

Sisters' Class - Usool-ul-Fiqh: The fundamentals of fiqh and its science

An introduction to Usool-ul-Fiqh (1)

- The word “usool” is the plural of “asl”, which means “something which is built upon”, often translated as a “foundation” or “fundamental principle”
- The word “fiqh” in the Arabic language means “understanding”, such as in the hadith “whoever Allah wants good for, He gives him “fiqh” (understanding) in the religion”
- The word “fiqh” in a technical sense means “knowing the laws of the shari’ah which relate to our actions, with detailed evidences”
 - “knowing” – this may be something you know for sure, or something you believe to be true based on your best effort
 - “the laws of the shari’ah” – the laws which are extracted from the sources of legislation, such as things that are obligatory, and things that are forbidden
 - “which relate to our actions” – for example: the prayer and the zakah, not those laws which relate to aqeedah (creed)
 - “with detailed evidences” – fiqh deals with specific issues and detailed problems, unlike usool-ul-fiqh, which only deals with general rulings

An introduction to Usool-ul-Fiqh (2)

- So when we put these two parts together, we understand something about the science of usool-ul-fiqh, that it relates to foundations, or fundamental principles of fiqh
- However, we can also look at it as a separate science in itself
- It is defined as “a science which is concerned with the general proofs of fiqh, and how to benefit from them, and the state of the person who is qualified to benefit from them”
 - “the general proofs of fiqh” – the general principles, such as “a command makes something obligatory” and “a prohibition makes something forbidden”
 - “how to benefit from them” – by studying the meanings of words, and what we benefit from different types of words, we can benefit by extracting rulings from the proofs of fiqh
 - “the state of the person who is qualified to benefit from them” – namely the “mujtahid” (the scholar who is qualified to give rulings based on his own effort)

How do we benefit from Usool-ul-Fiqh?

- It allows the person who studies it properly to be able to extract rulings from the sources of legislation

- For a beginner, it allows you to understand how the scholars arrive at their rulings, and gives you an awareness of why some things are obligatory and others are forbidden
- By studying the Arabic language and what the words mean in terms of religious rulings, we can better understand what Allah wants to do
- It gives a student a solid understanding of common words which are used today, such as “waajib” (obligatory) and “sunnah muakkadah” (a highly recommended sunnah)

A very brief history of the science

- The first person to gather together usool-ul-fiqh as a science was Al-Imaam Ash-Shaafi’ee
- Many of the leading scholars of usool-ul-fiqh were very misguided in their aqeedah, and many were proponents of philosophical thought. It is not possible to study the science in detail without resorting to their works
- Some of the principles of usool-ul-fiqh are used to justify misguidance – Al-Imaam Ash-Shaafi’ee used to refute these principles in his books
- For this reason, a student must be very careful that he/she learns the subject from someone who understands this issue, and is able to differentiate between the beneficial knowledge and the falsehood

Laws of the Shari’ah

- The rulings upon which fiqh revolves are five:-
- Waajib (obligation): that for which the one who performs it is rewarded, whilst the one who abandons it is punished. Those rulings which are waajib (obligatory) are divided into two categories:
 - fard ‘ayn (individual obligation), the doing of which is sought from everyone who is morally responsible. The majority of the Sharee’ah rulings enter into this category.
 - Fard kifaayah (collective obligation), the performance of which is sought from the morally responsible collectively, but not from every individual specifically. If none of them do it, they are all sinful, but if enough of them do it, the people who don’t do it are not sinful. Examples, including the learning of the various branches of useful knowledge and useful industries; the adhaan; the commanding of good and forbidding of evil; and other similar matters.
- Haraam (prohibition): this is the opposite of an obligation.
- Mustahabb (recommended): that for which the one who performs it is rewarded, whilst the one who leaves it is not punished.
- Makrooh (detested): this is the opposite of a recommendation. The one who leaves it is rewarded, and the one who does it is not punished.
- Mubaah (permissible): this is where both doing or leaving are equal. There is no reward or punishment.

A key principle of Islamic law

- Whatever is required to fulfill an obligation is itself an obligation
- Whatever is required to fulfill a recommendation is itself recommended
- Whatever leads to the establishment of a prohibition is itself prohibited
- Whatever leads to the establishment of a detested act is itself detested.

Where do we get our laws from?

- The Book and the Sunnah, and these two are the foundation by which the mukallafoon (the morally responsible) are addressed, and upon which is built their Religion
- Then ijmaa' (consensus) and al-qiyaasus-saheeh (sound and correct analogy), these two are derived from the Book and the Sunnah.
- So fiqh - in its entirety - does not leave the realms of these four usool (fundamentals)

Commands and prohibitions

- The fundamental principle concerning commands in the Book and the Sunnah is that they indicate an obligation, except if there is an evidence to indicate to it being mustahabb (recommended) or mubaah (permissible)
- The fundamental principle concerning prohibitions is that they indicate the thing to be forbidden, except if there is an evidence indicating it being makrooh (detested).

How we understand language

- It is obligatory to return every ruling to the Sharee'ah definition
- If there is no definition in the Qu'raan, then it is obligatory to return the ruling to the apparent meaning in the Arabic language
- But whatever has not been defined, neither in the Sharee'ah, nor in the language; then it is obligatory to refer it back to the habits of the people, and their customary usage

Mantooq vs Mafhoom

- "Mantooq" refers to the explicit meaning of the text
- "Mafhoom" refers to something which is understood from the text
- For example: "if water is more than two *qullah* it does not become impure"- this text has a "mafhoom", namely that water which is less than two *qullah* does become impure
- When faced with a contradiction we prefer the explicit meaning over a meaning that is understood from the text

General texts vs Specific texts

- From the texts of the Book and the Sunnah are those which are 'aam (general). The majority of the texts are of this nature.
- Other texts are khaass (specific), and are indicative of only some categories, types and individuals.
- Thus, if there does not exist any contradiction between the 'aam and the khaass texts, then each of them are independently acted upon. We take the general text to be general, and the specific text to be specific.
- However, if a contradiction is presumed, then we restrict the general meaning in light of the specific meaning.

Mutlaq vs Muqayyad

- Some texts are mutlaq, meaning that they are general and absolute – their ruling applies to all
- Some texts are muqayyad - meaning that they are restricted.
- They have to be restricted by something valid
- When we find a presumed contradiction, the mutlaq is restricted and qualified by the muqayyad.

Mujmal vs Mubayyan

- And from the texts are the mujmal (comprehensive) and mubayyan (explicit).
- Whatever the Lawgiver has made comprehensive in one place, yet made it explicit in another, then it is obligatory to return to what the Lawgiver made explicit.
- Many of the rulings in the Qur'aan are mujmal (comprehensive) in nature, but have been explicitly explained in the Sunnah.
- Such as the prayer, which is only described in a comprehensive way in the Qur'aan, such as "perform the prayer", but it is described in great detail in the sunnah.

Muhkam vs Mutashaabih

- Similar to this are the texts that are muhkam (unequivocal and singular in meaning) and those that are mutashaabih (equivocal and open to more than one meaning).
- It is obligatory to understand the mutashaabih in the light of those texts that are muhkam.
- So we understand that "...whoever kills a believer intentionally - his recompense is Hell, wherein he will abide eternally...", in the light of "Indeed, Allah does not forgive association with Him, but He forgives what is less than that for whom He wills..." – Therefore we say that a Muslim who kills another Muslim deliberately may be forgiven if Allah wills.

Abrogation

- Amongst the texts are the naasikh (abrogating) and the mansookh (abrogated)
- The abrogated texts in the Qur'aan and the Sunnah are few in number.
- Whenever there is the possibility of harmonising two texts, with the possibility of each one being acted upon in its own particular circumstance, then it is obligatory to do so.
- Declaring a text to be abrogated should only be used as a last resort
- In this case, the later text abrogates the earlier one. However, if it is impossible to determine which is the earlier text and which is the later, we then turn to other means of preferring one text over another.

Statements, actions & approval of the Prophet (peace be upon him)

- When the Prophet sallallaahu 'alayhi wa sallam does something as an act of 'ibaadah (worship), but he does not command its performance, then what is correct is that this action of his is indicative of it being mustahabb (recommended).
- If he does something as an act of 'aadah (custom or habit), then it is indicative of it being mubaah (permissible).
- Whatever the Prophet sallallaahu 'alayhi wa sallam acknowledges of statements and actions, then the ruling is one of ibaahah (permissibility), or other than it, according to the manner in which he acknowledged such statements and actions.
 - If he approved of something in a way that suggests that it is recommended, then we say that it is recommended, and so on.

A further word about Qiyaas (Analogy)

- Qiyaas is to compare two things which are similar, and to give one the ruling of the other
- Such as when someone says: x is similar to y, because of such and such a reason, and x is haraam, so therefore y is also haraam
- Qiyaas is only resorted to when there exists no text.
- If Qiyaas goes against a text from the Qur'aan and the Sunnah it is not valid
- If the two things are not similar, it is not valid. Such as the people who justify seeking barakah from pious people, because the companions used to seek barakah from the Prophet (peace be upon him). However, the Prophet (peace be upon him) is not the same as pious people for many reasons, so we say this is a false type of Qiyaas.

Some key principles

- Amongst these usool (fundamental principles):
 - Certainty is not invalidated by doubt. So whosoever entertains a doubt regarding anything, should return to the asl of certainty. For example, if you know that you made wudhoo, but you can't remember if you broke it or not,

you must return to what you are certain about, and you do not have to make wudhoo again.

- The basis concerning all things is that they are pure. So unless you know something is impure, and you have an evidence for that, everything should be considered pure.
- The basic principle is the permissibility of using anything, except when there exists an evidence indicative of its impurity or prohibition. So in terms of worldly items, such as cars, microphones etc, the basic principle is that they are permissible, unless there exists a proof that they are not.

Some key principles (2)

- There is no obligation with inability, nor is there any prohibition with necessity
 - The Lawgiver has not made incumbent upon us what we are incapable of doing in totality.
 - What the Lawgiver has made obligatory, from the obligations, but the servant is incapable of performing it, then that obligation is totally dropped. However, if he is capable of performing a part of it, then it is required for him to fulfil what he is capable of, whilst the part he is incapable of is dropped.
 - Likewise, whatever the creation are in need of, then it has not been made haraam (prohibited) to them.
- As for the khabaa'ith (evil matters), which have been made haraam, then if the servant is in need of that (due to a necessity), then there is no sin in using it. This is because daroorah (necessity) allows those matters which are fixed and prohibited.
- And daroorah is measured by its need, in order to lessen the evil. Thus, daroorah permits the use of what is normally forbidden from food, drinks, clothing, and other items.
- It is vital that we do not abuse these principles to benefit ourselves, by making the halaal haraam, and the haraam halaal. As Allah says: "And do not say about what your tongues assert of untruth, "This is lawful and this is unlawful," to invent falsehood about Allah . Indeed, those who invent falsehood about Allah will not succeed." [An-Nahl 16:116]

Some key principles (3)

- And from these principles is: Select the higher of the two benefits, or incur the lesser of the two harms when faced with them both
- Upon this great principle many issues are built. So when the benefit and harm are both in equal proportion, then repelling harm takes precedence over procuring benefits

Who are the companions?

- The statement of a single Sahaabee(Companion) - who is defined as anyone who met the Prophet sallallaahu 'alayhi wa sallam, having eemaan (certainty of faith) in him, and dying upon eemaan –
- If an opinion from them has become widespread and not objected to, but rather it has been affirmed by the Sahaabah (Companions), then it is a form of ijmaa' (consensus).
- If it is not known to have become widespread, nor is there known to be anything in opposition to it, then according to the most correct opinion, it is a hujjah (proof).
- However, if other Companions have disagreed or contradicted it, then it is not a proof.

Prohibitions, commands, and choices

- An amr (command) for something, entails a prohibition for its opposite.
- And a prohibition of something, entails a command for its opposite.
- A prohibition of something necessitates that matter to be null and void, except if there is a daleel (evidence) indicative of its validity.
- And a command which follows a prohibition, returns it to what it was prior to this.
- And both an command and a prohibition necessitate immediate compliance, but they do not require repetition, except when linked to a specific reason to do so.
- Matters in which a choice is given are of varying types. So if the choice was given with the aim of facilitating ease to the person, then the choice is desirable and preferred.
- If the choice was given to achieve a particular maslahah (benefit), then choosing that which is a greater benefit is obligatory.

Giving a fatwa & asking for one

- This is something in which the people have become very misguided in our times
- There are a number of important points to bear in mind, of which I will only mention a few:
 - The person giving the fatwa must fully understand the question, and the situation of the person asking. A change in circumstances or an unclear question, can render the answer null and void.
 - For example, it was said about one of the scholars “he permits interest based mortgages out of necessity.” However the scholar was explained the question in the following way: “Shaykh we have interest based mortgages, which if we don't take them, we will be forced to live in the streets, and we will be exposed to all kinds of dangers.” So it is clear

that the reality of the situation was not explained to the Shaykh and therefore his fatwa was null and void.

- The person asking the fatwa must be sincere in their question, not seeking to cause disagreement by carrying tales between the scholars
- The person asking the question must not keep repeating the question to different scholars until they find an answer that suits them, rather they should choose the most knowledgeable of the people that they have access to in any particular topic, and they should accept their answer with proof. They should only leave the answer if it becomes clear to them that the answer is against the Qur'aan and Sunnah.
- The person giving a fatwa from his own effort and knowledge, must be qualified to do so. Anyone who is not at that level must not use his own effort to reach an answer, but may pass on the answers of people who are qualified to give them.
- There are many more manners of seeking and giving fataawaa, I mentioned only a few of the most important.