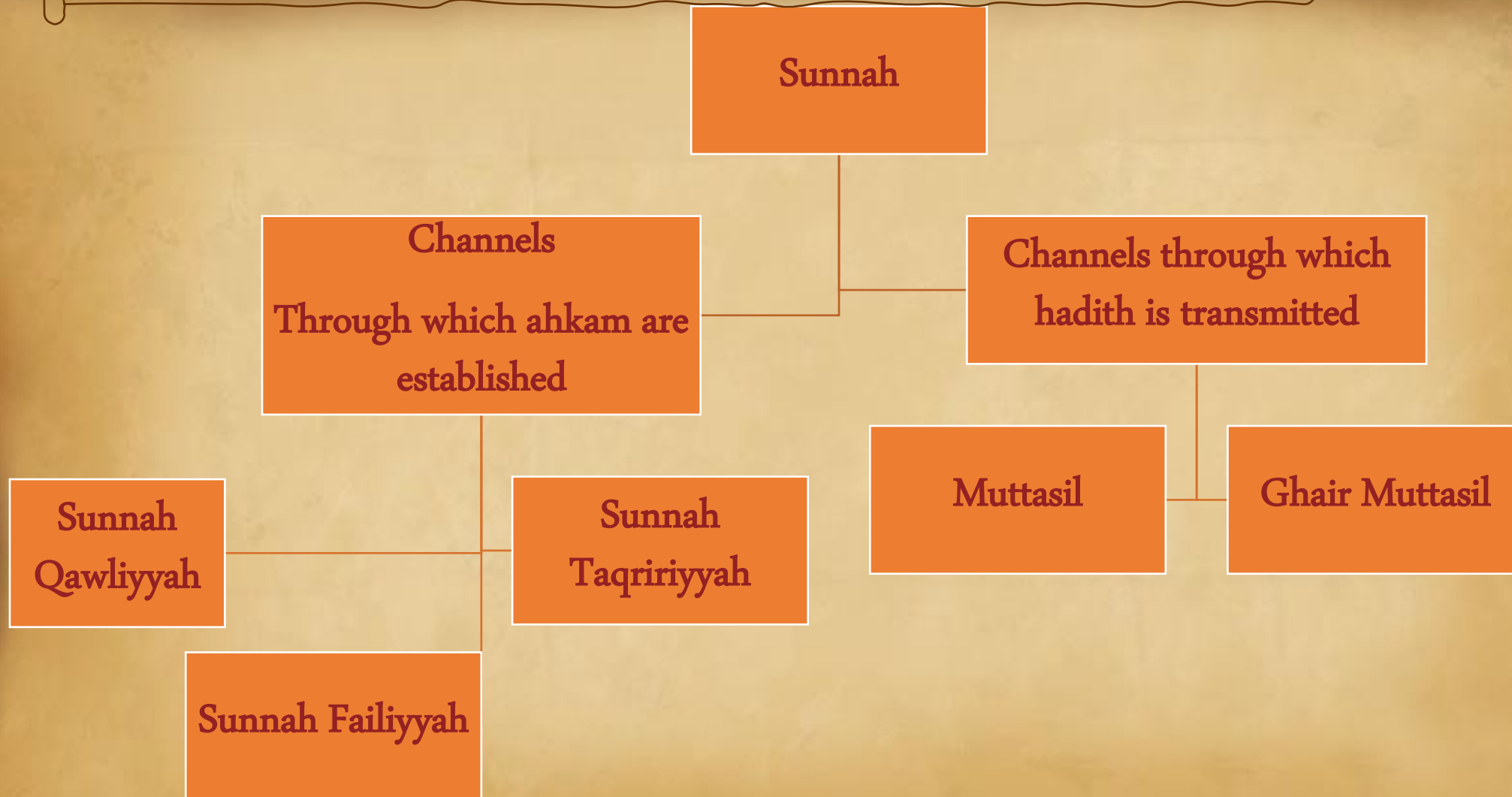
- It shows that there is a determined order for approaching the sources
- It is not proper to move towards second source unless the first source has been searched thoroughly for a solution.
- Moreover, Hadith e Ma' az also indicates that analogy (Ijtihaad) is to be resorted to when the search in the texts has been exhausted.
- The Qur'an and Sunnah should be approached together.

THE HOLY QUR'AN AS A SOURCE OF LAW

- Considering the Qur'an as the primary source means that all the other sources are secondary to it.
- There are approximately six hundred verses in the Qur'an related to Ahkaam (Islamic Law)
- Almost 500 of these pertain to the "Ibadaat" and the remaining to crimes, personal law and other issues.



SUNNAH AS A SOURCE OF LAW



CONSENSUS OF LEGAL OPINION (IJMA')

➤ Literally the word Ijma' means

“agreement upon a matter”

➤ Technically, Ijma' is defined as

“ The consensus of mujtahid (independent jurists) from the ummah of Muhammad ﷺ after his death in a determined period upon a rule of Islamic Law.



CONDITIONS FOR THE VALIDITY OF IJMA'

- The consensus must be among mujtahid
- The agreement must be unanimous
- The jurists must be from Prophet's Ummah
- The consensus must have taken place after the departure of Prophet
- It must be among the mujtahids of single determined period
- The agreement must be upon a rule of law, the hukm Shari'
- The ijma should be transmitted to the later jurists by way of tawatur



TYPES OF IJMA'

- Explicit Ijma' or Ijma' Qawli
- Tacit Ijma' or Ijma' Sukuti



SECONDARY SOURCES

➤ Secondary sources are of two types:

1. Rational: the techniques of legal reasoning that the mujtahid employs during his ijtiḥād. Such sources provide means of extension for the law stated in these primary sources.
2. Transmitted:



QIYAS (ANALOGY)

➤ Literally, Qiyas means

“Measuring or estimating one thing in terms of another”

➤ The meter rod is also called *qiyas*

➤ Technically, the term has been defined as:

“the assignment of the hukm of an existing case found in the texts of the Qur’an, the Sunnah, or ijma’ to a new case whose hukum is not found in these sources on the basis of a common underlying attribute called ‘illah of the hukum”



ELEMENTS OF QIYAS

➤ Qiyas consists of four elements:

- The case mentioned in the texts with its hukm;
- The hukm of the set of facts mentioned in the text;
- The '*Illah* or the underlying cause that has led to the hukm;
- The new case for which the hukm has not been explicitly mentioned and which requires a shariah ruling.



EXAMPLES OF QIYAS

THE CASE	HUKUM	UNDERLYING CAUSE	UNDECIDED ISSUE	GRANTED RULING
Consumption of Khamar	Prohibited	Intoxication	Marijuana Drugs	Prohibited
Proposal Upon Proposal	Prohibited	Harm to another interest	Offer upon offer	Prohibited
Sale while the call for the Friday prayer has been made	Prohibited	Reduction of the incentive to offer jumah	Other contracts such as marriages	Prohibited



ISTIHSAN (JURISTIC PREFERENCE)

➤ Literally;

“to consider something good”

➤ Technically;

“Creation of an exception to a general principle due to a stronger evidence when the general principle is based upon analogy”

- forgetfulness eating during fasting
- Salam Transactions
- Agreement of hire



MASLAHAH; EXTENDED ANALOGY

➤ It is defined as;

“the preservation of the purposes of Islamic Law in the settlement of legal issues”

- Compilation of Qur'an
- Excessive Charity



MAQASID AL SHARIA'H

DEEN

- Protection of Religion

NAFS

- Protection of life

MAAL

- Protection of wealth and property

NASL

- Protection of lineage

AQAL

- Protection of Mind/ Intellect

IRD

- Protection of dignity



SADD AL ZARAI'

➤ The term can be interpreted as

“Blocking the lawful means to an unlawful end”

➤ The principles is concerned with the lawful acts.

- The cultivation of poppy is banned as it leads in most cases to the production of opium and heroin.
- Selling of weapons to common people during chaos.



TRANSMITTED SOURCES

- Opinion of a Companion
- Earlier Scriptures
- Customs





SOME IMPORTANT TERMS

IJTIHAAD

➤ The literal meaning of *Ijtihaad* is

“expanding of maximum effort in the performance of an act”

➤ Technically,

“it is the effort made by *mujtahid* in seeking knowledge of the *ahkaam* (rules) of the Shariah through interpretation”

Mujtahid is defined as a Muslim scholar that has met certain requirements including a strong knowledge of the Qur'an, Sunna, and Arabic, as well as a deep understanding of legal theory and the precedents; all of which allows them to be considered fully qualified to practice *ijtihad*.



TAQLEED

- The word “Taqlaad” is derived from “*qaladah*” which means an ornament tied around the neck like a necklace.
- In its technical sense, *taqlid* is defined as:
“acting upon the word of another without *hujjah* (proof) ”



TAQLEED IN THE PAKISTANI LEGAL SYSTEM

- The constitution of Pakistan permits *taqlid* in article 189, 201.
- These articles make the judgment of supreme court binding on all courts and the judgments of the high courts binding on courts subordinate to them.
- The doctrine of precedent is nothing more than an institutionalized form of *taqleed*
- A layman accepts the opinions of the lawyers in their daily legal problems
- Similarly, A faqih or Mufti is expert in his area and there should be no hesitation in accepting his opinion by those who are laymen in his field of specialization.







CLASSIFICATION OF ISLAMIC LAW

THU HUKM: WHAT IS ISLAMIC LAW

- The Hukm Shar'i in its literal sense conveys the meaning of a rule of Islamic Law.
- It consists of three elements;
 1. The Hakim; Lawgiver which is the original source for Islamic Law i.e is Allah
 2. The Mahkum fih; the act on which the hukm operates
 3. The mahkum 'alayh; the subject (legal person) for whose conduct, the hukm is stipulated.



THE MEANING OF HUKM SHARAI

➤ The jurists have defined the Hukm as;

“ A communication (order) from Allah, related to the acts of the subjects through a demand, option or through a declaration.

- The hukm is communication from Allah
- The communication is related to the acts of the subjects
- The hukm may be expressed through a demand
- The hukm may grant a choice or option to the subject for the commission or omission of an act
- The communication may be expressed through a declaration.



CLASSIFICATION OF ISLĀMIC LAW

- As has been indicated earlier, the subject matter of Fiqh is human action with regard to their validity or invalidity.
- A person is demanded in shariah to do or to refrain from some thing
- Human acts have been classified into several categories by Jurists in light of shariah and according to the principlal of interpretation



CLASSIFICATION OF ISLĀMIC LAW



FARD

- – Obligatory Act :An act expressly commanded by Allah in the Holy Qur'an is known as Fard. This duty arises from an evidence or source that is definitive with respect to its implication.
- The following explains a Fard in detail:
 - a. An act that is obligatory to be executed
 - b. It has been proven by rigorously authenticated texts
 - c. The denial of any Fard renders one to come out of the folds of Islam.
 - d. If one omits to perform any Fard without any valid shari'i reason, then such a person becomes a fasiq (transgressor) and the person is regarded as a major sinner.



WAJIB

- – Necessary: An act that is almost as compulsory as a Fard. The Messenger of Allah never omitted it. It is graded second, below a Fard in its necessity.
- a. An act that is compulsory to do.
 - b. It is proven by religious arguments through ijtiḥad.
 - c. One who denies a Wajib is misguided.
 - d. If one omits a Wajib without any valid shari'i reason, then he is a transgressor and liable for the punishment of Hell.
 - e. To miss a Wajib once (deliberately, without any valid reason) is a minor sin (Gunah-e-Saghira). However, persistently omitting a Wajib shall turn it into a major sin (Gunah-e-Kabira).



MUSTAHABB/MANDUB

- Recommended; An act which is suggested to be done.
- It is defined as;
“a demand by the lawgiver for the commission of an act without making it binding”
- The difference between recommendation and the two kinds of previous obligation is based on the binding nature of command. The source is probable, but the demand is expressed in non-binding terms.
- The recommended act sometimes has some additional legal emphasis behind it for persistent or continued performance. On this criterion, it is further classified into two types.

1- Sunnah Muakkadah

2- Sunnah Ghair Muakkadah



SUNNAH MUAKKADAH

➤ “Sunnat” generally means: an act done or liked by the Messenger of Allah in relation to worship. One shall gain reward for performing a Sunnah, but there is no sin of on omits it. However, to continually omit it is a sin, and if one shows dissatisfaction to a Sunnah, then this is fisq.



SUNNAH MUAKKADAH

- a. Sunnat-e-Mu'akkada is an act necessary to perform.
- b. An act that was always performed by the Messenger of Allah], but occasionally omitted so as to differentiate from something that is Wajib.
- c. One gains the displeasure of Allah Most High and His Beloved Prophet if a Sunnat-e-Mu'akkadah is omitted even if it is occasionally. Thus, making it a habit to omit a Sunnat-e-Mu'akkadah is an act of earning even more displeasure of Allah and His Beloved and inevitably, one becomes liable for punishment.
- d. The status of a Sunnat-e-Mu'akkadah is near a Wajib.
- e. Sunnat-e-Mu'akkadah is sometimes known as Sunnat-e-Huda



SUNNAH GHAIIR MUAKKADAH

- a. If it is performed one shall reap reward.
- b. The Messenger of Allah had performed such an act, but also omitted it without any reason.
- c. To omit a Sunnat-e-Ghayr Mu'akkadah is disliked in the Islamic Law (Shari'ah). However, one is not punished for this.
- d. Sunnat-e-Ghayr Mu'akkadah is also known as Sunnat-e-Zawa'id.



MUSTAHAB

➤ Desirable Acts:

- a. An act that is appreciated by the Sacred Islamic Law (Shari'ah)
- b. There is no harm if one omits it
- c. One gains reward for doing it, but one is not punished for omitting it.



MUBAH

- a. An act that is neither commanded nor prohibited by the Shari'ah.
- b. There is no reward for doing it, and no punishment for omitting it.



HARAM

Unlawful: a Totally forbidden in Islam.

b. Proven by rigorously authenticated texts.

c. Anyone who denies something proven from the Qur'an and Hadith to be Haram, becomes a kafir.

d. If this act is committed deliberately and intentionally, even once, then such a person is a transgressor (fasiq), and has committed a major sin (Gunah-e-Kabira). Thus, such a person shall be punished.

e. To refrain from such acts is rewarded.

F. Haram is considered the opposite of Fard.



MAKROOH -E-TEHRIMI

- "Makruh" generally means something that is not desirable i.e. something that is disliked by the Islamic Law.
- a. Makruh-e-Tehrimi is something that is essential to refrain from.
 - b. To do an act that is Makruh-e-Tehrimi is a sin and against the commands of the Shari'ah.
 - c. Anyone who does it is a Fasiq, and will be punished.
 - d. There is reward to refrain from such acts.
 - e. If such acts are done once, then they are not classed as a major sin. However, to persevere on such acts does turn it into a major sin (Gunah-e-Kabira).
 - f. It is considered the opposite of a Wajib.



MAKRUH-E-TANZIHI

- a. An act that is disliked by the Shari'ah.
- b. If this act is done, then there is no sin or punishment. However, it is bad to make it a habit of doing such an act.
- c. One gains reward for not doing it.
- d. It is considered the opposite of Sunnat-e-Ghayr Mu'akkadah.» Khilaf-e-Awla: It is best to avoid such acts, but if done then there is no sin or punishment. It is considered the opposite of Mustahab.



