

## Part 1: Fiqh

This system commonly known as ilm Al-Fiqh, is extensive, covering a very wide range; and its history dates back to the earliest Islamic era. It has been taught with great detail and ramifications in every era, producing several jurist consults of repute during every century. Among the jurists, known as faqih (pl. Fuqaha) some were genius. A number of volumes have appeared to elucidate the Islamic jurisprudence; some of them are masterly treatment of the laws on every walk of human life.

Most of the problems confronting human society are dealt with by various laws, like, the civil laws, the family laws, the penal code, the management laws, and so on. Fiqh deals with all of them under various chapters, and in different names. Moreover, it deals with such laws which are not covered by the modern day laws, like the ones related to the acts of worship. Because of a very wide range of subjects covered by Fiqh, it actually includes numerous faculties which are normally learnt separately today.

### The Term 'Fiqh' In The Quran & Hadith

The word 'Fiqh' and its derivation 'tafaquh' has been extensively used in the Quran and Hadith, and in almost all cases it denotes in-depth study and profound understanding. The Quran says:

***"If a group of people from every tribe stayed behind to study (and ponder on) the religion, (they would be able) to warn and admonish their people when they return to them so that they are cautious." (Al-Tawbah, 9: 122)***

And the Prophet (S) is reported to have said:

"Whoever commits forty Hadith for the sake of my Ummah shall be resurrected by Allah as a learned faqih."

It is not known whether the term faqih was applied to the learned companions of the Prophet (S). However, we certainly know that the generation which followed the companions, known as tabe'een, used this appellation for a number of scholars among them. There were for example, seven great jurists among them who are known as 'fuqaha sab'ah' i.e. the seven fuqaha. The year 94 A.H. was known as 'sanatul fuqaha' (the year of the Fuqaha) because in that year, together with our fourth Imam, Ali b.

Husayn (‘a), great jurists like Saeed b. Musayyab, Urwah b. Zubair, Saeed b. Jubayr and others died. Thereafter, great Islamic scholars, particularly the jurists were commonly classified as Fuqaha.

Our Imams (‘a) have used the term Faqih quite often. Some of their companions were recommended to study religion thoroughly and become Faqih, and when they attained that degree of knowledge, they were called fuqaha. We know of quite a few students of our Imams (‘a) who were known as Shi’ah Fuqaha by their contemporaries.

## The Term Faqih As Elucidated By Islamic Scholars

In the Quran and Hadith, Fiqh denotes profound understanding and knowledge of Islamic fundamentals and laws, and is not confined to any particular branch of religious sciences. But with the passage of time, the word becomes synonymous with the knowledge of Islamic laws and jurisprudence.

The Ulema have divided Islamic teachings into three groups:

**Principles of Faith:** These are the fundamentals which are related to one's faith, like the belief of God, the resurrection and the Day of Judgement, the Prophethood, the divine revelation, the Angels, the Imam.

**Moral behaviour and ethics:** These are aimed at improving human behaviour and cultivating spiritual aspects of our existence. They deal with taqwa, Justice, Generosity, Bravery, Patience, Submission to the Will of Allah, and so on.

**Practical laws:** These deal with the rules and regulations laid down for certain acts, and also provide guidelines for the way these acts be performed.

The Fuqaha of Islam have restricted the use of the word Fiqh to the third category, perhaps because it has been a matter of popular concern, and that the believer sought such guidance more often. This is why men of proficiency in this branch of Islamic knowledge only came to be known as 'Fuqaha'.

## Hukm Taklifi & Hukm Wadh'ee

It is important that we are acquainted with some of the terminologies used by fuqaha in relation to Islamic laws. The divine laws are divided by them in two groups: taklifi and wadh'ee. taklifi laws are wajib, haram, mustahab, makrooh and mubah. These are five aspects of Islamic laws which a Muslim has to keep in mind while discharging his obligations.

In Islam, every human act will fall in one of these five categories. There are acts which are wajib, which must be performed as an obligation, like the daily prayers, as opposed to those which are haram and forbidden, like speaking lies, being unjust, intoxication, and so on. Then there are acts which are optional. They are recommended acts which are rewarded, but if not performed, no sin is committed.

The example is optional prayers (nafilah) which either precede or follow the daily prayers.

On the other hand, there are certain unworthy acts, i.e. makrooh, which a Muslim is advised to avoid, but no sin is committed if he engages in them, like talking about worldly affairs in the Mosque which is supposed to be a place of worship. Besides, there are acts which are mubah, meaning permissible acts, doing or not doing of them does not entail any reward or punishment.

Thus, we see that Taklifi laws are based on 'do's' and 'don'ts', enjoining, forbidding, or generally permitting a Muslim.

Wadh'ee laws are an amalgam of temporal and divine laws, partly governed by natural or moral duties, like matrimony, proprietorship, contracts and so on.

## **Ta'abbudi And Tawassuli**

The obligatory (wajib) acts are of two types: ta'abbudi and tawassuli.

Those Wajib acts which must be performed with a vivid and clear intention (niyyat) of earning the pleasure and proximity of Allah (qurbat) are ta'abbudi. Such a niyyat is a prerequisite, in absence of which the act would be considered invalid. The examples are all acts of worships, like the daily prayers, fasting etc.

But there are other obligations which do not necessarily require the intention of qurbat for their validity, like obedience to the parents, fulfilling promises and pledges, honouring the contracts, performing incumbent social responsibilities and so on.

## **Ayni & Kifai**

Wajib acts have been further classified as Ayni and Kifai:

Wajib Al-Ayni are those obligatory acts with which every individual Muslim is charged, like the daily prayers and fasting during the month of Ramadhan. But Wajib Al-Kifai remains a collective obligation on the general Muslim populace, until it is performed by one or few among them, thus relieving the rest of the obligation.

Like the social obligations of qualifying as a doctor, becoming a soldier, a judge, a farmer or a businessman, and in this form of obligation is included the rituals of Ghusl Al-Mayyit, kafan and burial etc.

## **Ta'yini & Takhyiri**

This is yet another classification of Wajib acts. Wajib Al-Ta'yini relates to those particular acts which have been specifically identified as obligatory, like the daily prayers, fasting, Hajj, Khums, Zakat, Amir bil Maroof, Jihad etc. But Wajib Al-Takhyiri offers choice and alternatives, like in the case of kaffara for a

person who has deliberately left out a fast in the month of Ramadhan. He will either free a slave, or feed sixty deserving poor, or keep sixty fasts.

## Nafsi & Muqaddami

In this classification, Nafsi Wajib acts are those which are obligatory by themselves, and are not a prelude to another obligation. For example, it is Wajib to rescue a person who is on the verge of being burnt, drowned or harmed to death.

Muqaddami obligation, besides being Wajib itself, is actually a mean to performing another Wajib act. For example, it is Wajib to rescue a person who has fallen into a well, but preparing for the rescue by way of procuring a rope or any other implement is a Muqaddami Wajib. Similarly, Hajj is a Nafsi Wajib, but attending to its prerequisites like getting a passport, buying the tickets, and other necessary preparations will be termed Muqaddami. In the case of the daily prayers, for example, Wudhu and Ghusl at the time of the prayers would be called Muqaddami.

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