

# **The Basics of Islamic Jurisprudence**

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A description of the general and specific topics that are covered in Islamic jurisprudence such as terminologies, sects, sources and subjects.

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# Introduction

وَمَا كَانَ الْمُؤْمِنُونَ لِيَنْفِرُوا كَآفَّةً فَلَوْلَا نَفَرَ مِن كُلِّ فِرْقَةٍ مِّنْهُمْ طَائِفَةٌ لِّيَتَفَقَّهُوا فِي الدِّينِ وَلِيُنذِرُوا قَوْمَهُمْ إِذَا رَجَعُوا إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ

***Nor should the Believers all go forth together; if a contingent from every expedition remained behind, they could devote themselves to studies in religion, and admonish the people when they return to them, that thus they (may learn) to guard themselves (against evil).***[1](#)

Man lives in this world and interacts with all that is in it. There are various relationships between man and the different beings of this world and there are relationships between man and Allah, the most high.

Every relationship is different. A relationship can be between man and Allah, a person and his family, a person and society, a person and government or between one family and another, one society and another or one government and another. People want to act according to their knowledge or according to revelation regarding these relationships in order that they can be prosperous and successful.

The divine commands that create the perfect path for man to walk onto must be inclusive of all different

aspects and dimensions of life.

The Islamic legal system organizes people's lives in all dimensions, individual or social. This system is called '*al-ahkam al-shar'yyah*'. Islamic jurisprudence explains this system and is one of the deepest and widest Islamic science.

Islamic jurisprudence is one of the sciences that glorify the Islamic civilization.

This jurisprudential system started with the proclamation to prophethood. Its principles were perfected during the life of the prophet.

We will try, in this humble effort, to describe the important general and specific topics that are covered under jurisprudence. The style of this book is in the form of a book to be taught in schools and it is a prelude to the field of comparative jurisprudence.

I ask Allah, the most high, to make this effort fruitful and to grace me by accepting it and to correct our intentions and actions. Definitely, he is the best helper.

Also, I give special thanks to professor, Shaykh Mahmūd al-Sayf and professor, Dr. Ya'qūb 'Alī Barjī for their remarks and guidance.

Hassan al-Ridā

1426 Hijrī – Qum al-Muqadasah

[1](#). 9:122

## The Literal and Figurative Definition of Jurisprudence

The Arabic term for jurisprudence (*fiqh*) literally means: knowledge about something and understanding it; being clever. [1](#)

*Fiqh's* literal definition does not only mean understanding a word, instead it is a deep knowledge about it. *Fiqh* has been used in the Qur'an in this meaning:

لَهُمْ قُلُوبٌ لَا يَفْقَهُونَ بِهَا

***They have hearts wherewith they understand not.*** [2](#)

Figuratively, *fiqh* means: knowledge about Islamic legal rulings from their sources. So, *fiqh's* figurative

definition is taken from its literal one in the sense that deriving religious rulings from their sources necessitates the *mujtahid*<sup>3</sup> to have a deep understanding in the different discussions of jurisprudence. He must look deep down into a matter and not suffice himself with just the apparent meaning. A person who only knows the appearance of a matter is not a *faqih*.<sup>4</sup>

The subject of thinking deeply (*tafaquh*) about religion has been repeatedly mentioned in the Qur'an and traditions transmitted from the prophet (s) and the Imams (a). What is taken from them, on a whole, is that Islam wants man to deeply understand religion. Of course, this understanding covers such subjects as Islamic theology, Islamic ideology, ethics, Islamic upbringing, the Islamic social system, worship, religious rulings and manners that one must have in his individual and social life. The term '*fiqh*' has become popular amongst Muslims since the second century after the *Hijra* A.H. to mean Islamic jurisprudence or the art of deriving religious rulings from their sources. It has obtained the following meaning: a precise and deep understanding and ability to derive religious rulings from their sources.<sup>5</sup>

## The Meaning of Fiqh

Nowadays, the term *fiqh* is generalized to mean Islamic sciences or Islamic rulings in the broad sense. The broad meaning of Islamic rulings is broken up into three fundamental categories:

1. Theology; what is obligatory for a *mukallaf* to believe about Allah, his angels, books, messengers and the Day of Judgment.
2. Ethics; the positive traits that a *mukallaf* must obtain and the negative traits that he must stay away from.
3. Actions; the actions that a *mukallaf* must perform.

This is proved by the tradition from the prophet (s) who said: "Whoever wants Allah to treat him favorably must have a deep understanding (*yafqahu*) in religion."<sup>6</sup>

Here, the word *fiqh* is used in its general sense, synonymous of Islam.

When the different sciences are categorized the term *fiqh* is used to mean the Islamic rulings regarding one's actions.

*Fiqh*, in its specific meaning and what is discussed in books of *fiqh*, includes everything that has to do with all aspects of man's life. Everything that is studied today including foundational laws, city management, family relations, individual actions, management, politics, etc is found in the different sections of *fiqh*.<sup>7</sup>

## Shari'ah and Fiqh

*Sharī'ah* encompasses what was decreed in the time of prophethood found in the Qur'ān and prophetic traditions.

*Fiqh* is what has been gained from the efforts of scholars after the prophet's (s) demise.<sup>89</sup>

1. Ibn Manzūr, *Lisān al-'Arab*
2. 7:179
3. To be discussed later.
4. *Tafsīr al-Manzūr*, volume 9, page 420
5. Shahīd Muttaharī, *Madkhal Ila al-'Ulūm al-Islāmīyah*, page 3
6. Muslim, *Sahīh*, volume 3, page 95 (Nayshāpūrī print)
7. Shahīd Muttaharī, *Madkhal Ila al-'Ulūm al-Islāmīyah*, page 45
8. Ayatollah Ja'far Subhānī, *Tārīkh al-Fiqh al-Islāmī wa Adwārihi*, page 6

## The Importance of Jurisprudence

Allah, the creator of mankind and the world with all its precision and secrets, emphasizes in the Holy Scriptures that man needs order in his worldly life and needs to find the path that leads him to his purpose, which is the eternal blessings of the next life.

Man's divine disposition (*fitrah*) necessitates him to follow religion and religious laws. The reason for this is that man, as shown in his nature and throughout history, is unable to understand what is good and what is bad for him in every situation.

Jurisprudence, which discusses the divine code, teaches us religious laws which give order to our worldly life, which give us benefit, which take us away from corruption and show us the path that leads man to his purpose.

## The Special Qualities of Jurisprudence

- Inclusiveness; it includes everything needed to manage and give order to man's life in every aspect and dimension. Jurisprudence gives order to man's life in every different situation, for example: worship, social relations, business deals, personal affairs such as marriage, divorce, inheritance, adequate support (*nafaqah*), family rights, legal matters, government, war, enjoining the right and forbidding the wrong, charity and punishments.
- Easiness; there is no divine law that puts a *mukallaf* in extreme difficulty.<sup>1</sup>
- Congruence with man's nature; a law that is against one's divine disposition cannot be found. The

reason for this is that the one who makes the divine laws is the same one who created man and who knows the secrets of his soul. For this reason it is possible for Islamic jurisprudence to be in congruence with man's divine disposition.<sup>2</sup>

- Balance; There is no excessiveness in jurisprudence.<sup>3</sup>

Islamic jurisprudence is what connects this world to the next.

<sup>1</sup>. Refer to 22:78

<sup>2</sup>. Refer to 30:30

<sup>3</sup>. Refer to 2:143

## Jurisprudence Jargon

### Duty (Taklif)

The Arabic term *taklif* is derived from the term *kulfah* which means difficulty. It is used to mean the forcing of an action. For example the sentence; Zayd forces (*kallafa*) 'Amr to do an action; he forces him.

Divine laws are called *taklif* because they are sent from the Master, glory be to him, and it is necessary for the *mukallaf* to obey them.

So, *taklif* means a forced action given to an adult by the Master, glory be to him. These actions encompass different aspects of man's life, for example his personal life, his worship, his family life and his social life. These laws give order to his life. Examples of these laws are: prayer being obligatory and adultery being forbidden.<sup>1</sup>

### Ijtihad

From the beginning of Islam until its middle ages there was another word for *fiqh*, it was *ijtihād*.

*Ijtihād* is derived from the term *juhd* which means effort and struggle. The jurist is called a *mujtahid* because of his efforts and struggle in making religious rulings.

The word *istinbāt* has a similar meaning. It is derived from the word *nabat* (*al-mā'*) which literally means taking water out of the ground. A jurist performs a similar action when he struggles to take the religious ruling from its source.<sup>2</sup>

The term *ijtihād* is used by the religious scholars to mean obtaining a proof for a religious ruling.<sup>3</sup>

## The Necessity of Ijtihad

Islamic rulings are not mentioned for every situation. That would be impossible, because there are countless situations that happen all the time. Instead it gives general principles and rules.

Therefore, when a jurist must make a ruling for a certain situation he must look into the official sources and give his ruling. Here is where *fiqh* is synonymous with a deep, precise and inclusive understanding.[4](#)

## Mujtahid

Definition: a *mujtahid* is one who has reached the level of *ijtihad* in understanding religious laws. This means that he has the ability to deduct religious rulings from the Qur'an and traditions.

This *mujtahid* is able to deduct religious laws in all the subjects that the *mukallaf* needs or only certain subjects because of their ease. In the first case he is called a pure *mujtahid* and in the second a minor *mujtahid*.

The sciences that a *mujtahid* needs to know in order to be able to deduct religious rulings are:

1. Arabic grammar; syntax, morphology, vocabulary and eloquence. The reason for this is that the Qur'an and traditions are in Arabic and it is impossible to understand the Qur'an or the traditions without knowing Arabic.
2. *Tafsir*; the *mujtahid* will have to refer to the Qur'an so he must have a general knowledge of *tafsir*.
3. Logic; because every deductive skill needs logic. Logic teaches one how to define something and how to deduce something.[5](#)
4. The science of traditions: a *mujtahid* must know about traditions and their categories.
5. The science of *rijal*: This is the science of knowing the individual in the chains of narrations; knowing if they are trustworthy or not. The reason for this is that one cannot accept everything that is narrated unless it is narrated by trustworthy people.
6. The principles of jurisprudence: This is one of the most important sciences that the *mujtahid* must know because they are the rules that are applied in all of the different sections of jurisprudence.

## Taqlid

*Taqi'd* means acting according to the verdict of a *mujtahid*. *Taqi'd* shifts the responsibility of finding the religious ruling from the person performing *taqi'd* to the *mujtahid*.

*Taqi'd* is one of the ways of finding a religious ruling, like *ijtihad*. Except that *ijtihad* is a direct way and



*taqlīd* is an indirect way, because one reaches the religious ruling from the *ijtihād* of another.

The proof for *taqlīd* being permissible or obligatory is the actions of sane people. Sane people find it necessary for an ignorant person to refer to a scholar. The referral of the ignorant to the scholar is something seen in every society that man has been in. It is even seen today. An example of it is when a non-specialist refers to a specialist.<sup>6</sup>

One is dependent on *taqlīd* in finding out religious rulings except in the cases where one knows a religious rule. One can know a religious rule by having certainty about it which is possible without struggling and without study. Examples of these are some of the obligatory actions, many of the recommended actions and most of the permissible actions which are known by most of the people who live in religious areas. Or, one can know the religious rule because of it being self-evident like the obligation of prayer or the forbiddance of drinking wine.

## Precaution

Precaution *ihtiyāt* means: the *mukallaf* performing everything that he suspects to be obligatory but does not suspect it to be forbidden or refraining from performing anything that he suspects to be forbidden but does not suspect it to be obligatory. The *mukallaf* must know the different instances of precaution to be able to do this. He must know every place where it is suspected to be obligatory and not suspected to be forbidden or it is suspected to be forbidden and not suspected to be obligatory. This knowledge does not come without looking at verdicts from different *mujtahids*.

So, precaution is another tool of finding the religious ruling. It is different than the previous two, *ijtihād* and *taqlīd*. The *mujtahid* reaches the religious ruling from his efforts while the person who performs *taqlīd* obtains the exact rule from the *mujtahid*. But, the person who performs precaution only gets a general understanding of the rule. The reason for this is that the religious ruling for him is something dangling between obligation, recommendation or permission.<sup>7</sup>

Precaution is a way of becoming certain that one has performed the real religious ruling. Precaution is divided into two categories:

1. Obligatory precaution: the *mukallaf* must act according to precaution if he wants to stay on the *taqlīd* of whoever he performs *taqlīd* to. But, in this ruling, he or she can act upon the verdict of another scholar if he wants to change the person who he performs *taqlīd* to. The condition that must be followed is that he must change from the most knowledgeable to the next most knowledgeable and so on.
2. Recommended precaution: the *mukallaf* does not have to act according to this precaution, but it is better to do so.

<sup>1</sup>. Muhammad Bāqir al-Sadr, Halaqah 1, page 126

<sup>2</sup>. Shahīd Muttaharī, Madkhal Ila al-'Ulūm al-Islāmīyah, page 10

3. 'Alī Mishkāt, Istitāhāt al-Usūl, page 18
4. Shahīd Muttahar, Madkhal Ila al-'Ulūm al-Islamiyyah, page 8
5. Hādī al-Fadl, Dirās fī al-Fiqh al-Imāmīyyah, page 39
6. Hādī al-Fadl, Dirās fī al-Fiqh al-Imāmīyyah, pages 252–254
7. Hādī al-Fadl, Dirās fī al-Fiqh al-Imāmīyyah, pages 255–256

## The Jurisprudential Sects of Islam

We learned that Islamic jurisprudence is the knowledge of Islamic laws, what is permissible and what is forbidden, what is obligatory, what is disliked (not recommended, unfavorable) and what is recommended (favorable), and what is correct and what is incorrect.

We also know that these Islamic laws are derived from the Qurʾān and prophetic traditions.

We also know that the Muslims in the time of the Prophet (s) would take their religious rulings from him. They would take the rulings that had to do with worship, like prayer, pilgrimage, fasting and spiritual purification, or the rulings that had to do with transactions like trade, partnership, rent, land, marriage and divorce and other rules that are found in the religion from him.

Then, after his death, some situations arose in one's prayer, fast, life, business, partnership or pilgrimage...etc that did not occur during the Prophet's (s) lifetime. They needed to know what the religious ruling was. In this case they would refer to some of the companions to take the ruling from them. Some took rulings from Imām 'Alī bin Abī Tālib (a), some from 'Abd Allah bin 'Abbās and some from 'Abd Allah bin Mas'ūd. 'Alī (a) was the most knowledgeable companion; the Prophet (s) said the following about him: "I am the city of knowledge and 'Alī is its entrance."<sup>1</sup>

But, we see some different verdicts passed by different companions and the generation that came after them called the *tābiʿīn*. There were many *mujtahids* and many differences in verdicts, but there were no jurisprudential sects like there are today. The Muslims would refer to the scholars amongst the companions, *tābiʿīn* and Imāms (a) for the religious rulings that they needed. Imām 'Alī bin al-Hussayn al-Sajjīd (a), Imām Muhammad bin 'Alī al-Baqir (a) and Imām Ja'far bin Muhammad al-Sādiq (a) lived in these times.

### How Jurisprudence sects were formed and when

The divisions of Muslims became widespread after the murder of the third *khalīfa*, 'Uthmān bin 'Affān. At that time the Muslims swore allegiance to Imām 'Alī bin Abī Tālib (a) but Mu'āwiyah bin Abī Sufyān refused to swear allegiance to him. Nobody followed him in this except the people of Syria. He formed his own, autonomous government there. He also took some jurists and some people who related

traditions with him, and thus the major division was started.

At the same time where the Muslims and the great companions believed 'Alī (a) to be the rightful *khalīfa* and the most knowledgeable person war was started between him and Mu'awwiyah bin Abū Sufyān. Here, the belief in the Ahlul-Bayt (a) grew. The Ahlul-Bayt are glorified in the Qur'ān. Allah said that he removed all impurities from them and purified them a thorough purification. Allah also made it obligatory to love them and accept their authority.

A *shi'a* (follower) of the Ahlul-Bayt (a) is one who loves them, obeys them and believes in their rights.

The Shia had a strong presence during the fight with Mu'awwiyah and after Imām 'Alī bin Abū Tālib's martyrdom when his son al-Hassan (also the son of the daughter of the prophet) became the *khalīfa*. After that a big argument arose between Imām al-Hussayn bin 'Alī bin Abū Tālib (a) and Yazīd bin Mu'awwiyah which lead to a war between them in a place called Karbalā', Iraq. This war took place on the tenth day of the Islamic month '*Muharram*' in the 61st A.H.. Imām Hussayn and 78 of his companions and family members were martyred in this war.

With all of this, there were not jurisprudential sects of Islam as there are today. There were two different sects at that time. One of them followed the Ahlul-Bayt (a) those that Allah cleansed from all impurities and purified them a thorough purification, those who did not say anything except what their forefather, the messenger of Allah (s) said. The Ahlul al-Bayt (a) are none other than Imām 'Alī, Hassan, Hussayn and the nine Imāms that came from his lineage (a). The other group followed the *Umayyad* judges. Of course amongst the *Umayyad* judges there were different opinions and various verdicts.

At the end of the first century A.H. different jurists appeared and the Islamic sciences took form. Examples of these jurists are: Sa'ād bin al-Mussayab, al-Hassan al-Basrī and Sufyān al-Thawrī who lived in the same time as Imām Muhammad al-Baqir bin 'Alī bin al-Hussayn bin 'Alī bin Abū Tālib. The scholars of this time learned from him.

Islamic jurisprudence started to spread out in the second century A.H. Islamic jurisprudential sects also started to form because many jurists appeared and they made many religious verdicts which differed from the verdicts of others. Some of the differences include leaving the arms down in prayer or crossing them or in some of the rulings regarding *wudū'*, fasting, divorce, inheritance, etc.

The jurisprudential sects of Islam that are taught and have scholars and students all over the world are:

1. The Ahlul-Bayt (a) sect. It is also called the Ja'farī sect or the Shia Imāmīyyah sect.
2. The Hanafī sect.
3. The Mālikī sect.
4. The Shāfi'ī sect.

## 5. The Hanbalī sect.

Each of these jurisprudential sects will be described:

### The Ahlul-Bayt (a) Sect

It must be stated that the Ahlul-Bayt (a) do not have a separate sect, or different laws than their forefather Muhammad (s). Instead, they continued his path and were taught by him. Rules pertaining to worship, contracts and other miscellaneous subjects are all taken from one source full of wisdom and light, which is none other than the Prophet (s). Imām al-S̄diq (a) said: “We do not give any legal rulings or ethical advice unless it was passed to us by our great father who obtained it from the Prophet (s).” So, their traditions, unless changed, depict the essence of Islam that was sent from the lord of the worlds.<sup>2</sup>

The Ahlul-Bayt (a) sect is also named the Ja'farī sect attributed to Imām Ja'far al-S̄diq bin Muhammad al-B̄qir bin 'Alī (Zayn al-'Ībidīn) bin al-Hussayn (al-Sibt) bin 'Alī bin Abī Tālib (a). It is also named the Shia Imāmīyyah sect because of their belief in the 12 Imāms from the Ahlul-Bayt (a).

Imām Ja'far al-S̄diq (a) was the Imām of the Muslims in his time. He was the teacher of scholars and famous for his greatness, knowledge, abstinence from the world and worship.

Imām Ja'far al-S̄diq (a) was born in the 82ndA.H., during the Umayyad reign. He taught and spread Islamic sciences in the prophet's mosque, just like his forefathers did. He would relate traditions from his father, al-B̄qir (a) who related them from his forefathers all the way up to the messenger of Allah (s). He gave 1000 jurisprudential verdicts and was ahead of the scholars of his time in Islamic sciences, for example theology, *tafsīr* (exegesis) and everything else Muslims treasured.

There were around 4000 religious students that related traditions from him.

Some of Imām al-S̄diq's (a) students were experts in the prophetic traditions and leaders of different sects, for example: Imām Abī Hanāfah (the leader of the Hanafī sect) and Imām Mālik bin Anas (the leader of the Mālikī sect).

The Ahlul-Bayt jurisprudential sect has spread today to different areas of the Islamic world, for example Iraq, Lebanon, Iran, Pakistan, Indonesia, Turkey, Saudi Arabia, India, Azerbaijan, etc.

### The Hanafi Sect

This sect is called the Hanafī sect because of its imām, Abī Hanāfah.

Abī Hanāfah's full name is al-Nu'mān bin Thābit bin Zayd al-Fārsī. His forefathers were from Kabul. Abī Hanāfah was born in the 80thA.H. and died in the year 150 in Baghdad.

Abū Hanīfah grew up in Kufa and spent half of his lifetime working as a merchant before he became a seminary student and teacher. He studied under Hammād bin Abū Salamah for eighteen years before he became a scholar himself. He was one of the big scholars of his time and reached the level of *ijtihād*. He accepted voting and syllogism *qiyas* in addition to the Qurʾān and prophetic traditions as tools for deriving religious rulings or *fatwa*. Many scholars of his time refuted him on this issue. In this regard, both Imām Muhammad al-Bāqir (a) and Jaʿfar al-Sādiq (a) said that when making a *fatwa* one must stick only to the Qurʾān and the prophetic traditions.

His sect spread in Iraq and later in other areas of the Islamic world. Abū Hanīfah lived for 52 years during the Umayyad reign, but did not accept them. Rather, he believed that the rule *khilafat* should be given to the family of ʿAlī (a). He even ruled in favor of the ʿAlawī uprising lead by Zayd bin ʿAlī bin al-Hussayn bin ʿAlī bin Abū Tālib and allowed money that was collected from *zakāt* tax to be spent on the uprising. It should be mentioned that Zayd bin ʿAlī bin al-Hussayn tutored Abū Hanīfah for two years and ʿAbduallah bin al-Hussayn bin ʿAlī bin Abū Tālib was also one of his tutors.

The Umayyad rulers asked him to become a judge and he refused. Because of this, they put him in prison and whipped him for days, until he was on the brink of death. Then, the prison warden helped him to escape and he fled to Mecca. Afterwards, he was travelling between Mecca and Medina pretending to be a nomad. During this period of time he studied for two years under Imām al-Sādiq (a). He has a famous saying describing this experience: “If it wasn't for these two years, al-Nuʿmān would have perished.” He stayed there until the end of rule of the Umayyad dynasty on the hands of the Abbasid dynasty.

When the Abbasid dynasty came to power, Abū Hanīfah refused to help them. Al-Mansūr imprisoned him and ordered him to be lashed 120 times which resulted in his death.

## The Maliki Sect

This sect is named its founder Imām Mālik bin Anas bin Mālik al-Asbahī who was a member of the Yemenite al-Asbah tribe.

Mālik bin Anas was born in Medina in the 93rd A.H.. He was a student of some of the Islamic jurists of his time including Nafiʿ, Mawla ʿAbduallah bin ʿUmar and Ibn Shāhib al-Zahrī. He also studied under Imām Jaʿfar al-Sādiq (a) and related traditions from him. He said: “I have not seen anyone better than Jaʿfar bin Muhammad.”

He lived under the Umayyad rule for forty years and during this time he did not portray himself as a scholar.

When the Umayyad dynasty fell and the Abbasid dynasty came to power he showed inclination towards the family of ʿAlī bin Abū Tālib (a) and ruled that they were the legitimate rulers and that rule *khalafah*

was their right. He passed a verdict making it obligatory to aid Muhammad bin 'Abd Allah bin al-Hassan bin 'Alī bin Abū Tālib who revolted against the Abbasid dynasty. As a punishment, Ja'far bin Sulaymān, the Abbasid governor of Medina at the time, ordered him to be lashed 50 times. The lashes were so hard that his shoes fell off.

Later on, the Abbasid khalīfa, Abū Ja'far al-Mansūr changed his mind and improved his relations with Imām Mālik. He asked Imām Mālik to write a jurisprudential book, in accordance to his sect, to be published. Imām Mālik wrote the book *Al-Maṭṭa'*, the book of religious verdicts, and the Mālikī jurisprudential sect became the official sect of the Abbasid Empire and missionaries were sent as far as Africa and Indonesia to preach *Al-Maṭṭa'* and the Mālikī sect. Imām Mālik differed from Abū Hanṣafah on his views regarding voting and syllogism as valid sources of religious rulings. He died in the 179thA.H..

## The Shafi'i Sect

This sect was named after its founder Imām Muhammad bin Idrīs bin 'Abbās bin 'Uthmān al-Shāfi' whose lineage traced back to Hāshim, the son of 'Abd al-Muttalib, the Prophet's (s) grandfather.

Imām Shāfi' was born in the 150thA.H., the same year that Abū Hanṣafah died. He was an orphan and his mother raised him in Yemen. When he reached 10 years of age he went to Mecca to learn reading and writing. He then lived in the desert for 17 years before becoming a religious student. He studied under the scholars of his time such as Muslim bin Khālid al-Makhzūmī and Mālik bin Anas (the founder of the Mālikī sect and the author of *al-Maṭṭa'*.) When Imām Mālik passed away he returned to Yemen.

During Rashīd's reign, he was charged with helping the 'Alawī movement along with others by the governor of Yemen. He was then sent to Baghdād to be tried. Many were killed but Shāfi' was saved.

He then migrated to Egypt and preached his sect there. His sect was also spread by his students in other parts of the Islamic world. Imām Shāfi' died in the 198thA.H.

He has said: "If there is a prophetic tradition in opposition to my view, throw my view against the wall."<sup>3</sup>

## The Hanbali Sect

This sect was named after its founder Ahmad bin Muhammad bin Hanbal who was an Arab.

He was born in Baghdād in 164 A.H. He started his studies there at the age of 15. He studied under both Imam al-Shāfi' and 'Ali Abū Yusif al-Qāḍī (Abū Hanṣafah's student.) He also studied under different scholars of his time, such as Harūz, one of Imām Sādiq's (a) students.

This sect was spread like the other sects. This sect is still practiced in the Arabian Peninsula and other parts of the Islamic world. Ahmad bin Hanbal died in Baghdād in 241 A.H.

1. Al-Sharḥ al-Murtada, Tanzīh al-Anbiyā', page 212
2. Bīqir Sharḥ al-Qurayshī, Tuhfa't min Sīrat A'imah Ahl al-Bayt (a), page 12
3. Asad Haydar, Al-Imām al-Sādiq wa al-Madhḥib al-Arba'h, volume 1, page 175

# The History of the Ahlul-Bayt (a) Jurisprudential

## The Three Stages of the Ahlul-Bayt (a) jurisprudence Sect

An important point about the history of the Ahlul-Bayt (a) jurisprudential sect is that it is divided into different stages. Each stage will be described. An important point about the history of the Ahlul-Bayt (a) jurisprudential sect is that it is divided into different stages. Each stage will be described.

### The First Stage

This was the stage of the narration of traditions from the Imāms (a). This stage starts from the early days of Islam and ends at the Lesser Occultation in 260 A.H.

Jurisprudence, in this stage, was narrating traditions. Companions would hear a tradition from one of the infallibles (a) and spread it to their communities without organizing them into different subjects.

The first text that was written, other than what the Commander of the Faithful (a) wrote, was written by Abū Ruffī', a companion of the prophet (s) and Imām 'Alī (a). He wrote a book called *Kitāb al-Sunan wa al-Ahkām wa al-Qadāyā*.

His son, 'Alī bin Abū Ruffī', the Commander of the Faithful's (a) scribe, wrote a book using the different sections of jurisprudence, for example *wādā* and *salat*.

Jurisprudential texts increased during the imamate of Imām Bīqir and Sādiq (a) due to the weakness of the Umayyad dynasty during its last days and power being shifted to the Abbasid dynasty.

Jurisprudential texts continued to grow, so much so that during the time of Hurr al-'Amīlī there were 6600 texts. 400 of these texts became famous and were called the 400 principles. The four great books of the Shia written by the three great scholars<sup>1</sup> were compiled from these books.

The city of Medina was the center of Islamic studies for the Ahlul-Bayt (a) during this period until Imām Sādiq (a) moved to Kufa and the second center of Islamic studies was formed.

Al-Hassan bin 'Alī al-Washī' said: "I witnessed 900 scholars who all said that they heard so and so from Ja'far bin Muhammad (a) in this mosque (Masjid al-Kūfa)." <sup>2</sup>

The Imām had great companions in Kūfa, such as Abūn bin Taghlib who related 30,000 traditions and

Muhammad bin Muslim who related 40,000.

When we say that jurisprudence in this stage was just compiling and spreading traditions rather than organizing them into different sections, we do not mean that this includes the big scholars of the time. Each one of them was an authority in themselves, like Muhammad bin Muslim, Zarʿarah ibn Aʿyan and Abū Basīr. Imām Sadiq (a) said: “Burīd bin Muʿwiyah al-ʿAjali, Abū Basīr Layth al-Bakhtar al-Murādī, Muhammad bin Muslim and Zarʿarah will be given the glad tidings of Heaven. They believe in Allah about the obligatory actions and forbidden ones. The line of prophethood would have discontinued if it were not for them.”<sup>3</sup>

The Imām considered them *mujtahids* who had the capability of deriving verdicts from the Qurʾān and prophetic traditions. Sometimes he (a) would order them practice it, for example he (a) said: “It is upon us to tell you the principles and it is upon you to branch them out.”<sup>4</sup> He (a) also told people to refer to some of his companions in religious rulings, like Yūnis bin ʿAbd al-Rahmān. Someone asked the Imām: “It is not possible for me to come to you and ask everything that I need about religious sciences. Is Yūnis bin ʿAbd al-Rahmān trustworthy; can I take whatever I need from him?”

The Imām answered: “Yes.”<sup>5</sup>

He (a) also ordered some of his companions to give religious verdicts, such as Abūn bin Taghlib. The Imām (a) told him: “Sit in Medina’s mosque and give religious verdicts to the people. Verily I love to see my Shia to be like you.”<sup>6</sup>

## The Second Stage

This stage started at the Minor Occultation in 260 A.H., and lasted until the days of Shaykh Tūsī who lived between 385 A.H. and 460 A.H.

In this stage the Ahlul-Bayt (a) jurisprudential sect transformed from merely relating traditions without organizing them into different sections into writing jurisprudential books without adding anything to the traditions or changing their terminology. This is clear in the book *Sharʿiyī* which was written by ʿAlī bin Bābaway for his son Muhammad. It is said that when someone needed a tradition they would find it in this book.

Other similar books are *al-Maḡnaʿ* and *al-Hidāyah* by Shaykh al-Sadūq, Muhammad bin ʿAlī bin Bābaway and *al-Nihāyah* by Shaykh al-Tūsī.

We are not saying that there weren’t scholars who were spreading traditions, but we are saying that now the traditions are organized into different subjects similar to the practice today. This is clearly seen in the books *al-Kāfī* by Shaykh al-Kulaynī and *Man Lī Yaduruhu al-Faqḥ* by Shaykh al-Sadūq.

This is what generally took place in this stage. This does not mean that there weren’t any scholars who added to the traditions by using intellectual deductions, as seen in the works of al-ʿUmmānī and al-Iskafī.



If one wants to explain more he can say that this stage had three major schools:

1. The school of Qum and al-Ray: This school used traditions but did not use intellectual deductions. Some of the scholars of this school are the two Saduqs. This was a strong school and was relied upon by many scholars.
2. The school of al-'Ummayn and al-Iskaf: This school preferred using intellectual deduction to such an extent that they accepted syllogism and voting. Al-'Ummayn's full name was al-Hassan bin 'Al bin Ab 'Aq. It is said that he is the first person to apply his *ijtihad* to actions, while mentioning the different sections of jurisprudence and mentioning the reasons behind the verdicts. He wrote the famous book: *al-Mustamsik bi-habl al-Ras*. Unfortunately this book is not in existence today. Al-Iskaf is Muhammad bin Ahmad bin al-Junayd who lived after Ab 'Aq. He wrote jurisprudential books, for example *Tahth al-Shah li-ahkam al-Shar'ah* and *al-Ahmad fi al-Fiqh al-Muhammad*. Similarly, these two books do not exist anymore.
3. The school of Baghdad: This is also called the school of Shaykh al-Mufid. This school tried to find a common ground between the schools of traditions and intellectual deductions. The reason behind this might be Shaykh al-Mufid, who was a student of Ibn al-Junayd and Ja'far bin Muhammad bin Qaway who was from Qum and a member of the Qum school of thought. Shaykh al-Mufid wrote many books, such as *al-Maqna'ah* which was commented upon by Shaykh al-Tus in his book *Tahth al-Ahkam*.

### The Third Stage

This stage started at the era of Shaykh al-Tus and is the prevalent one today. In this stage the jurisprudential books changed from imitating the traditions in form and language to writing with different terminology and mentioning different situations that did not occur at the time of the revelation of the Quran. All of this occurred with accepting intellectual deduction perfected by traditions and the acceptance of intellectual principles. The book *al-Mabsut* by Shaykh al-Tus serves to ascertain the conclusion that we already reached about this stage.

Other important advancements that have been made during this stage:

1. The sections of jurisprudence have become more specialized.
2. More subjects were introduced in accordance with needs of the time.
3. Intellectual deductions have been made stronger and their proofs have become clearer.
4. The relationship between jurisprudential rulings and jurisprudential principles become clearer.
5. Putting more effort into investigating the chains of narration.
6. Disregarding some of the ancient texts which do not have relevance to the needs of today's world and writing books with today's world's needs.

# Sources of Religious Verdicts

## 1. The Book

What is meant by the book is the Qurʾān which was sent down by Allah to Prophet Muhammad (s). Our belief is that the Qurʾān that is in our hands today, its meaning and words has not been altered in any possible way.

وَمَا كَانَ هَذَا الْقُرْآنُ أَنْ يُفْتَرَىٰ مِنْ دُونِ اللَّهِ وَلَكِنْ تَصْدِيقَ الَّذِي بَيْنَ يَدَيْهِ وَتَفْصِيلَ الْكِتَابِ لَا رَيْبَ فِيهِ مِنْ رَبِّ الْعَالَمِينَ

***“This Qurʾān is not such as can be produced by other than Allah; on the contrary it is a confirmation of (revelations) that came before it, and a fuller explanation of the Book- wherein there is no doubt – from the Lord of the worlds.”<sup>7</sup>***

It is a holy book and all of the Muslims agree that it was divinely inspired and that its content is entirely correct. It is the primary resource of Islam and it is an eternal authority and reference for mankind until the Day of Judgment. It says that Allah's religion is Islam and that the Muslims must always follow the Qurʾān. It is also a universal legislative reference for all of mankind.

## The Authority of the Book

It is unanimous amongst Muslims that the Qurʾān is an authority for Muslims. The proof behind this is twofold:

1. Certainty that it was sent to the Prophet (s): This was established by multiple and successive accounts passed down by Muslims from one generation to the next.
2. The Qurʾān being sent by Allah: The miraculous nature of the Qurʾān in regards to both the language and the content is a proof of its composer. Moreover, no one could produce anything like the Qurʾān or even a single verse, in spite of the challenge posed in the Qurʾān. Allah says:

تَنْزِيلُ الْكِتَابِ لَا رَيْبَ فِيهِ مِنْ رَبِّ الْعَالَمِينَ

***“(This is) the Revelation of the Book in which there is no doubt, from the Lord of the Worlds.”<sup>8</sup>***

## Jurisprudential Verses in Quran

There are around 500 verses in the Qurʾān that deal with religious rulings. These verses are a part of the sources for obtaining religious verdicts and are called: *ayyāt al-ahkām*.

## 2. Traditions (Sunnah)

The Arabic term *sunnah* literally means a way of acting, but figuratively it means: the words, actions and affirmations of one of the *ma'sumeen* Infallibles. In order to understand this definition completely we must understand a few terms:

- Infallible: anyone whose infallibility is established. The Infallibles are the Prophet (s) and the twelve Imams from the Ahl al-Bayt (a).
- The sayings of an infallible: Whatever the infallible says that has anything to do with religious rules.
- The actions of an infallible: Whatever action an infallible takes.
- The affirmations of an infallible: The occurrences that happen in the presence of an infallible to which the infallible does not oppose.

### The Authority of Traditions

Muslims agree unanimously that the words, actions and affirmations of the Prophet (s) are considered an authority for all Muslims. Allah says:

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا

***“So take what the Messenger assigns to you, and deny yourselves that which he withholds from you.”<sup>9</sup>***

The words, actions and affirmations of the Imams of the Ahl al-Bayt (a) are only considered an authority only if their infallibility and their place in the line of successors to the Prophet is proved. There are numerous proofs of their infallibility in key resource books about Imamate and theology. Please refer to them.

## 3. Consensus

The Arabic term for consensus is *ijma'* which literally means unanimity.

Shiites view consensus as a tool to unearth an Infallible's verdict. Unlike the other jurisprudential sects, Shiites do not regard consensus as an independent proof as it is the case with the Qur'an, the traditions and logic.

Whenever a consensus shows us what the Infallible's verdict is, it has authority. Otherwise, it does not have authority.

The question arises: Why do the Shia include consensus as one of the sources of religious verdicts

when it is not considered an independent proof?

Shaykh al-Ansārī answered this question in the following way: Consensus being a source for religious verdicts is not an accurate statement. True Consensus is a tool to establish the truth, and in this case, both the means and the truth are considered a proof.

How does Consensus help determine the verdict of an infallible?

There is no single answer. Attempts to find an answer to this question started at the time of Shaykh al-Tūsī and continue to this day. The answers fall under two categories:

1. Internal consensus: A consensus of *mujtahids* who lived in a period of time in which one of the Infallible was present. He was part of the consensus but nobody knew him personally. Therefore, this kind of a consensus is an authority. How do we know that the infallible was amongst them? This answer to that is to be found in the books of the principles of jurisprudence.
2. Linguistic consensus: This consensus informs us, in an intellectual way, that the infallible agreed with the ruling but was not part of the consensus. His duty is to prevent all of the scholars from making an incorrect consensus. More answers are found in the books of the principles of jurisprudence.

#### 4. Intellect

What is meant by the intellect here is anything that man's intellect can understand and a religious ruling can be derived from. [10](#)

An example is when Allah makes obligatory an action through a Quranic verse or reliable tradition, but one must perform another action to be able to perform this obligatory action and there is not any verse or tradition about this action. Man's intellect understands the relationship between an obligatory action and its precepts becoming obligatory. This leads to certainty about the action being obligatory.

An example of this is that Allah made the pilgrimage obligatory on anyone who has financial ability. This is found in both the Qur'an and traditions. But, Allah did not mention that the travel from one's hometown to Mecca is obligatory, even though it is a necessary precept to performing the pilgrimage.

Man's intellect understands the relationship between performing the pilgrimage and having to travel. It is possible to say that the travel becomes obligatory by the *mukallaf* having certainty, like some have said. having certainty, like some have said.

#### The Authority of Intellect

It is self-evident that intellect itself is an authority; it does not need a proof. The reason for this is that intellect is a foundational proof for Islamic beliefs.

When Intellect is viewed as a fundamental proof for Islamic beliefs it becomes easy to reach the conclusion that it is an authority for religious rulings as well. The reason for this is that beliefs are more

important than rules; they are the roots of religion.

1. Muhammad bin Ya'qub al-Kulayni – al-Keffi, Muhammad bin 'Ali bin al-Hussayn al-Sadiq – Man Lahu yahduruhu al-Faqih, Muhammad bin al-Hassan al-Tusi – al-Tahdhib and al-Istibsar.
2. Al-Najsh, Rijal al-Najsh, under al-Wash'
3. Shaykh al-Tusi, Rijal al-Kash, under Abi Basir Layth al-Muradi
4. Al-Hurr al-'amil, Was'il al-Shah, the 6th chapter of the qualities of a judge, tradition 51
5. Al-Hurr al-'umul, Was'il al-Shah, the 11th chapter of the qualities of a judge, tradition 33
6. Al-Najsh, Rijal al-Najsh, under Abi
7. Yunus: 37
8. Sajdah: 2
9. Hashr: 7
10. Muhammad Baqir al-Sadr, Halaqah 2, al-Dalil al-'Aqli

## Subjects of Jurisprudence

The jurisprudential subjects are divided into two categories: acts of worship and dealings or transactions. Dealings are further divided into: contracts, one-party contracts and miscellaneous rulings.

Al-Shahid al-Awwal divided jurisprudence into these subjects along the mentioned foundations when he said: "All of this is divided into four parts; worship, contracts, one-party contracts and miscellaneous rulings."

This classification is found in the books early day such as *Shar'ya' al-Islam* by Muhaqiq al-Hill.

The subject of *taqlid* or imitation (following a specific scholar) is mentioned in the books of jurisprudence, along with subjects relating to it, in the introduction section. They say that it is obligatory for every *mukallaf* who has not reached the knowledge level of *ijtihad* to either follow someone in *taqlid* or practice precaution in worship and transactions, even if these are regarded recommended or permissible actions, except where the ruling is self-evident.

The condition for practicing precaution is that one is knowledgeable of the situations where precaution is applicable (only a few people actually do). Without practicing *taqlid*, the acts of worship and daily dealings of an individual – unless he or she is capable of precaution– are considered invalid. <sup>1</sup>

Then the section of worship is mentioned:

Worship is an action that depends on having the intention of being close to Allah, for example, performing *salat* prayer.

Muhaqiq al-Hill mentioned ten different subjects under the acts of worship category:

1. Spiritual purification (*tahṭrah*): Spiritual purification is the use of a pure substance conditional upon an intention.<sup>2</sup> There are two types of spiritual purification; spiritual purification from physical impurities that stem from the body (*khath*) and spiritual purification from spiritual impurities (*hadath*).

Spiritual purification from a physical impurity consists of cleaning the body, clothes or anything else from the ten impure substances: urine, feces, blood, semen, touching carcass, etc. This form of purification does not stipulate having an intention.

Spiritual purification from spiritual impurities consists of using water for *wudṭ*, *ghusl* and *tayammum*. This form of spiritual purification is a prerequisite for such acts of worshipping as prayer and circulating the Ka'aba *tawṭf*. This form of spiritual purification is broken by different natural occurrences such as sleep, urination and ejaculation; intention is a prerequisite in this form of purification.

There are eleven ways which one can use to spiritually purify something that has become physically impure. They are as follows: pure water, touching earth, sunlight, transformation, evaporation of two thirds of a liquid, transfer of human blood into a mosquito or a bug, converting to Islam, being part of something or someone pure, removing the physically impure substance and preventing an animal that has eaten physically impure substances (instead of food) from eating more physically impure substances.

2. Prayer (*salṭh*): Praying precludes one from committing terrible actions. It is the foundation of religion and if it is accepted all other forms of worship will be accepted but if it is rejected all other forms of worship will be rejected.

In this section the obligatory daily prayers are discussed as well as the prayers on the two holy days (*ṭd*), the funeral prayer, the Prayer of the Signs, the prayer after *tawṭf* and recommended prayers *nawṭfil*. The conditions of prayer are also discussed along with the foundations of prayer, the precepts to prayer and the actions that invalidate the prayer. The different types of prayer are also discussed, such as the prayer of a traveler, individual prayer, congregational prayer and compensatory prayers.

3. Taxes (*zakṭh*): It is a form of tax which is applicable to nine different items: gold, silver, wheat, barley, dates, grapes, cows, sheep and camels. The conditions of these nine items are discussed in jurisprudence, how much must be paid and how the money should be spent. This form of tax is mentioned in the Qurṭn, for the most part, next to prayer. A verse that mentions how this tax should be spent is in *Sṭrah al-Tawbah*, verse 60.

4. The One-Fifth tax (*khums*): *Khums* is another form of tax taken from one fifth of one's property. The Sunni sects claim that this tax is applicable to war-booty alone. One fifth of the war-booty is taken and added to the Islamic treasury. The Ahl al-Bayt (a) jurisprudential sect says that war-booty is only one of the items that this tax is applicable to.

The following items are added to war-booty: mines, treasures, lawfully obtained money mixed with

unlawfully obtained money in such a way that one does not know how much of it is lawful and how much is unlawful and one does not know the rightful owner, land that an unbeliever living in a Muslim country buys from a Muslim, treasures taken from the sea and money saved for over a year. The proof that the Ahl al-Bayt (a) sect uses, is the *khums* verse (*al-Inf*: 41) and traditions from the Ahl al-Bayt (a).

5. Fasting (*sawm*): Fasting is obligatory for every a *mukallaf* , who has come of age and does not have a valid exception. One must fast during the month of *Ramad* in every year. It is also recommended to fast on other days throughout the year, except on the two holy days (‘*id*), for it is forbidden to fast on those days. It is not recommended to fast on the tenth day of the month of *Muharram*. A fasting person must refrain from eating, drinking, sexual intercourse, soaking the head in water, inhaling thick smoky substances...etc.

6. Staying in a mosque (*i’tik*): The Arabic term *i’tik* literally means staying in a specific place, but when used as a jurisprudential term it means staying for an extended time in a mosque in order to worship. This is an act of worship that a person does by fasting for three or more days in a mosque. The different rules and conditions of this are explained in jurisprudence. *i’tik* is essentially recommended, but if one performs *i’tik* for two days, the third day becomes obligatory. One must perform this act of worship in the Holy Mosque of Mecca, the Prophet’s Mosque in Medina, the Kufa Mosque, The Basra Mosque, or, at least, the main congregational mosque of a city. One may not perform this act in a small mosque. The Prophet (s) would perform *i’tik* on the last ten days of the month of *Ramad*.

7. Pilgrimage (*hajj*): The Arabic term *hajj* literally means intention, but in jurisprudence it is a term which comprises of different actions performed in a specified place (Mecca and its surroundings). It is obligatory on anyone who meets all of the conditions. The actions of the pilgrimage are as follows: putting on the special *ihram* clothes in Mecca, stopping in ‘Arafat, staying in al-mash’ar, throwing the stones at the ‘*qabah*, sacrificing an animal, shaving one’s head, walking around the Ka’bah seven times (*taw*), performing the *taw* prayer, running back and forth between Saf and Marwah, *taw al-nis*, *taw al-nis* prayer, throwing stones at the symbol of *satans*, and staying at *Mina*.

There are three kinds of pilgrimage. The first is called *al-tamatu* and is obligatory on those whose homes are more than 92 kilometers away from the Holy Mosque of Mecca. The second and third are called *al-qirn* and *al-ifrad* respectively. These are obligatory on those whose homes are less than that distance.

8. Lesser pilgrimage (‘*umrah*): There are two types of this smaller version of pilgrimage. The first is called *al-tamatu* and is obligatory on every *mukallaf* who can perform the pilgrimage and lives more than 92 kilometers away from the Holy Mosque of Mecca. The second type is called *al-ifrad* and is obligatory on anyone who is financially able to perform it, whether the greater pilgrimage has become obligatory on him or not, and does not live more than 92 kilometers from the Holy Mosque of Mecca.

The actions that must be performed in the lesser pilgrimage are: putting on the *ihram* clothes in one of

the specified sites, *tawḥīf*, *tawḥīf* prayer, running back and forth from Safḥ and Marwah and have one's her cut.

9. Declaring War (jihād): There are two types of war in Islam: offensive and defensive. In Ahl al-Bayt (a) jurisprudential sect only an infallible can declare war, and that is when it becomes an obligatory duty. On the other hand, a defensive war can become obligatory at any time and can also become obligatory upon men as well as women.

War can also be divided into civil and international war. It is also obligatory to fight a group that leaves the community of an Imām, like what happened in the case of the *Khawḥrij* and the wars of *Jamal* and *Siffīn*.

The following subjects are also mentioned under the main subject of war: rules pertaining to followers of other religions living in Muslim countries and peace treaties between Muslim governments and non-Muslim governments.

10. Enjoining good and forbidding evil (*'amr bi al-ma'rūf wa nahḥ 'an al-munkar*): Islam is a religion that deals with social issues. The importance of a healthy society is emphasized in the divine laws that were sent for mankind's success. It is obligatory, according to Islamic law, for everyone to uphold moral actions and to fight immoral actions. This is what is mentioned under the subject of enjoining good and forbidding evil. Refer to the verse in *Sūrah ḥ/ Imran*: 104.

There are conditions pertaining to this are mentioned in the books of jurisprudence.

After the section of worship, the section of contracts is mentioned. This section has fifteen different subjects:

1. Trading (*tijārah*): Transactions like buying, criteria of the buyer and the seller, the items being bought or sold, the contract itself, the wording of the contract, different kinds of transactions: resale with specification of gain, resale with the specification of loss, and *tuliyyah* are also discussed. *Tuliyyah* is the transfer of the sold to the buyer without any addition or subtraction from it.

2. Collaterals (*rahn*): The item that is given is called a collateral, the person giving the collateral is called a *rḥīn*. The *Rḥīn* must offer this transaction by using any words that relay his offer and the *murtahan*, or person who takes the collateral, must accept it by using any words that relay his acceptance.<sup>3</sup>

3. Bankruptcy (*iflas*): A bankrupt person is one who does not have enough money to pay back his debts. The Islamic jurist prevents this person from using his property with the intent of him paying back his debts, as much as possible.

4. Limitation of legal competence (*hajr*): The Arabic term '*hajr*' literally means preventing and what is meant is the prevention from spending one's money. There are many instances where one is prevented from spending his money due to bankruptcy (which was mentioned), a child who has not come of age,



an insane person, an incompetent person and a dead person who has made a will for over one-third of his property.

5. Guarantee (*damān*): This is a contract that needs both a proposal and an acceptance. There is a difference in guarantees between the Shia and the Sunni. The Ahl al-Bayt (a) jurisprudential sect defines '*damān*' as the moving over of the responsibility for the debt from the indebted person to the guarantor.

After this the person who lent money does not have the right to ask the person he lent the money to for his money, rather he must ask the guarantor. This way, the guarantor pays back the debt and then seeks out the person who owed the money in the first place to pay him back. However, the Sunni jurisprudential sects claim that the person who lent the money can get his money from either the person he loaned it to or the guarantor.

6. Peace (*sulh*): The agreement upon giving up one's possession of an item or the yield of an utilizable thing or the yield of a right. It is not conditional on there being a fight before it.

The peace that is meant here is not the same as what is meant in the subject of war (*jihād*). Peace that is mentioned in the subject of war is a political agreement, but the peace that is mentioned here is related to financial matters, for example if one owes an unknown amount of money to another he can make 'peace' with that person by paying him a specific amount of money agreed upon by both parties.

7. Partnership (*shaarkah*): Partnership means the ownership of property or a right by more than one person. An example of this is the inheritance that belongs to a few children. They are partners in the inheritance before it is divided up. Another example is when two or more people own a car, horse or piece of land, even if two people share in a piece of virgin land that they cultivated.

There are two types of partnerships: contracted and non-contracted. What were mentioned above are examples of non-contracted partnerships. Examples of contracted partnerships are business partnerships, farmland partnerships and industrial partnerships. There are many rules mentioned in the books of jurisprudence pertaining to contracted partnership.

8. Silent partnership (*mudārabah*): this is a type of contracted partnership where there is a partnership between one's property and another's work. One or more people give money to another person or persons to conduct business transactions with that money.

9. Silent partnership in farming and running an orchard (*muzāra'ah* and *musāqā'at*): These are two types of partnerships similar to *mudārabah*. They are both partnerships between money and work. The difference between them is that *mudārabah* is a partnership between money and work in business while *muzāra'ah* is a partnership between money and work in farming.

For example, the owner of a land makes a contract with a farmer and they split up the profits in an

agreed upon fashion. *Musḥaqḥat* is a partnership between money and work in an orchard, for example, the owner of the land makes a contract with the gardener and they split the profits that they make from the selling fruits.

One of the conditions that must be observed in a partnership between money and work, whether it is *mudḥarabah*, *muzḥaraʿah* or *musḥaqḥat*, is that if a loss the loss as well as the profit is shared, and that the profit cannot be a fixed amount of money but rather a certain percentage. This way, both the person who puts up the money and the person who works are equal.

10. and 11. Trust and borrowing (*wadʿah* and *ʿarḥyah*): *Wadʿah* is giving a piece of one's property to another to protect it. *ʿarḥyah* or lending is letting another use one's property in order to make a profit. Both of these are kinds of trusts with the difference that in the case of *wadʿah* one gives his property to another for safe keeping and the keeper can only benefit from that property with the owner's consent. This is the opposite of *ʿarḥyah* where the other person uses the property in order to make a gain from it.

12. Renting (*ijṣrah*): This is a contract where one rents the yield of an utilizable thing or a right to specified price. There are two types of renting. The first is where one rents a piece of property at a specified price – as in renting a house, a car or even clothes– and the other is where one hires a person perform a certain work, for example sowing clothes, cutting hair, building a house or other things.

Renting is similar to buying and selling because two pieces of property are being exchanged, with the difference that in buying and selling a piece of property is exchanged with another while in renting a piece of property is exchanged with the right to make use of another piece of property.

There is a similarity between renting and *ʿarḥyah*. In both renting and *ʿarḥyah* utilization occurs, however, with renting the person pays for the ability to use the other's property while and in *ʿarḥyah* the person does not pay which means he does not have a right in using the property.

13. Representation (*wakalah*): allowing another to act in lieu of someone during his life. An example of this is that man, nowadays, needs someone to represent him in a courtroom or a representative in a contract, for example, business contracts, renting, *ʿarḥyah*, trusts, religious endowments, divorce, etc.

The person who is being represented is *muwakkil*, the person who is representing is *muwakkal* or *wakil* and the transaction is *wakalah* or representation.

14. Religious endowment and charity (*waqf* and *sadaqah*): *Waqf* means to give away one's property to a special group of people. There is a difference of opinion about *waqf* needing an intention of getting closer to Allah or not. Muhaqiq al-Hillī's opinion is that it intention is not a prerequisite because *waqf* and *sadaqah* are mentioned in the section of contracts, not worship.

There are two types of *waqf*, specific and general. Each one of these has their own special laws.

15. Religious endowment of a house or yield (*sukna* and *habs*): These are similar to *waqf*. The

difference is that in *waqf* the property is given away forever and the person is not able to retrieve his property.

*Habs* is when a person allows another to use the yield of his property in order to perform humanitarian services for a specific period of time after which the property is returned to its owner.

*Sukna* or habitation is when someone allows another to live in his house for a specified period of time after which the property is returned to its owner.

16. Gifting (*hibah*): One of the things that one can do with his possessions is to give them away. Gifting can be either with receiving something in return, or without. One is not able to take back a gift for which something was given in return, but one can take back a gift in which something was not given in return for it, except if it was gifted to a relative or the if the gift is no longer in existence.

17. Racing and shooting (*sabq* and *rimyah*): These are two forms of contracts that are conditional upon racing, involving the use of horses or camels, and shooting. Islam has forbid all kinds of gambling except these kinds because they improve military skills and improve one's ability to do well in war times. Racing and archery are related to the section on *jihad*.

18. Will (*wassiyah*): A will is making someone the possessor of an item or a yield after one's death. This is according to the will one makes regarding his possessions and small children (if it is allowed to make a will regarding the raising and protection of one's children) and occurs after his death. In a will, a person has control over only one third of his total possessions, to be given away or used in whatever many he decides.

Muslim jurists have divided a will into three parts. First is property, one makes another the owner of a certain part of his property. Second is contracts, one pays another to represent him in performing a pilgrimage, *zayrah*, prayer, fast are any other righteous deed. Third is freeing, one frees one of his slaves, for example.

19. Marriage (*nikah*): Jurists mention the conditions of the marriage contract. Then they mention whom we can't marry (*mahram*), for example a father can't marry his daughter, a mother can't marry her son, a sister can't marry her brother and so forth. Then they mention the two forms of marriage; the permanent and the temporary. Then they mention what happens if the marital duties are violated. Then the jurists mention the concept of adequate support, which is one of the wife's rights with the husband.

This is the end of the section on contracts. Muhaqiq al-Hill mentioned that there were 15 different subjects within this section, but then mentioned 19 of them. It is not understood why. Maybe it was a mistake or maybe he mentioned some of the subjects together.

The third section that Muhaqiq al-Hill mentioned is one-party contracts. There are 11 subjects mentioned within this section.

1. Divorce (*talāq*): Divorce is when a man annuls his marriage contract. Divorce is either forever (*bā'in*) or not (*raj'ī*). If the divorce is *raj'ī*, the man can return to his marriage during the specified time during which the woman cannot remarry.

For divorce to be valid, it must not be initiated when the wife is having her menstrual period and that there must be two just witnesses available. The Prophet of Islam said: "Allah loathes divorce although it is a permissible action."

2. When divorce is requested by either the wife or both parties it is called *khal'* and *mubārah*: These are two forms of irreversible *bā'in* divorce. *Khal'* is a form of divorce where the wife forces the husband to divorce her by giving him back part or the entire dowry; i.e. whatever the man would accept to divorce her. If he chooses to divorce her he cannot return to her unless she gives him permission.

*Mubārah* is similar to *khal'*, but in this case both parties opt for the divorce. Here, the woman can choose what she wants; with the condition that it does not surpass her dowry.

3. A pre-Islamic form of divorce (*zihār*): *Zihār* is a form of divorce that was prevalent during the pre-Islamic era, or the so-called Era of Ignorance. It is where the husband says to the wife: "You are to me like the back of my mother." This was enough for the couple to become divorced. Islam does not accept *zihār* as a form of divorce. Rather, Islam says that it is forbidden to say this and if one does he must pay a penalty, which is freeing a slave. If one cannot find a slave he must fast two months in a row. If one is unable to fast he must feed sixty poor people. It becomes forbidden for the husband to have intercourse with his wife after he said the mentioned sentence and before he paid the penalty.

4. Abstinance vow of a husband (*ʿayūb*): *ʿayūb* is a kind of vow where a husband vows not to perform intercourse with his wife forever, or at least more than four months, in order to punish her. If the wife takes her case in front of a judge the judge will force the man to take back his vow or divorce his wife. If he decides to take his vow back he will have to pay the penalty. Taking back a vow is forbidden except in this case where it becomes obligatory.

4. Cursing (*la'ān*): *La'ān* is also related to the relationship between a husband and wife. It is a kind of curse from one side against the other. If a husband claims that his wife committed adultery but does not produce four witnesses, he will be subject to the punishment of false testimony, except if he performs *la'ān*. If he performs *la'ān* his wife will be forbidden for him forever.

*La'ān* must be performed in front of a judge. The man must say four times: I bear witness, in front of Allah, that what I said about this woman is true. Then he must say: The curse of Allah is upon me if I am a liar. Then the woman must say four times: I bear witness, in front of Allah, that he is a liar. Then she must say: May Allah become angry with me if he is truthful.

In this way the husband and wife are separated from each other forever.

6. Freeing a slave (*'itq*): Islam has many teachings regarding slavery. Slaves are only taken from

prisoners of war. The purpose behind slavery is not to use the slave but rather it is for them to live in a Muslim family and to become Muslim. The goal is not to make a slave remain a slave forever, instead it is to teach a disbeliever Islam and then give him social freedom after he has attained spiritual freedom. So, the goal of slavery is to free the slaves and there are many different ways to free a slave in Islam. For this reason, jurists have called this subject *freeing a slave*, not slavery.

Jurists have said that there are four ways to free a slave:

- A slave owner freeing a slave because of a religious penalty or just getting closer to Allah.
- Freeing part of the slave, half of him, a third of him, a fourth of him or a tenth of him for any reason.
- If someone enslaves his parents, grandparents, children or grandchildren. In Islam this form of slavery does not exist and the relative would be automatically freed.
- If a slave has certain bodily ailments, for example if he is blind or has leprosy.

7. *Tadbir*, *mukatabah* and *istid*: These are three cases which necessitate freeing a slave. *Tadbir* is when the slave owner makes a will to free the slave after his death. *Mukatabah* is when the owner and the slave make a contract for the slave's freedom after he pays a sum of money. Allah orders the slave owners to make a contract with a slave if the slave wishes and the slave is a believer. Allah also says that some money should be given to him to help him with life's expenses.<sup>4</sup> *Istid* is when a women slave bears the master's child. After the slave owner's death the mother becomes the slave of the child and, as was mentioned earlier, a child cannot be the owner of his mother, so she becomes free.

8. Confession (*iqr*): Confession is one of the legal subjects of Islam. If a person claims that another owes him money he must put forth evidence. If he cannot produce evidence his claim will be dismissed. However, if the other person confesses to the fact that he owes the plaintiff money, his confession will take the place of the missing evidence.

9. Reward (*ju'ah*): *Ju'ah* is similar to hiring a person to perform work, except in *ju'ah* a specific person is not hired but rather the person says that he would pay a certain amount of money to anyone who performs a specific work.

10. Vows (*aym*): *Aym* is the plural of the Arabic term *yam* which consists of two types of vows: *halaf* and *qasam*. If a person vows to perform a certain action it is obligatory on him to perform it. Of course there are conditions:

- When the vow is taken in Allah's name. It is not obligatory to carry out a vow taken in the Prophet's, Imams' or Quran's name.
- The action has to be a permissible one. It is not obligatory to carry out a vow made to perform a forbidden or disliked action.

Examples of correct vows are to read so and so good book from cover to cover or to brush one's teeth every day. If one does not carry out a correct vow he must pay the penalty.

11. Pledge (*nathr*): A pledge is different than a vow and it has specific wording. If a person wants to pledge to perform the daily recommended prayers he must say: "*lillah alayi* (literally translated as for Allah on me, or I commit to Allah) to perform the daily recommended prayers every day." The pledge is conditional on the fact that the action is beneficial for one's religion or worldly affairs. A pledge to perform an action that is neither beneficial nor harmful is invalid.

The wisdom behind carrying out the vow or pledge is because they are types of contracts made with Allah and it is obligatory to be true to one's contracts that he makes with other people<sup>5</sup>, so it is also obligatory to be true to the contracts he makes with Allah.

## Miscellaneous Rulings

The forth section of jurisprudential rulings is the miscellaneous rulings. Miscellaneous rulings does not have a specific definition, rather Muhaqiq al-Hill<sup>6</sup> put everything that was not acts of worship, contracts or one-party contracts into this section. He divided this section into twelve subjects:

1. Hunting and slaughtering animals (*sayd* and *thib<sup>7</sup>h<sup>8</sup>*): Before anything, we will say: "An animal whose meat is lawful to eat becomes lawful when it is slaughtered in a specific way, fished in a specific way, hunted by a trained dog (in relation to some animals) or hunted by a weapon that has a spearhead, like an arrow or spear."

If an animal is slaughtered or hunted in the above-mentioned method, the rulings of a *tathk<sup>9</sup>yah<sup>6</sup>* (it becoming lawful to eat) will apply to it, not the rulings of a carcass. A carcass is spiritually unclean and is a forbidden item to eat.

Hunting is only allowed on the wild animals whose meat is permissible, like gazelle, mountain goats, wild cows and the likes. Hunting is not allowed on domesticated animals like sheep and cows.

The use of dog that is used to hunt is conditional on it being trained to do so; the killed animal that is retrieved by an untrained dog is not permissible to eat. Similarly one is unable to use other predatory animals.

The weapon used to hunt is conditional on it being made out of iron, or at least another material that is mined; so it is not allowed to hunt with a weapon made out of rock. Another condition is that the person hunting or slaughtering an animal must be a Muslim and must start his action by the reciting the name of Allah. There are other conditions as well.

2. Foods and beverages (*at'amah* and *ashribah*): There are a series of rulings in Islam regarding eating and drinking, given to make sure one uses nature beneficially. Examples of these are hunting and

slaughtering animals, which have been mentioned, and food and drinks. Islam generally permits beneficial items and forbids harmful items, but does not satisfy itself with this general principle. In some cases the harm of a certain item is mentioned which necessitates staying away from it or the benefit of an item is mentioned which allows the usage of it.

There are two types of foods: animal and non-animal. Animals are divided into two categories: sea animals and land animals. None of the animals in the sea are allowed except fish types that have scales. Land animals are divided into two categories: wild and domesticated. From amongst the domesticated animals cows, camels and sheep are permissible. Horses, mules and donkeys are also permissible but it is not recommended to eat them. Dogs and cats are forbidden to eat. From amongst the wild animals, predatory animals and insects are forbidden to eat, but wild cows, wild donkeys and mountain goats are permissible. Rabbits are also forbidden to eat, even though they are not predatory animals.

Different kinds of birds are permissible to eat, for example pigeons, ducks and chicken. Predatory birds are forbidden to eat.

It is forbidden to eat non-meat items if they are a spiritually unclean substance or a spiritually clean substance that has become spiritually unclean. It is also forbidden to eat anything that is harmful according to the general public. So, for example, it is forbidden to eat poison, even if it is tasty.

It is forbidden to eat dirt, whether it is harmful or not. It is also forbidden to drink any intoxicating substance or eat someone else's food without their permission.

3. Usurpation (*ghasb*): Usurpation is using the property or rights of another without consent. This is forbidden and one becomes accountable to the owner if his property becomes destroyed. It is forbidden to use anything that has been usurped, meaning that *wudʿ* would become invalid if performed with usurped water or one's prayer *salat* would become invalid if performed wearing usurped clothes or on an usurped place.

4. Right of pre-emption (*shuf'ah*): The right of pre-emption is the right that a partner has to purchase the partnership of a third party who bought it from his partner. So, if two people purchase an item jointly and one of them sells his share the other has the right to purchase the share from the third party at the same price.

5. Cultivation of virgin land (*ihy' al-maw'at*): Cultivation or revival of moorland for farming purposes. The Prophet of Islam (s) said: "Whoever cultivates a piece of moorland, it becomes his."

There are many issues dealt with in this section.

6. Lost property (*laqtah*): The general meaning of lost property is property that the owner lost and nobody else has obtained it. There are two kinds of this lost property: animal and non-animal.

The finder does not have the right to take the property as his own if it is an animal and he does not fear

that it will die. But, if he does fear that it will die, for example, if he finds a sheep in the middle of the desert, he can take it as his own but he must search for its owner. If he finds the owner he must give the sheep to him, but if he does not find the owner then it becomes a property with an unknown owner which in this case should be spent on the poor with the permission of a judicator.

If the lost property is not an animal and worth less than half of a *mithqal* of a silver coin, the finder can take it as his own. But, the finder must declare that he has found the lost item and search for its owner for one year if it is worth more than the above mentioned amount (naturally, items that would go bad, like fruit, are not included in this ruling). If the owner was not found and the finder found the item in the Holy Mosque of Mecca, the finder can do one of two things: he can give it away as charity and give the price of the item to the owner, if he ever finds him, or he can keep it for the owner.

If he found it anywhere outside of the Holy Mosque of Mecca he can do one of three things: he can take ownership of the item and owe the owner the price of the item if the owner is found or he can give it away as charity and pay back the owner if found or keep it as a trust for the owner.

If there is no sign on the item indicating the owner there is no need to declare that one has found it, rather, the finder will be able to choose from the three choices above.

7. Inheritance (*mirath*): The rules of inheritance in Islam are obligatory to follow. It is not permissible for the deceased (during his life) to split up the inheritance however he desires or to give all of his possessions to one person. The division of property is done on three levels; when there is a person on one level, the next levels do not receive inheritance.

The first level: Parents and children. If the children are dead at the time of the division, grandchildren get the inheritance.

The second level: Grandparents, brothers and sisters and if one's brothers and sisters died, nieces and nephews.

The third level: Aunts and uncles and their children.

These are according to family relations, but if one is related because of a reason, for example marriage, they inherit in every level.

The exact amount that everyone inherits is explained in detail in the books of jurisprudence.

8. Judgment (*qadh*): It is the judgment made between people in order to settle their disputes. There are many issues addressed in this section that cannot be explained here, but we will mention some brief points:

The court system in Islam is a special system that makes sure that justice is served in a precise way. One of the ways to prove this is by mentioning the special conditions that Islam gives for one to become a judge. Some of the conditions are: He must be a *mujtahid* on a scholastic level and his *ijtihad* must be



established. His morals must also be in congruence with Islam.

Another condition is that he must be pious and stay away from vices, even the ones that have nothing to do with being a judge. The judge is not allowed to take money from the defendants or the plaintiff's, rather he is awarded a large sum of money from the Muslim nation's treasury.

Confessions and witnesses (and nowadays oaths) are effective in proving or disproving one's claim in the Islamic court system.

9. Being a witness (*shahādah*): Witnessing is a branch of the section of judgment. Confessions fall under the same category. If one claims, for example, that another person owes him money, the other person can either confess to the claim or denies it. If he confesses it is enough for the judge to order that the money be paid. If he rejects the claim, the plaintiff must bring evidence to prove his claim.

One way of provide evidence is to produce a witness. If he has a witness and all of the conditions of being a witness and giving testimony are observed, his claim will be proved. The defendant does not have to provide a proof that he is truthful. Sometimes the defendant has to swear an oath that he is truthful.

10. Fixed and open legal punishments (*hudūd* and *ta'zīrāt*): These punishments are related to Islam's penal system and are also related to the sections of judgment and witnesses. Islam has given certain punishments for certain crimes which are supposed to be carried out in every situation, every place and every age. These punishments are called *hudūd*. There are some punishments that are up to the judge to determine, where he can look at the situation and make the punishment more or less severe. These punishments are called *ta'zīrāt*.

We will mention some of the *hudūd*, briefly, because mentioning them in length should be done in other books.

- The punishment for adultery of two married people who can easily be with their spouse is stoning. If one of the adulterers was not married or could not easily be with his spouse he or she would be given 100 lashes, except if the adultery was committed with one of his or her family members (*mahram*) where the punishment would be death.
- The punishment for homosexuality is death by the sword, throwing him or her off of a high mountain or building or burning him alive.
- The punishment for wrongly accusing someone of a crime is 80 lashes. Wrongly accusing someone of a crime means accusing a man or woman of committing adultery without having enough witnesses.
- The punishment for drinking alcohol or other liquid intoxicants is 80 lashes.
- The punishment for theft is cutting off the four fingers of the right hand with the condition that the

stolen item was worth at least a fourth of a *dīnār*.

- The punishment of an enemy who takes up arms against the people is either killing him by the sword, crucifixion or cutting off his right arm and left leg or his left arm and right leg.

11. Retaliation (*qasās*): Retaliation is another form of punishment that Islam allows. In reality, this is the right of the victim if he was injured, but not killed or for his inheritor against the criminal. The crime should either be murder or seriously injuring one of the victim's body parts and the crime would have either committed intentionally, similar to second-degree murder, or accidentally.

Intentional murder is when the criminal hits the person with the intention of killing him, with or without the use of a weapon, resulting in the death of the victim. The important thing here is the intention to murder.

Second degree murder is when the criminal intentionally hits the person but without the intention of killing him, resulting in death. For example the intention was to wound the person but ended up killing him. Or, if the person wants to discipline a child by hitting him and the child dies.

Accidental murder is when the killer did not have any intention of harm at all.

If the murder was committed intentionally the inheritors of the victim have a right called *qasās*. They can use this right and have the murderer executed in an Islamic court. *Qasās* does not apply to second-degree or accidental murder.

12. Fines (*dīyah*): Fines are another right that is given to the victim or his inheritors. The difference is that in *qasās* there is the eye for an eye concept while with *dīyah*, a fine is incurred.

- [1.](#) Imām al-Khomeinī (r), Tahrīr al-Wasīla, page 4
- [2.](#) Shaykh al-Tūsī, al-Mabsūt, volume 1, page 4
- [3.](#) Imām Khomeini (r), Tahrīr al-Wasīla, volume 2, page 3
- [4.](#) Refer to Sūrah Nūr, verse 33
- [5.](#) Refer to 5: 1
- [6.](#) Opposite of a carcass.
- [7.](#) An old unit of measurement.

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