

# Introduction to Islamic Legal Theory

Lesson 3



# The Subjects of Islamic Legal Theory

- Usul al-Fiqh is the science that teaches us how to correctly and validly infer Islamic rulings from the primary sources. The primary sources are the Quran, Sunnah, consensus and reason.
- Occasionally, we may encounter circumstances in which we cannot deduce the Islamic law from the above-mentioned four sources.
- The Islamic shariah is not silent on this matter and has established a system of practical rulings from which we can infer what can be called “the apparent laws” الأحكام الظاهرية

# The Subjects of Islamic Legal Theory

- Apparent laws are introduced in contrast to “the actual laws” which are known as *الأحكام الواقعية*.
- “The actual laws” refer to the genuine intention of the Law Maker (God) while “the apparent laws” represent the jurists’ best effort to understand God’s actual intentions with regard to particular religious duties in particular situations.

# The Subjects of Islamic Legal Theory

- Thus, Islamic legal theory, as a discipline explores two main areas:
- 1. Instructions for correct and valid deduction of the actual laws of the shariah from the primary sources. This area of study is known as “the principles of inference” أصول الإستنباط
- 2. Instructions for the correct and valid way of application of practical rules, if, and when, the inference of the actual laws is not possible. This part is called “the principles of application” أصول عملية

# The Subjects of Islamic Legal Theory

- Since deduction or inference of the actual laws is from one of four sources (the Quran, Sunnah, consensus, and reason) the problems of the principles of inference are divided into four parts.
  - 1. The Binding Testimony of the Apparent Meanings of the Quran
  - 2. The Binding Testimony of the Apparent Meanings of the Traditions
  - 3. The Single Report
  - 4. Contradictions Between Hadith

# The Apparent Meanings of the Quran

- **The Binding Testimony of the Apparent Meanings of the Quran**
- In Arabic this is called **حجية ظواهر الكتاب**
- When we examine any text, the meaning of a text can either explicit **نص** or apparent **ظاهر**
- Can the apparent meanings of the verses of the Quran be used as evidence for a ruling?
- This was a major debate between the Usulis and the Akhbaris.
- The Akbaris believed that no one has the right to refer to the Quran and deduce Islamic rulings except for the Ahlul Bayt.
- The claim of the Akhbaris was based on traditions which forbid interpretation of the Quran according to a person's personal opinion.

# The Apparent Meanings of the Quran

- The Akhbaris maintain that the meaning of each Quranic verse must be sought from the relevant hadith.
- In cases where the apparent meanings of the Quranic verses are contrary to the apparent meanings of the relevant hadith, the meaning of the hadith take precedence. In such cases we should act according to the hadith and acknowledge that we do not know the true meaning of the verses in question.

# The Apparent Meanings of the Quran

- The Usulis, however, have proved that the deduction that Muslims make from the Quran is direct, and that the prohibition on interpreting the Quran based on personal opinion does not mean that people have no right to understand the Quran by their own thoughts and reflections, but that the Quran must not be interpreted according to one's personal interests and inclinations.
- The Usulis argue that the Quran itself emphasizes and encourages people to reflect upon its verses and explore its hidden and sublime meanings by means of their intellect. This clearly shows that people are allowed to strive to understand the Quran as much as they can.



# The Apparent Meanings of the Quran

- Furthermore, the Prophet and the Imams are authentically reported to have told us that forged hadith would appear, and in order to distinguish the true from the false, we must compare all hadith with the Quran and any hadith that contradicts the Quran must be understood to be false and thus disregarded.
- This of course cannot be done without referring to the Quran!
- Thus, these traditions that command us to use the Quran as the criterion to verify the authenticity of a hadith prove that the apparent meanings of the Quran are binding and authoritative.

# The Apparent Meanings of the Quran

- The Prophet (s) presented the Quran as the criterion for assessing the validity of any tradition:

فما وافق كتاب الله فخذوه، وما خالف كتاب الله فدعوه

“If it (the hadith) conforms to the Quran, accept it. And if it contradicts the Quran, disregard it.”

# Problems with the Sunnah

- We defined the Sunnah as the words, actions and silent endorsements of the Prophet and the Ahlul Bayt.
- There is no disagreement about the binding authority of the apparent meanings of the hadith. Even Akhbaris accept that we can rely on the apparent meanings of the traditions of the Prophet and Ahlul Bayt.
- There are two main challenges we face with respect to the Sunnah:
  - 1. How can we determine that something is actually the Sunnah?
  - 2. What do we do when there are contradictions and discrepancies between narrations?

# Problems with the Sunnah

- Sometimes we have full conviction that a hadith is indeed from the Prophet and Ahlul Bayt, either because it is widely transmitted (mutawatir) or because there is strong contextual evidence.
- Traditions which don't reach that evidentiary threshold, are known as single reports خبر الواحد.
- These are hadiths that have been reported from the Prophet or Imams but by one person only, or one that is reported by more than one person but has not passed the threshold of being so widely transmitted that it gives full conviction that the report is indeed from the Prophet.

# Problems with the Sunnah

- Can such traditions be used as a basis for deducing the relevant Islamic ruling or not?
- The Usulis believe that , provided the transmitters of the report were just or at least probably truthful, the hadith they have narrated can be used to deduce the relevant law.
- Some Usuli have cited some Quranic verses to support this claim. For the sake of brevity, we will examine two verses:

# Problems with the Sunnah

يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُو

*“O you who believe! If a wicked person comes to you with news, verify it...” Quran 49:6*

- This means that we are to be skeptical of news delivered by a wrongdoer and should investigate and not act upon the report before assessing its truthfulness.
- The verse’s implicit meaning is that if a just and reliable person gives us a report, we are permitted to act on it and accept it without investigation.

# Problems with the Sunnah

وَمَا كَانَ الْمُؤْمِنُونَ لِيَنْفِرُوا كَافَّةً 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 understanding in the religion and warn their people when they return to them that they might be cautious.” Quran 9:122*

- If accepting the report of a single person was not permissible, God would not have commanded those who learned Islam to “warn” their people.
- This indicates that خبر الواحد الثقة is binding.

# Conflicting Hadith

- What should we do if we come across conflicting hadiths?
- Must we consider that when two contrasting reports exist we are to ignore them both, just as if we had no hadith on the subject at all?
- Or do we have the option of acting according to whichever of them we like?
- Or are we to act with caution and this act according to the hadith that is nearer to caution?
- Or is there another way to come to a decision?



# Conflicting Hadith

- The Usulis argue that, first, one must try to reconcile the content of opposing hadith, and the unified content of opposing hadith, must, as much as possible, be implemented.
- And if this is not possible, then one must see which one of the opposing hadith has priority over the others in some way, such as in the reliability of the chain of narrators, in its credibility among earlier scholars who may have had some other evidence that we have missed, or in its being clearly not due to taqiyyah and the like.

# Conflicting Hadith

- Example: In the 3<sup>rd</sup> and 4<sup>th</sup> unit of prayer, should we recite the four glorifications once or three times? There are hadith that indicate both.
- If the conflicting hadith are equally sound in terms of reliability, we call this تعادل or equivalence.
- If one hadith is favored it is called ترجيح.
- There are hadiths that teach us what to look for in a hadith to determine if it should be favored and given preference أخبار علاجية