

Introduction to Islamic Legal Theory

Lesson 1



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ENRICHING THE SOUL

Defining Islamic Legal Theory

- Islamic legal theory also known as أصول الفقه which literally means ‘the principles of Islamic jurisprudence’.
- In order to appreciate the scope of this science it’s important to first define “fiqh” and “usul”.

Defining Fiqh

- The Arabic word, *fiqh* essentially means profound understanding.
- Our information about the affairs and events of this world can be of two types. Shallow and superficial or deep and profound.
- Consider an economic example. We notice that certain products have a fixed price while other products steadily increase in value. This type of information is universally available and is superficial.

Defining Fiqh

- Some people have a deeper understanding of global markets and are able to specifically identify the factors determine why certain items are fixed while others steadily increase in value.
- When a person has knowledge of economics that surpasses the level of simple observations and attains the level of being able to discern causes and trends, they can be described as one with deep understanding in economics.

Defining Fiqh

- In the Quran and in hadith we have this concept of التفقه في الدين
وَمَا كَانَ الْمُؤْمِنُونَ لِيَنْفِرُوا كَآفَّةً فَلَوْلَا نَفَرَ مِنْ كُلِّ فِرْقَةٍ مِّنْهُمْ طَائِفَةٌ لِّيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ

“And it is not for the believers to go forth [to battle] all at once. For there should separate from every division of them a group [remaining] to obtain a deep understanding of the religion and warn their people when they return to them that they might be cautious.” Quran 9:122

Defining Fiqh

مَنْ حَفِظَ عَلَى أُمَّتِي أَرْبَعِينَ حَدِيثًا يَنْتَفَعُونَ بِهَا فِي أَمْرِ دِينِهِمْ ، بَعَثَهُ اللَّهُ يَوْمَ الْقِيَامَةِ **فَقِيهًا** عَالِمًا

“Whoever memorizes forty traditions from which my community benefits in their religious affairs, Allah will raise him on the Day of Resurrection as a learned jurist and a scholar.”- The Prophet (s)

Defining Fiqh

- Thus the literal meaning of “fiqh” is to have a deep understanding of something.
- Gradually, because of its abundant usage among Muslims, the term became associated with having a deep understanding of the religion of Islam.
- The meaning of the word “fiqh” then evolved one step further to mean “a deep understanding of the practical rulings of Islam”
- Among the second-generation Muslims التابعون there were individuals known as “jurists” فقهاء

Defining Fiqh

- What is the technical definition of fiqh and a faqeeh?

الفقه هو العلم بالأحكام الشرعية عن أدلتها التفصيلية

“Fiqh is the discipline which deals with understanding the practical laws of Islam from their detailed sources/references

Defining Fiqh

- Someone may have an entire legal manual of Islamic laws memorized and still not be considered a “faqeeh” or jurist.
- An Islamic jurist is the one who can go back to the sources and deduce religious rulings.
- Such an individual must possess deep knowledge and be intimately familiar with the Quran and the thousands of hadith that if a new issue arises, they can go back to the sources and provide a legal answer to the question.

Pre-requisites for the Jurist

- For the study of Islamic jurisprudence, it is necessary for a jurist to prepare himself/herself by mastering many other branches of learning including the following:
 - 1. **Arabic**, namely syntax, grammar, and rhetoric. As the Quran and hadith are in Arabic, it is not possible to benefit from them without at least a basic knowledge of Arabic and literature.
 - 2. **Commentary of the Quran** (tafseer). Since a jurist must use the Quran as a point of reference, some knowledge of the commentaries on the Quran is absolutely essential.
 - 3. **Logic**. Every branch of learning in which reasoning is used requires the application of logic.

Pre-requisites for the Jurist

- **4. The Discipline of Hadith:** A jurist must have sound knowledge of hadith and must be able to distinguish the different types of hadith. A jurist must become familiar with the language of hadith through extensive exposure to them.
- **5. The Discipline of Rijaal:** This discipline examines the identities, backgrounds and reliability of the transmitters of hadith
- **6. Islamic legal theory (usul al-fiqh):** The most important branch of learning in preparation for jurisprudence is usul al-fiqh which is essentially the science of the rules of inference of Islamic legal rulings from their sources

Defining Important Terms

- *Ijtihad* literally means "to endeavor, strive, put oneself out, work hard." In Islamic legal terminology it means "the process of deriving the laws of the shari'ah from its sources."
- *Mujtahid* means a person who does ijtihad or who is an expert of Islamic laws.
- *Fiqh* literally means deep or profound knowledge, and in Islamic terminology it means the science of Islamic laws.
- *Faqih* (pl. *fuqaha'*) means the expert of fiqh. The terms "*mujtahid*" and "*faqih*" mean the same.

Defining Important Terms

- *Istinbat* comes from the root “nabt” which literally means to extract water from a deeper layer of the earth. It is as if the jurists have likened their efforts in extracting the Islamic law from the primary sources to the art of bringing water from the depths of the earth to the surface.