

The Evolution of Fiqh

Lesson #1

What is the difference between *fiqh* and *shariah*?

Linguistically: *Fiqh* (الفقه) means “deep understanding.”

For example: The Prophet (ﷺ) said:

((من يرد الله به خيرًا يفقه في الدين))

“Whomsoever Allah intends good for, he give him a *deep understanding* of the religion.” [Bukhari & Muslim]

Terminology of the Scholars:

Early Scholars would use *fiqh* to mean:

- Knowledge
- Rulings
- Understanding

For example: Imam Abu Hanifah (699-767 AD) authored a book related to Islamic theology called “The Greater *Fiqh*” (الفقه الأكبر).

Later Scholars would use the term to refer solely to actions.

Technical Definition:

«العلم بالأحكام الشرعية العملية، من أدلتها التفصيلية»

“Knowledge of the rulings of the Shariah which are related to actions from their detailed sources.” (Abu Zahrah, *Usul al-Fiqh*)

The Value of *Fiqh*:

Fiqh is:

- An honourable knowledge.
- A type of knowledge used to understand the Shariah.

Given that *Fiqh* is used to understand the Shariah, it is a virtuous knowledge. Ibn al-Qayyim (1292-1350 AD) offers a beautiful title of the people of *Fiqh* by referring to them as “the signatories on behalf of the Lord of the Worlds.” (*I’laam al-Muwaqi’een*):

“...and if signing on behalf of the kings is something that cannot be undermined and is very honourable role, how about signing on behalf of the Lord of the Heavens and the Earth?” (*I’laam al-Muwaqi’een*)

What is the Shariah?

Linguistically: Shariah (الشريعة) means “way” or “path.”

((ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيحَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا وَلَا تَتَّبِعْ أَهْوَاءَ الَّذِينَ لَا يَعْلَمُونَ))

“Then we put you on a path in the affair, therefore follow it, and do not follow the desires of those who do not know.” [*al-Jaathiyah* 45:18]

The Goals of the Shariah

- 1) Protection of Human life.
- 2) Protection of Life.
- 3) Protection of Religion.
- 4) Protection of Progeny.
- 5) Protection of Wealth.

What is the Shariah based on?

The Shariah is based on two type of proofs:

- 1) Primary Proofs (الأدلة الأصلية): These are proofs wherein no other evidence is required. In other words:
 - a. The Qur’an
 - b. The Sunnah
- 2) Secondary Proofs (الأدلة الفرعية): These are proofs which may require other proofs (i.e. *Ijma*, *Qiyas*, *Istihsaan*, etc.)

Primary Proofs

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ ۖ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ
الْآخِرِ ۚ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

“O you who believe! Obey Allah and obey the Messenger and those in authority from among you; then if you quarrel about anything, refer it to Allah and the Messenger, if you believe in Allah and the last day; this is better and very good in the end.” [an-Nisaa 4:59]

Additionally, primary proofs are of two types:

1) Explicit (قطعي)

An example of this is:

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ

“And you may have half of whatever your wives leave you if they do not have any children.” [an-Nisaa 4:12]

2) Equivocal (ظني)

An example of this is:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ

“And the divorced women should keep themselves in waiting for three *quru’*.” [al-Baqarah 2:228]

This part of the *ayah* has been classified as such due to the different interpretations of the word “*quru’*.” The word may mean:

- i. The time of purity.
- ii. The menses itself.

According to Shaykh Ibn Jibreen (may Allah have mercy on him): “...the correct meaning in the verse is the menses as this is its most often usage by the Lawgiver and is the opinion of the majority of the Companions.”

The Prophetic Sunnah: Authority and Status

وَمَا يَنْطِقُ عَنِ الْهَوَىٰ

“And He (the Prophet صلى الله عليه وسلم) does not speak of his own desires.” [an-Najm 53:3]

وَأَنْزَلَ اللَّهُ عَلَيْكَ الْكِتَابَ وَالْحِكْمَةَ

“...and Allah has revealed the Book and the *Hikmah*...” [al-Nisaa 4:113]

قُلْ إِنْ كُنْتُمْ تُحِبُّونَ اللَّهَ فَاتَّبِعُونِي يُحْبِبْكُمُ اللَّهُ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ

“Say: If you love Allah, follow me. Allah will love you and forgive you your sins...” [aal-Imraan 3:31]

Types of Sunnah

The Sunnah, in terms of content, can be categorised in three forms:

- 1) Speech of the Prophet صلى الله عليه وسلم (القولية)
- 2) Actions of the Prophet صلى الله عليه وسلم (الفعلية)
- 3) Agreement of the Prophet صلى الله عليه وسلم (التقريرية)

In terms of the way it was narrated, it may also be categorised thusly:

- 1) *Mutawatir* i.e. Successive narration (المتواتر): A successive narration is one conveyed by narrators so numerous that it is not conceivable that they have agreed upon an untruth thus being accepted as unquestionable in its veracity.
- 2) *Ahaad* i.e. Singular (أحاد): Linguistically, *hadith ahad* refers to a *hadith* narrated by only one narrator. In *hadith* terminology, it refers to a *hadith* not fulfilling all of the conditions necessary to be deemed *mutawatir*. *Hadith ahad* consists of three sub-classifications also relating to the number of narrators in the chain or chains of narration:
 - a. *Mashur*: This refers to *hadith* conveyed by three or more narrators but not considered *mutawatir*.
 - b. *Aziz*: Any *hadith* conveyed by two narrators at any point in its *isnād* (chain of narrators).

- c. *Gharib*: *hadith* is one conveyed by only one narrator. Al-Tirmidhi's understanding of a *gharib hadith*, concurs to a certain extent with that of the other traditionists. According to him a *hadith* may be classified as *gharib* for one of the following three reasons:
- i. Firstly, a *hadith* may be classified as *gharib* if it is narrated from one chain only.
 - ii. Secondly, a *hadith* can be classified as *gharib* due to an addition in the text, though it will be considered a sound tradition, if that addition is reported by a reliable reporter.
 - iii. Thirdly, a *hadith* may be declared *gharib* since it is narrated through various chains of transmitters but having within one of its chains an addition in the *isnād*.

Explicit Texts Versus Non-Explicit

Understanding these differences is important in establishing the legality of a particular understanding.

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|---|
| a) سنة قطعية الثبوت \ ظنية الدلالة |
| Explicit in terms of narration / Ambiguous in terms of interpretation |
| <p>مَنْ كَذَبَ عَلَيَّ مُتَعَمِّدًا فَلْيَتَّبِعُوا مَقْعَدَهُ مِنَ النَّارِ</p> <p>"Whoever lies upon me, then let him take his seat in the Fire." [Muslim]</p> |
| <p>It is categorized as:</p> <ol style="list-style-type: none"> i. Explicit in terms of narration because it was overwhelmingly narrated (i.e. <i>mutawatir</i>). ii. Ambiguous in terms of narration due to the different interpretations: <ul style="list-style-type: none"> • The <i>Dhahiriyya</i> used this as a proof to indicate one would permanently be in the Fire if they had lied upon the Prophet ﷺ, even if they had repented. • The <i>Jamhur</i> (majority) however disagreed and explained that this referred to a long sentence in the Hellfire rather than permanently abiding in it. |

b) سنة ظنية الثبوت \ ظنية الدلالة

Non-Explicit in terms of narration / Ambiguous in terms of interpretation

لَا صَلَاةَ لِمَنْ لَمْ يَقْرَأْ بِفَاتِحَةِ الْكِتَابِ

"There is no prayer for the one who does not recite *Al-Fatiha*." [Bukhari]

- i. It is categorized as non-explicit in terms of narration as the narration is not *mutawaatir*.
- ii. Ambiguous due to the different interpretations:
 - *Shafis* classically interpreted this to mean that the prayer is not valid.
 - *Hanafis* interpreted this to mean that the prayer is not a 'perfect' prayer but nonetheless acceptable.

c) سنة قطعية الثبوت \ قطعية الدلالة

Explicit in terms of narration / Explicit in terms of interpretation

The Prophet ﷺ prayed 4 units of prayer for *Dhuhr*.

- i. It is categorized as explicit in terms of narration as the narration is *mutawaatir* and it cannot be argued that the Prophet ﷺ prayed more or less than this amount.
- ii. Explicit as one cannot interpret 4 to mean something else.

b) سنة ظنية الثبوت \ قطعية الدلالة

Non-Explicit in terms of narration / Explicit in terms of interpretation

طلاق الأمة طلقتان و عدتها حيضتان

"The *Talaq* of the *ummah* is two and it's period is two cycles " [Abu Dawud]

- i. It is categorized as non-explicit in terms of narration as the narration is not *mutawaatir*.
- ii. It is explicit in terms of meaning as it is not open to interpretation. Were it not for the fact that the *hadith* was weak, none would disagree with it.

