

USUL AL-FIQH

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INTRODUCTION

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Definition of Usul al-Fiqh

- **Two considerations :**
- **Firstly; based on the components of the two words:usul and fiqh**
- **Secondly; Usul al-Fiqh as a discipline of knowledge or science of Islamic discipline**

Definition of Usul al Fiqh...continue

- The Hanafi School of law defines *Usul al-Fiqh* as the knowledge of the principles that can be reached to the derivation of the rules from its sources or the principles of derivation of the rules.
- Meanwhile, the Shafi'i jurists define *Usul al-Fiqh* as the knowledge of the proofs of *fiqh* in general, methods of deriving the rules from the proofs and position of a person who derives the rules.
- Thus *usul al-fiqh* is concerning with the principles and methodologies of deriving Islamic law.

RELATIONSHIP BETWEEN USUL AL-FIQH AND FIQH

- Fiqh is the knowledge of the rules relating to a conduct of person(sayings or doings) or the rules themselves.
- It principally consists of two main divisions: devotions(ibadah) like fasting etc.; and civil matter (adat/muamalat) e.g. rules relating to family (munakahat), crime (jinayah), transaction (mu'amalat), etc, ;

Relationship continue...

- Usul al-Fiqh is the knowledge of principles or methodologies of deriving the rules (relating to a conduct of person: sayings or doings) from specific sources or the principles or methodologies themselves.
- Thus these two disciplines are inter related as their common object is to derive Islamic law.
- The jurist or scholar of *fiqh* has to rely on the principles and methodologies that have been laid down by the scholar of *usul al-fiqh* in deriving the law.

SUBJECT MATTER OF USUL AL-FIQH

- Proofs or Sources (al-adillah) of Islamic law e.g. al-Qur'an, Sunnah, Ijma' Qiyas, Masalih Mursalah etc.
- Rules of Islamic law (al-ahkam) and the components of the rules: Law Giver (Hakim), the act of the subject (Mahkum fihi), the subject (mahkum 'alaih i.e. a person who is addressed by the law – mukallaf).

Subject Matter Continue...

- Conflicts of proofs and preference (al-Ta'arud wa al-Tarjih)
- Rules of Interpretations
- Mujtahid : person who derives the rules

Thus the subject of *usul fiqh* consists of all principles and methodologies which are necessary for the jurists (*faqih*) to rely upon in the derivation of the rules.

OBJECTIVES OF STUDYING USUL AL-FIQH

1. Have an ability of deriving the rules (Islamic law) i.e. ability to exercise *ijtihad* and to give preference when there is a conflict of laws.
 2. Have an ability of comparing the Islamic laws as propounded by the different schools.
- This is because the law is based on proofs, so we may know whether the laws of each school is based on a strong and valid proofs.

Objectives Continue...

3. To know the methodology and principles used by the jurists of different school of laws in deriving the rules.
- Enable a person to understand the basis principles and proofs that have been relied upon by the jurists of different school of law in their ijtihad.

Objectives Continue...

- So that we are able to understand the Islamic law better.
- We clearly understand that Islamic law is not merely based on opinion but it is based on legal proofs either from the Qur'an and Sunnah or the principles which derived from the Qur'an and Sunnah for example istihsan, masalih marsalah etc. These principles are derived from the Quran.

Historical Development of Usul al-Fiqh

- Usul al-Fiqh exists as the fiqh exists
- When there is fiqh, it is necessarily that there is usul al-fiqh
- Nevertheless the compilation of fiqh begins before the compilation of usul al-Fiqh.
- Because there is no necessity for compilation of usul al-fiqh at early period.

Historical continue...

- There is no need for the principles of *usul al-fiqh* during the period of Prophet (pbuh) since the Prophet himself is the source of reference.

Historical continue...

- After the death of the Prophet (saw), there arise many events and cases which require exercise of opinions (ijtihad) and derivation of the rules from the Quran and the Sunnah of the Prophet (saw).
- As regards the companions of the Prophet (saw) who are knowledgeable and familiar with the rules of extraction from the two sources, they do not really in need of the principles to derive the law when exercising ijtihad as they are well verse and familiar with Arabic language and its grammar.

Historical continue...

- They also well understand with the rule of interpretation of legal texts and the spirit and objective of the Shari'ah as well as the reasons of the revelation of the Quran and the reasons of the coming of Sunnah

Historical continue...

- Therefore, during the period of the Companions, usul al-fiqh was not also compiled. As the principles of usul fiqh has already existed and developed in their heart and mind and were not formally expressed.

Historical continue...

- Similarly during the period of the Successors (tabi'un). This is due to the fact that there is no necessity towards it. Furthermore, the period of tabi'un is also closed to the period of the Prophet (saw) and they learned the principles and methodology of ijtiḥad from the companions.
- The need to the compilation of *usul al-Fiqh* appeared in the period after the Tabi'un as the Islamic territory has expanded. This is due to several factors:

Historical continue...

- Mixing of Arab with non-Arab
- Problems and cases require the exercise of ijtihad increase
- The emergence of many mujtahids with different methods of derivation of law
- Arising of discussion, arguments and dispute among the scholars of fiqh e.g. school of Hadith in Hijaz and school of opinion in Kufah, Iraq.

Historical continue...

- The above factors led to a conclusion that it is necessary for the jurists to lay down the principles and methodology of deriving the rules in order to be reference for the jurists in exercising (ijtihad). So that they may arrive at Islamic law with a correct/ right opinion.

Historical continue...

- Those principles which are relied upon by the mujtahid in deriving the rule i.e. the rule of interpretation and its principles, the objectives and spirit of the Shari'ah, consideration of public interest, the methodologies adopted by the companions while deriving the law, etc. are known as Usul al-fiqh.

Historical continue...

- It said that the first who wrote on Usul al-Fiqh is Abu Yusuf, the disciple of Imam Abu Hanifah. However, the book did not reach us until today. The famous view of the jurists asserts that the first who writes on Usul al-Fiqh is Imam al-Shafi'i (d. 204h) in his famous work al-Risalah.

Historical continue...

- After Imam al-Shafi'i, Imam Ahmad bin Hanbal has written on 'Ta'ah al-Rasul' (Obedience to the Prophet i.e. sunnah as one of the source of law), on 'al-Nasikh wa al-Mansukh' (Rule of abrogation).
- Afterwards, many books on Usul al-Fiqh were written and extended by the Muslim jurists, eg al-Usul by al-Jassas (al-Hanafi) (d. 370 H), al-Burhan by al-Juwayni (al-Shafi'i) (d. 413) al-usul by Fakhr al-Din al-Bazdawi (d. 482 H) and al-Mustasfa by al-Ghazali (d. 505 H).