

FAST

ISLAMIC & RELIGIOUS STUDIES

LECTURE NO 9
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ISLAMIC LAW & JURISPRUDENCE

الفقه و أصوله

MEANING OF FIQH

- Literally, the word Fiqh means “Deep Understanding”
- The word has also been used in the same sense in the Holy Qur`an

لَهُمْ قُلُوبٌ لَا يَفْقَهُونَ بِهَا

They have heart, but understand not with them



EXPLAINING THE TERM FIQH

➤ The expression has also been used for having understand the religion deeply.

The Prophet said:

مَنْ يُرِدِ اللَّهُ بِهِ خَيْرًا يُفَقِّهْهُ فِي الدِّينِ

“He for whom Allah wishes good, grants him understanding in religion”



EXPLAINING THE TERM FIQH

- The Prophet is also reported to have blessed Ibn `Abbas saying:

اللهم فقهه في الدين وعلمه التأويل

“O God give him understanding in religion”

- Both, the Qur’anic verse and the Hadith, mean a deeper understanding of the religion.



TECHNICAL MEANING OF FIQH

- The '*Ilm* (knowledge) had also being used in the same meaning of fiqh during the time of Prophet Muhammad ﷺ which refers to the knowledge that comes through reports, that is , traditions; *ahadith and athar*.
- Afterwards, the term “Fiqh” have been applied by the scholars of shariah to the knowledge of the rules of Shariah, whether these rules relate to beliefs or actions.
- The earlier jurists defined the term as:

“A person’s knowledge of his right and duties”

The definition was very wide and includes all elements of shariah; belief's, ethics etc.



TECHNICAL MEANING OF FIQH

- As the science of Uṣūl-Fiqh (Islamic jurisprudence) developed, Fiqh became a special subject that dealt with outward practices. Some distinguished between the doctrinal issues by using the term *Fiqh Al-Bātin* and the practical aspects as *Fiqh Al-Zhāhir*.
- The practical rules means laws about actions (conduct and behavior) of the people, the evolution of which as obligation, recommendation, prohibition, disapproval and permission has been classified.



TECHNICAL MEANING OF FIQH

➤ Therefore, the term has been defined as:

“Fiqh is the knowledge of the practical laws of the Sharī‘ah that are derived and deduced from specific and detailed evidences”

- By practical laws of the Sharī‘ah, it include all that is required by a Muslim individual in his daily life, which includes Śalāt, Zakāt, fasting, Hajj (pilgrimage), Marriage, Divorce, Laws of Succession, Jihād etc.
- It also excluded ethical issues that concern the heart like sincerity, hatred, anger, pride and many others. The laws regarding belief have also been excluded.



DIFFERENCE BETWEEN SHARIAH & FIQH

SHARIAH

- Shariah is a broad term with respect to Fiqh
- Shariah is the whole divine Law and values as given by Allah.
- Shariah is unchangeable and fixed
- Shariah laid down the basic principles

FIQH

- Fiqh is the law extracted by Muslim Jurists from the sources of Shariah
- Fiqh is confined to human acts in terms of legality and illegality
- Changes according to circumstances under which it is applied
- The subject matter of Fiqh is Human Actions

COMPREHENSIVENESS OF FIQH

➤ The area of Fiqh can be divided into three major categories

1. Ibadaat: The rules of ritual purification, prayers, fasting, pilgrimage, Zakat, and some other forms of worship are dealt under this heading
2. Muamalat: The area deals with property, contracts, business partnerships, debts, mortgage, marriage, divorce, gifts, inheritance etc.
3. Hudud & Jinayaat: Major offences like theft, robbery, denunciation, consumption of wine and other are called hudud in which the punishment has been set by Allah, while offences against human body and torts are called Jinayaat.



IMPORTANCE OF FIQH

- Human beings have been created by Allah to serve Him and to create an environment wherein the word of Allah is upheld.
- It is the responsibility of every Muslim to lead his/her life in conformity to Allah's orders and wishes.
- However, it wasn't possible for every Muslim to ascertain the rules himself.
- He needs an expert whom he can trust his understandings of Islam



IMPORTANCE OF FIQH

The holy Qur'an says:

وَمَا كَانَ الْمُؤْمِنُونَ لِيَنفِرُوا كَآفَّةً ۚ فَلَوْلَا نَفَرَ مِن كُلِّ فِرْقَةٍ مِّنْهُمْ طَائِفَةٌ لِّيَتَفَقَّهُوا فِي الدِّينِ وَ
لِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ

It is not (necessary) for all the believers to go forth.'; So, why should it not be that a group from every section of them goes forth, so that they may acquire perfect understanding of the Faith, and so that they may warn their people when they return to them, so that they may take due care (of the rules of Shari_ah).



IMPORTANCE OF FIQH

- The Holy Prophet Muhammad ﷺ said:

فَقِيهٌ أَشَدُّ عَلَى الشَّيْطَانِ مِنْ أَلْفِ عَابِدٍ

‘One faqih is more severe on the devil than a thousand worshippers are “ [tirmidhi]

- The word *fiqh* is used in this Hadīth which clearly refers to a person having insight and understanding in matters of religion.





DEVELOPMENT OF FIQH

DURING ERA OF PROPHET ﷺ

- The 23-year period of revelation
- Most of the verses revealed prior to the Hijrāh concentrated on Aqīdah
- Once the Muslim community had been established in Madīnah after the Hijrāh,
- Gradually other laws were revealed in order to govern the affairs, lives of the individuals, the community and the newly founded Islamic state.



DURING ERA OF PROPHET ﷺ

- During the ten years, the ummah witnessed the application and subsequent approval of the four major sources of evidence in Islam and more specifically in Fiqh.
- These sources were; the Qur'ān, Sunnah, ijma' and Ijtihād.
- The Qur'ān was revealed gradually sometimes in accordance with occurrences and incidents.
- Very often, if the Ṣaḥābā faced some issue, they asked Prophet who provided them with the solution or else they waited for revelation from Allah after which they immediately complied



IN THE ERA OF PROPHET ﷺ

➤ So, the main source of legislation was divine revelation which comprised of;

- Wahi Matluw (Qur'an)
- Wahi Ghair Matluw (Sunnah)

➤ The Salat and Zakat made clear through Sunnah.

➤ The commands regarding Riba.

➤ Incident of Bilal when he purchased superior dates in exchange of inferior.

➤ The Prophet Said:

“When a Judge applies himself (ijtihād) and arrives at a correct decision, then he is granted two rewards, but if he applies himself (ijtihād) and errs, then he would still get one reward”



IN THE ERA OF PROPHET ﷺ

- The Prophet Muḥammad sent his companion Muā'ḍh ibn Jabal to Yemen. The Prophet questioned him, "How will you rule?" Muā'ḍh replied: "I will rule by the Book of Allah". The Prophet then asked him, "What if you don't find it in the Book Of Allah?" He (Muā'ḍh) said, "I will rule by the Sunnah". Again the Prophet asked, "What if you don't find anything in the Sunnah?". He replied: "I will apply Ijtihād"
- This Ḥadīth establishes Ijtihād and outlines the methodology of Fiqh and thus forms the basis for later works in Uṣūl-Fiqh. It also shows that deducing laws is a process, and not a haphazard exercise.



- Another method used for legislation was Qiyās (analogical reasoning).
- In fact, it is a form of ijtihad.
- Qiyās was an accepted source in the time of the Prophet and his companions

وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولِي الْأَمْرِ مِنْهُمْ لَعَلِمَهُ الَّذِينَ يَسْتَنْبِطُونَهُ مِنْهُمْ

- ‘Ammār ibn Yāsir rolled in soil and made the dry ablution (Tayammum) and then performed Ṣalāt, when on a journey and he awoke in a state of impurity. His traveling companion, ‘Umar did not do this. They informed the Prophet about their respective actions who did not approve of Ammār covering his entire body in soil because of the verse in Sūrah Al-Mā'idah. He directed him to the correct method and further informed that the dry ablution would be acceptable for greater and lesser impurities.



ERA OF PROPHET ﷺ

➤ Qur'an & Sunnah has provided some very basic and fundamental principles through which, the solution of each and every problem can be sorted out.

➤ The Holy Prophet said:

تَرَكْتُ فِيكُمْ أَمْرَيْنِ لَنْ تَضِلُّوا مَا تَمَسَّكْتُم بِهِمَا كِتَابَ اللَّهِ وَسُنَّةَ نَبِيِّهِ

"I have left two matters with you. As long as you hold to them, you will not go the wrong way. They are the Book of Allah and the Sunnah."



AFTER PROPHETHOOD

- During the Prophet's time, the foundations and principles of jurisprudence were established.
- Thus, the duty of later scholars was to utilize these and deduce rulings on new issues.
- This period witnessed the spread of Islam beyond the Arabian Peninsula
- The Muslims interacted with various other non-Arab communities, which subsequently resulted in more 'new' issues that required Shar'ī rulings and verdicts.
- The jurists and jurisconsults (Muftī's) were required to apply themselves in resolving these matters.



ERA OF KHULAFĀ

- The four Khalīfas were all trained in jurisprudence and in other matters of Islam by the Prophet Muḥammad.
- They were very capable jurists
- At the same time, consultation (shūrā) formed an essential part of their rule.
- During the period of the rightly guided Khalīfs, there were a number of companions who were known for their expertise in jurisprudence and pronouncing legal verdicts (fatwā).



AFTER PROPHETHOOD

- This period was one of great academic progress.
- Fiqh maxims were written, and many were engaged in reporting and transmitting Hadīth and interpreting the Qur'ān.
- the legal scholars and jurists ultimate goal was to deduce laws from the Qur'ān and Sunnah that conformed to the spirit and objectives of the Sharī'ah.
- Due to the different approaches and methodologies of different legal scholars, different schools developed.
- during this period, Islamic Jurisprudence matured and developed fully

