

# Introduction to Islamic Legal Theory

Lesson 4



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ENRICHING THE SOUL

# Issues Common to the Quran and Sunnah

- The issues common to the Quran and the Sunnah consist of the following:
  - Commands أوامر
  - Prohibitions نواهي
  - General Laws and Particular Laws عام وخاص
  - Absolute Laws and Conditional Laws مطلق ومقيد
  - Implicit Meanings مفاهيم
  - The Clear Laws and Ambiguous Laws مبين ومجمل
  - The Abrogator Laws and Abrogated Laws ناسخ ومنسوخ

# Commands أوامر

- The Arabic word أوامر is the plural of أمر which means “command”.
- It also refers to the type of verb that in English is called an imperative, like “Listen!” or “Stand!”
- In the Quran and Sunnah, many of the phrases are in the form of commanding verbs and it is here that many questions are raised in fiqh that must be answered in Islamic legal theory.
- These questions include whether or not a commanding verb implies obligation or recommendation or neither. Also, does the commanding verb imply that the action must be done immediately or is it permissible to leave a time interval?

# Commands أوامر

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ

*“Take alms out of their property, you would cleanse them and purify them thereby, and pray for them; surely your prayer is a relief to them; and God is Hearing, Knowing.” Quran 9:103*

- “Prayer”, in this verse, means to supplicate or send a blessing. Here, the first question that is raised concerns the status of the commanding verb “pray”. Does it mean that to supplicate is obligatory upon the Prophet?

# Commands أوامر

- The second question is whether or not the commanding verb implies immediate obligation.
- Is it obligatory that the Prophet supplicate immediately after taking the Islamic tax or is it permissible to leave an interval.
- Thirdly, is one prayer enough, or must it be performed repeatedly?
- Such matters are all discussed in detail in *usul al-fiqh*

# Prohibitions نواهي

- The Arabic word نواهي which is the plural of نهى means “prohibition” or ‘to prevent”.
- If in English we say, “Do not drink alcohol!”, this is a prohibition.
- Both in the Quran and in the Sunnah there are many prohibitions.
- Similar questions arise as to those on the subject of commanding verbs.
- Does a prohibition imply that the action in question is forbidden or does it simply indicate that the action is undesirable and detestable?
- Also, does a prohibition indicate permanence or temporality?

# Prohibitions نواهي

وَلَا تَقْرَبُوا الزِّنَى إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

*“And do not approach fornication; surely it is an indecency and an evil way.” Quran 17:32*

# General and Particular عام وخاص

- The general العام is a type of expression which includes all members of a kind, class or group by using certain linguistic styles or certain words like “all, every,..”
- The specific الخاص is a type of expression which includes some members of a kind, class or group.
- If there are laws related to a specific group that are opposed to the common and general laws, what is to be done?
- Must the two laws be interpreted as mutual exclusive? Or, since one of the two laws is general and the other particular, is the particular law to be understood as an exception to the general law?



# General and Particular عام وخاص

- For example, the rule : “Respect all scholars” is a general rule, because the word “all” does not specify which scholars and includes all scholars.
- However, the rule: “Respect all scholars except the corrupt ones”, is a specific rule because the word “except” qualifies the statement and limits the scope of the command to those scholars who are not corrupt.

# General and Particular عام وخاص

- For example, we are told in the Quran that divorced women must wait after their divorce for three monthly periods before they can remarry. However, in reliable traditions, we are told that if a woman marries and divorces before the marriage is consummated, it is not necessary for the women to observe the term.
- What are we to do here? Are we to reject this hadith on the grounds that it contradicts the Quran as the Prophet and Imams instructed?
- Or are we to assume that this hadith in reality expounds the Quranic verse for us and serves as an exception to the general rule?

# General and Particular عام و خاص

- It is the second view that is the correct, of course, for we are used to having a law introduced in the general form and then having the exceptions explained.
- The Quran has observed his conversational norm among human beings.
- In another place the Quran itself deems the hadith of the Prophet to be reliable:

# General and Particular عام وخاص

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمُ عَنْهُ فَانْتَهُوا

*“And whatever the Messenger has given you - take; and what he has forbidden you - refrain from.” Quran 59:7*

- In these types of circumstances, we accept that particular rulings act as exceptions, that is, they function as qualifiers **مخصص** to general laws and that general laws have been qualified and subjected to the act of specification **تخصيص** by particular rulings.

# Absolute and Conditional مطلق ومقيد

- The question of absolute and conditional rulings is similar to the question of the general and particular laws, with the following difference: the generality in the latter is determined by means of linguistic conventions, whereas the absoluteness of the former is determined by reason.
- In other words, the question of absolute and conditional is related to the very nature of the duty that the dutiful must perform.
- If the duty in question has no particular condition or qualifier attached to it, then it is absolute, and if it has a particular condition, it is restricted.

# Absolute and Conditional مطلق ومقيد

- In the example we gave above, the Prophet was commanded that, at the time of taking zakat from Muslims, he was to supplicate for them.
- This instruction, as regards whether the Prophet was to supplicate for them loudly or quietly, in the company of others or alone, is absolute.
- If we have no other proof provided by the Quran or reliable hadith that set conditions and qualifications, we act according to the absolute meaning of the verse. That is, we are free to perform the command in whatever fashion we like.

# Absolute and Conditional مطلق ومقيد

- If, however, we are provided with an authentic proof, telling us, for example, that the supplication must be recited loudly, here we interpret the original absolute as a conditional ruling.
- The restricting proof is called مقيد and the act of changing the ruling is called تقييد

# مطلق ومقيد Absolute and Conditional

وَالَّذِينَ يُظَاهِرُونَ مِنْ نِسَائِهِمْ ثُمَّ يَعُودُونَ لِمَا قَالُوا فَتَحْرِيرُ رَقَبَةٍ مِّن قَبْلِ أَنْ يَتَمَاسَا

*“Those who put away their wives (by saying they are as their mothers) and afterward would go back on that which they have said, (the penalty) in that case (is) the freeing of a slave before they touch one another...” Quran 58:3*



# Implicit Meanings مفاهيم

- The implicit meaning مفهوم is the opposite of what is explicitly stated.
- If someone says, “If you come with me to my house, I will give you that book.”
- This sentence conveys two meanings, one stated and one implicit.
- The explicit statement منطق is “If you come with me to my house, I will give you that book.”
- The implicit statement مفهوم is “If you do not come with me to my house I will not give you that book.”

# Implicit Meanings مفاہیم

فَلَا تَقُلْ لَهُمَا أُفٍّ

*"..say not to them [so much as], "uff," Quran 17:23*

- The explicit meaning of this statement is that you are forbidden to say “uff” to your parents. However, the implicit meaning is that you are forbidden from causing any injury (mental or physical) to your parents.

# Implicit Meanings مفاهيم

- Or we read in hadiths, “If you sleep, your ablution becomes void”.
- The explicit meaning of this statement is that ablution is nullified by sleep.
- The implicit meaning is that if you do not sleep, your ablution remains valid. There is no time-limit factor on the validity of the ablution.

# Implicit Meanings مفاهيم

- The implicit meaning is divided into two:
  - **1. Conforming implicit meaning** مفهوم الموافقة is where the implicit meaning and the explicit meaning conform to one another
  - As we saw in the example of saying “uff” to one’s parents, both the implicit and explicit meanings are of the same type (prohibition)
  - **2. Non-conforming implicit meaning** مفهوم المخالفة is where the implicit and explicit meanings are the opposites.
  - “If you sleep, your ablution is invalid”. The implicit meaning would be that if you do not sleep, your ablution is valid.
  - “If you slaughter an animal according to Islamic law, it is permissible to eat”. The implicit meaning is that if you do not slaughter according to Islamic law, you are not permitted to eat.

# The Clear and Ambiguous مبيّن ومجمل

- Any text we encounter falls into the following categories:
  - 1. **Decisive النص**: the meaning of this type of text carries only one possible meaning. The meaning is clear and there is no doubt as to what is meant.
  - 2. **Apparent الظاهر**: the meaning of this type of text carries different possibilities but amongst them there is one that stands out above the rest and that is clearer in meaning. It is this meaning that is adopted unless there is evidence to indicate otherwise.
  - 3. **Ambiguous المجمل**: the meaning of this type of text is ambiguous, since the text carries different possibilities and none of them supersede the others. Jurists cannot deduce any ruling from this type of text

# The Clear and Ambiguous مبيّن ومجمل

- From the three categories we can essentially divide any text into two main categories:
  - 1. **Clear مبيّن** the meaning of the text is clear either because of decisive or apparent
  - 2. **Ambiguous مجمل** the meaning of the text is unclear.

# The Abrogator and Abrogated ناسخ و منسوخ

- Sometimes in the Quran and Sunnah, we come across a command that was temporary, meaning that after a time a different law was given which has cancelled the first
- For example, a command was initially given that in the month of Ramadan, men must not have intercourse with their wives, even at night. This rule was then cancelled and permission was given.

# ناسخ و منسوخ The Abrogator and Abrogated

أَحِلَّ لَكُمْ لَيْلَةَ الصِّيَامِ الرَّفَثُ إِلَى نِسَائِكُمْ هُنَّ لِبَاسٌ لَكُمْ وَأَنْتُمْ لِبَاسٌ لَهُنَّ عَلِمَ اللَّهُ أَنَّكُمْ كُنْتُمْ تَخْتَانُونَ أَنْفُسَكُمْ فَتَابَ عَلَيْكُمْ وَعَفَا عَنْكُمْ فَالآنَ بَاشِرُوهُنَّ وَابْتَغُوا مَا كَتَبَ اللَّهُ لَكُمْ

*“It has been made permissible for you the night preceding fasting to go to your wives [for sexual relations]. They are garments for you and you are garments for them. God knows that you used to deceive yourselves, so He accepted your repentance and forgave you. So now, have relations with them and seek that which God has decreed for you...”*

*Quran 2:187*



# ناسخ و منسوخ The Abrogator and Abrogated

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا نَاجَيْتُمُ الرَّسُولَ فَقَدِّمُوا بَيْنَ يَدَيْ نَجْوَاكُمْ صَدَقَةً ذَلِكَ خَيْرٌ لَكُمْ وَأَطْهَرُ  
فَإِنْ لَمْ تَجِدُوا فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

*“O you who have believed, when you [wish to] privately consult the Messenger, present before your consultation a charity. That is better for you and purer. But if you find not [the means] - then indeed, God is Forgiving and Merciful.” Quran 58:12*