

ETHICS AND FIQH FOR EVERYDAY LIFE: AN ISLAMIC PERSPECTIVE

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CHAPTER TWO

EVOLUTION OF FIQH

The evolution of *fiqh*¹ over the ages is the topic of discussion in this chapter. The study examines the term *fiqh* from various aspects to show how this word or its derivation has been used in the *Qur'ān* and the *Sunnah*.² The meanings of *fiqh* and *Shari'ah*³ and the subtle distinction between the two are discussed. The chapter talks about the stages of development of *fiqh*, the first attempts to compile *fiqh*, the periods of the great *Imāms*⁴, the types of compilation of *fiqh*, the beginning of the rigidity of the *madhāhib*⁵, the compilation of *ahādīth*, the

¹ *Fiqh* is the understanding and application of *Shari'ah* (divine law). See below discussion under the title: “The Meaning of *Fiqh*.”

² *Sunnah* is the way of life of the Prophet, consisting of his sayings, actions and silent approvals. It is also used to mean a recommended deed as opposed to *Fard* or *Wājib*, a compulsory one.

³ *Shari'ah* is the corpus of general principles of Islamic law extracted from its two fundamental sources, the *Qur'ān* and the *Sunnah*, while also using other main sources (*ijmā'* and *qiyās*) and secondary ones like *istihsān*, *istiṣlāh*, *istiṣhāb*, *'urf* etc.

⁴ *Imām* literally means a leader, but Islamically it refers to one who leads a congregation in prayer or an outstanding scholar.

⁵ *Madhhab* (pl. *madhāhib*) is a school of thought. The four main schools of thought of the *Sunnī* sect (mainstream Islam) are the Ḥanafī, Mālikī, Shāfi'ī and Ḥanbalī schools of thought, named after their founders. However, the majority of the *Shī'ah*, who are also known as *Shī'ah al-Imāmiyyah al-Ithnā 'Ashariyyah* (i.e., the Twelver Imāmī Shi'ites) follow the Ja'fari school of thought.

organization of *fiqh* into *uṣūl*⁶ and *furu'*, the sources of Islamic law, the compilation of *fiqh*, the concept of *taqlid* (the blind following of a *madhhab*), the reformers who encouraged *ijtihād*⁷, and finally the efforts that have been made toward codification of Islamic law. The chapter concludes with a note that re-establishing Islam as the supreme guide in the daily lives of Muslims is achievable only by the revival of a dynamic *fiqh*.⁸

Meaning of *Fiqh*

The original meaning of *fiqh* is the understanding and knowledge of something. In this sense, *fiqh* and *fahm* are synonymous.⁹ It implies an understanding of Islam in a general way or what a prudent person is likely to conclude from obvious evidences.¹⁰ The word has been used in the *Qur'ān* in several instances.¹¹ The same meaning is reflected in the words of the Prophet.¹² The term '*ilm* (knowledge) also gives the same meaning, and in the time of the Prophet, there appeared to be no difference in the two terms. Later, as sophistication crept in, the term '*ilm*' came to be applied in a narrow sense to mean knowledge that comes from reports, that is, from traditions such as *hadīth* and *āthār*.¹³ The term *fiqh*, on the other hand, came to

⁶ *Uṣūl* (sing. *Asl*): The fundamental principles of any science or field of study. For example, *Uṣūl al-Fiqh* are the principles by the use of which the *mujtahid* arrives at the legal rules through the specific evidences. The *furu'* refer to the secondary principles.

⁷ *Ijtihād* is the effort of the jurist to derive the law on an issue by expending all the available means of interpretation at his disposal and by taking into account all the legal proofs related to the issue.

⁸ See Abu Ameena Bilal Philip, *The Evolution of Fiqh* (Riyadh: International Islamic Publishing House, 1996). This extremely readable and lucid work has been a guide throughout the work.

⁹ Ahmed Hasan, *The Early Development of Islamic Jurisprudence* (Delhi, 1994), p. 1.

¹⁰ Imran Ahsan Khan Nyazee, *Theories of Islamic Law* (Delhi, 1996), p. 20.

¹¹ For example: "What hath come to these people that they fail to understand a single fact." (Translation *al-Qur'ān*, *Sūrah al-Nisā'*: 78), and "They have hearts wherewith they understand not." (Translation *al-Qur'ān*, *Sūrah al-Ā'rāf*: 179).

¹² For example: "He for whom Allah wills His blessings is granted the understanding of *dīn*." (Ṣaḥīḥ Muslim: *Kitāb al-Amārah*)

¹³ *Āthār*: deeds and precedents of the Companions of the Prophet (p.b.u.h.).

be used exclusively to mean knowledge of the law. *Fiqh*, by its very definition, involves the exercise of one's intelligence and personal thinking. The Companions of the Prophet who gave legal judgments and were noted for exercising intelligence in their decisions were known as *fuqahā'*.¹⁴ It is interesting to note that *fiqh* could perhaps even cover the meaning of asceticism in the early period.

It is reported that Hasan al-Baṣrī said that a real *faqīh* is a person who despises the world, is interested in the hereafter, possesses a deep knowledge of religion, is regular in his prayers, pious in his dealings, refrains from disparaging Muslims and is a well-wisher of the community.¹⁵ The terms '*ilm*' and '*fiqh*' were separated when the specialization in law and tradition came into existence toward the end of the first century *Hijrah*.¹⁶ Similarly, the terms '*kalām*'¹⁷ and '*fiqh*' were not separated till the time of al-Ma'mūn (d. 218 AH). *Fiqh*, till such time, embraced both theological problems and legal issues. Abū Ḥanīfah (d. 150 AH) defined *fiqh* as "a person's knowledge of his rights and obligations."¹⁸ The subject of '*kalām*' was introduced for the first time by the *Mu'tazilah*¹⁹ as an independent science, when Greek works on philosophy were rendered into Arabic during the time of al-Ma'mūn.²⁰ From this

¹⁴ Ahmed Hasan, *The Early Development of Islamic Jurisprudence*, Delhi, 1994, p. 5.

¹⁵ Al- Ghazālī, op. cit., vol. 1, p. 39. Cited in Ahmed Hasan, p. 3.

¹⁶ *Hijrah* refers to the Prophet's migration from Makkah to Madinah, signifying the beginning of the Islamic calendar. See also Ahmad Hasan, p. 3, and Nyazee, p. 21.

¹⁷ *Kalām*: lit. Speech, but often used as abbreviation for '*ilm al-kalām*', that is, theology and dogmatics.

¹⁸ See Sadr al-Sharī'ah (d. 747 AH), *al-Tawdīh fī Ḥal Jawāmid al-Tanqīh*, (Karachi, 1972), p. 22. Cited in Nyazee, p. 21.

¹⁹ The philosophical school of thought commonly called rationalism. This school was founded by Wāsil ibn 'Aṭṭā and 'Amr ibn 'Ubayd during the 8th century CE. It later became the official philosophy of the 'Abbasid state and an inquisition was instituted in order to force all scholars to abide by it. Caliph Mutawakkil (1177-1192 CE) abandoned it and lifted the inquisition.

²⁰ Al-Shahristānī, *al-Milal wa al-Nihāl*, vol. 1, (Cairo, 1317 AH), p. 32. Cited in Ahmed Hasan, p. 4.

period, the term *fiqh* came to be restricted to the corpus of Islamic law.

As explained above, the word *fiqh* was used in the early days in a comprehensive way to include the tenets of Islam, its ethics, Islamic law, and the questions relating to the spiritual aspects of things, for which the term *taṣawwuf* subsequently came into use. In its technical sense, however, it was restricted to Islamic law alone and was defined as *al-‘ilm bi al-ahkām al-shar‘iyyah al-‘amaliyyah al-muktasabah min adillatihā al-taṣīliyyah*, meaning “the knowledge of the *Shar‘i ahkām* (legal rules), pertaining to conduct, that have been derived from their specific evidences.” A brief analysis of this definition brings out the following observations:

1. The meaning of *fiqh* is confined to the knowledge of the *al-ahkām al-shar‘iyyah* (legal rules).
2. The use of the word *al-‘amaliyyah* qualifies the rules to mean those that pertain to acts. Thus, knowledge of rules with respect to belief is excluded.
3. The use of the word *al-muktasabah* refers to types of knowledge that are acquired or derived, that is, the knowledge of the jurist (*faqīh*) and the knowledge of the layman (*muqallid*).
4. The use of the term *adillatihā al-taṣīliyyah* (specific evidences) further excludes from the definition of *fiqh*, the knowledge of the layman. The reason is that the layman does not acquire his knowledge of *fiqh* directly from specific evidences in the *Qur‘ān* and *Sunnah*, as does the jurist. He acquires his knowledge of *fiqh* from the jurist.²¹

Meaning of *Shari‘ah*

Shari‘ah, literally means a *waterhole* where animals gather daily to drink, or the *straight path* as in the *Qur‘ānic* verse:

﴿ثُمَّ جَعَلْنَاكُمْ عَلَى شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعُوهَا وَلَا تَتَّبِعُ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ﴾ (الجاثية: 18)

²¹ Imran Ahsan Khan Nyazee, *Theories of Islamic Law*, Delhi, 1996, pp. 24-25.

“Then We put you on a straight path in your affairs; so follow it and do not follow the desires of those who have no knowledge.”²²

Islamically, however, it refers to the sum total of Islamic laws revealed to Prophet Muhammad (p.b.u.h.), and which are recorded in the *Qur’ān* as well as deducible from the Prophet’s divinely guided lifestyle (called the *Sunnah*).²³

Distinction between *Fiqh* and *Shari‘ah*

It is often found that the terms *fiqh* and *Shari‘ah* are used interchangeably. The definitions of the two terms explained above indicate that the term *Shari‘ah* has a wider meaning than *fiqh*. The main distinctions between these two terms are as follows:

1. *Shari‘ah* is the law itself, while *fiqh* is the knowledge of that law—its jurisprudence.
2. *Shari‘ah* is fixed and unchangeable, whereas *fiqh* changes according to the circumstances under which it is applied.
3. The laws of *Shari‘ah* are, for the most part, general and lay down basic principles. In contrast, the laws of *fiqh* tend to be specific and demonstrate how the basic principles of *Shari‘ah* should be applied in given circumstances.

The Stages of Development of *Fiqh*

As a body of knowledge, *fiqh* has developed through the following stages:

The First Stage

The first stage in the development of *fiqh* covers the era of the Prophet (609-632 CE), during which the only source of Islamic law was divine revelation in the form of either the *Qur’ān* or the *Sunnah*. The *Qur’ān* represented the blueprint for the Islamic way of life, and the Prophet’s application of the blueprint in his

²² A. Yusuf Ali, *The Holy Qur’ān: Text, Translation and Commentary*, (Maryland: Amana Corporation, 1989), *Sūrah al-Jāthiyah*: 18.

²³ Muhammad Shalabee, *al-Madkhāl fī al-Ta‘rīf bi al-Fiqh al-Islāmī*, Beirut, 1969, p. 28. Cited in *The Evolution of Fiqh*, p. 2.

Sunnah acted as a detailed explanation of the general principles outlined in the *Qur'ān*.²⁴

The various sections of the *Qur'ān* were generally revealed to solve the problems which confronted the Prophet and his followers. A number of verses were direct answers to the questions raised by people during the era of prophethood.²⁵ A number of other verses were revealed due to particular incidents, which took place during the era of the Prophet. The same was the case of Islamic legislation found in the *Sunnah*, much of which was either the result of answers to questions, or were the pronouncements made at the time the incidents took place. This approach was more easily acceptable to the freedom-loving Arabs who understood the laws since the reasons and context of the legislation would be known to them.

The revelations during the *Makkan* period²⁶ (609-622 CE) were mainly concerned with the building of faith, in order to prepare the early converts for the difficult task of establishing the social order of Islam. The general contents of the *Qur'ān* dealt with *al-Tawhīd* (Allah's unity), Allah's existence, the next life, the incidents of people of the old, prayers, and a challenge to the Arabs to imitate the style of the *Qur'ān*.²⁷ It was during the *Madīnan* period²⁸ (622-632 CE) that the majority of the social and economic laws of the *Shari'ah* were revealed.

The basis of legislation in the *Qur'ān* was that of human reformation. As such, beneficial human customs and practices were recognized and incorporated into the body of divine legislation. *Qur'ānic* legislation incorporated the principles of removal of difficulty, reduction of religious obligations, and realization of public welfare and universal justice. This period marked the beginning of the evolution of *fiqh* and it was during

²⁴ *al-Madkhal*, p. 50. Cited in *The Evolution of Fiqh*, p. 5.

²⁵ Many of these verses actually begin with the phrase "They ask you about....", for example 2:217, 2:219 and 2:222.

²⁶ This period started with the beginning of the prophethood in Makkah and ended with the Prophet's *Hijrah* to the city of Madīnah.

²⁷ *al-Madkhal*, pp. 51-55. Cited in *The Evolution of Fiqh*, p. 9.

²⁸ The *Hijrah* marked the beginning of this period and the death of the Prophet in 632 CE.

this period that the foundations for the science of deducing laws from the *Qur'ān* and the *Sunnah* were laid by the Prophet (p.b.u.h.).

The Second Stage

The second stage represents the era of the Righteous Caliphs from the death of the Prophet (p.b.u.h.) to the middle of the 7th century CE (632-661). With the expansion of the borders of the Islamic state, Muslims were exposed to totally new systems, cultures, and patterns of behavior, for which specific provisions were not to be found in the laws of the *Shari'ah*. To deal with the new problems, the Righteous Caliphs relied on *ijmā'*²⁹ and *ijtihād*, in which they had been trained by the Prophet. They established procedures, which later became the basis for legislation in Islam.

In order to find the solution to new problems, the first step would be to search for a specific ruling on the problem in the *Qur'ān*. In the absence of a provision, a search for it would be made in the *Sunnah*. If still no answer was found, a meeting of the main companions of the Prophet would be called to arrive at an *ijmā'*. If there was no *ijmā'*, the position of the majority was taken. Finally, if the differences were so great that a majority opinion could not be determined, the Caliph would then make his own *ijtihād*, which would consequently become law.

There were some distinguishing features of *fiqh* during this period. It was free from factionalism. It was based on actual problems rather than imaginary ones. As a general practice, personal interpretation of the *Shari'ah* was avoided. Some laws of the *Shari'ah* were modified, either owing to the disappearance of the reason for the law's existence, or a change in the social conditions. The unified approach to *fiqh* prevented the rise of *madhāhib*.

²⁹ *Ijmā'* is the unanimous agreement of the companions of the Prophet (p.b.u.h.), or scholars in general, on a point of Islamic law.

The Third Stage

The third stage covers the rise and fall of the *Umayyad* dynasty³⁰, covering a period of about a century, extending from the death of the Righteous Caliph ‘Alī ibn Abī Tālib in 661 CE and the founding of the dynasty until the last of the *Umayyad* Caliphs around the middle of the 8th century CE. This period is significant in the historical development of *fiqh* and *madhāhib*.

The period was marked by great social unrest, dividing the *Ummah*³¹ into various sects and factions. The caliphate was converted into a kingship. Many new practices which were common in the non-Islamic states of that time, such as Byzantium, Persia, and India were introduced³², and scholars fled to outlying areas in order to avoid conflict and confusion.³³ The socio-political changes caused a number of sects and factions to appear. The *Shī'ah*³⁴ and the *Khawārij*³⁵ rebelled, and later developed their own particular systems of *fiqh*.

³⁰ The *Umayyads* were in power for approximately one century, extending from the death of the last of the Righteous Caliphs, ‘Alī ibn Abī Tālib in 661 CE and the ascendancy of the founder of the *Umayyad* dynasty, Caliph Mu‘āwiyah ibn Abī Sufyan, until the last of the *Umayyad* Caliphs around the middle of the 8th century CE.

³¹ *Ummah*: Literally means “nation,” but commonly used to mean the Muslim nation, which has neither geographic boundaries nor a national language.

³² The central treasury (*Bayt al-Māl*) was turned into the personal property of the Caliphs. Taxes not sanctioned by Islam were introduced. Music, dancing girls, magicians, and astrologers were introduced as forms of amusement in the court of the Caliph. See *The Evolution of Fiqh*, p. 46.

³³ *al-Madkhal*, pp. 121-122. Cited in *The Evolution of Fiqh*, p. 45.

³⁴ The term is applied to a variety of dissident groups united by their belief that the Prophet’s nephew and son-in-law, ‘Alī ibn Abī Tālib and his descendants, were divinely appointed to lead the Muslims, spiritually and politically.

³⁵ The part of the army of ‘Alī ibn Abī Tālib that broke off during the battle of Siffin (657 CE).