Introduction to Fiqh

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*Note: This is an unofficial translation of Sh. Mawlawi’s introduction to Fiqh. Translated by: MYDO Trabiyyah committee

What is Fiqh?

Fiqh is defined as the legal rulings (Ahkam Shar’iyyah) that a Muslim must adhere to during his/her life.

These rulings govern all the affairs of individuals as well as communities. They include:

1. Issues of rituals (Ibadat): rulings concerned with prayer (Salah), fasting (Siam), paying alms (Zakah), and pilgrimage (Hajj).
3. Transactions: rulings that govern people interactions with each other such as contracts, rights and obligations, etc.
4. Governing rulings: governs the relation between the governor with the governed.
5. International Law: rulings that govern the relationship between a Muslim country with other countries.

The comprehensives and diversity of the scope of Islamic Jurisprudence clearly demonstrate that Islam is a way of life, it is a religion (deen) and state (dawlah).1

What are the sources of rulings?

Muslims agree unanimously that the book of Allah, the Quran, and the Sunna of his prophet Mohammad (peace be upon him), are the major references from which rulings are taken.
The scholars have some differences over the other ways of deriving rulings including: consensus (Ijma?), beneficial acts neither accepted nor rejected by the Quran and Sunna (Maslaha Mursala), analogy (Qiyas), custom (Urf).

Since all the secondary sources ultimately rely on the Quran and Sunna to establish their validity, it is correct to say: The Quran and Sunna are the references accepted by every Muslim to learn the rulings of Islam.

This does not in anyway mean that we do not acknowledge the secondary sources of rulings.

It simply means they we subject any secondary source to the Quran and the Sunna.

**Types of legal rulings (Ahkam Shari'yya)**

**Legal rulings are of two types:**

First: Unequivocal/ Clear-cut (Qatiee): these are the Quran and the authentic Sunnah rulings that have one interpretation over which there is no dispute among the scholars. For example: obligation of prayer (Salah), fasting (Siyam), paying alms (Zakah), pilgrimage (Hajj), and the prohibition of: usury (Riba), fornication/adultery (Zina), intoxicants (Khamr), the consideration of intention (Niyya) for the reward of good actions.

Unequivocal legal rulings are not disputed amongst Muslims: whether scholars (Ulama), schools of thought (Mathahib), the common man (Al?amma). These rulings are described as being? known by necessity? (ma?loom min adeen bidararooah), and they?re few relative to the second type of rulings.

Second type: Speculative (Thanni), which includes

A. Rulings that are indicated by the Quran and authentic Sunna in an equivocal wording.
B. Rulings that jurists (Fuqaha?) derive from other acceptable sources through educated discretion (Ijtihad).
Examples of type A are:

- The portion of the head that has to be wiped while performing Ablution (Wodou?).

Imam Malik and Imam Ahmad say it should be the whole head, while it suffices to wipe part of the head according to Imam Abu Hanifa and Imam Shafie?. The difference of opinion is due to the multiple meanings of the letter? ba? in the verse (aya) that details the actions of Wodou?. The Quranic expression {bi ru?oosikum} can bear several meanings, and does not have one Qatiee meaning.

- The distance of travel that permits a person to break their fast, and shorten the prayer.

According to the Maliki, Shafie?, and Hanbali schools it is estimated to be 90 km as understood from the hadith narrated by Imam Bukhari that ibn Umar and ibn Abbas (may allah be pleased with them) used to break their fast and shorten their prayer when they travel a distance equivalent to 90 km. The hanafi jurists estimate it to be the distance walked by an adult for 3 days (82-85 km). They rely on the hadith of Imam Bukhari? it is not permissible for a woman who believes in Allah and the day of judgement to travel the distance of 3 days unless she was accompanied by a male relative who is unlawful for her to marry (mahram). It?s apparent that reasoning based on both hadiths are speculative of the distance of travel.

An example of type B of thanni rulings is the following case:

A wife of a person who is deemed to be lost (Mafqood) and it was unknown whether he was dead or alive.

The hanafi and shafi? school?s discretion (ijtihad) dictate that the wife has to wait until all the peers of the lost husband die and it is highly probable that he has passed away, then the judge would nullify the marriage contract and she can remarry. Their reasoning for this ruling is that the default assumption is the existence of the man until proven otherwise, which is a speculative opinion.

The Maliki school's discretion rule that the marriage would be nullified between a woman and her lost husband at her request after the passage of 4 years from the
last time he was reported alive, or 1 year if he was lost during war or war-like event. The evidence for this was the consideration of the wife’s benefit, and availing any harm imposed upon her that may occur as a result of her status, which is also considered a speculative (thanni) opinion.

1 The word Deen is comprehensive in nature. It implies the belief, the rituals and the rulings. The word state in English refers to a fictional entity where man is the source of law. In Islam, The Qur’an and the sunnah are the sources of law.
General Objectives (Maqasid) of Sharia’h

Scholars of Usool Al-Fiqh have derived 5 indispensable objectives that the Shariah came to establish and protect:

(1) The integrity of Creed,

(2) The integrity of Life,

(3) Integrity of Intellect,

(4) The integrity of Progeny, and

(5) The integrity of Wealth.

These objectives are established by promoting existence and are protected by removing the obstacles that may threaten or obliterate them.

These 5 objectives listed in order of priority are:

(1) Addeen (Creed):

Deen is is the primary objective of creation. All other objectives serve to establish the Deen. Promoting this objectives is manifested in performing rituals of Ibada (Salah, Hajj, etc) and calling to virtue ‘Ma’rouf. Protecting Deen is manifested in calling or acting to prevent ‘Munkar’ and Jihad.

(2) Annafs (Life):

Preserving the Integrity of life is the second objective of Shariah.

Preserving the Integrity of life is the goal of all the subsequent objectives. This includes protection of the human life, health and integrity by establishing rulings to preserve human life/dignity and punish those who trangress against it.
Protecting the Deen is given precedence over protecting the Nafs. This is clearly illustrated in the case of Jihad to preserve the right to freely worship Allah SWT.

(3) Al-Aql (Intellect):

To preserve and protect the intellect, Shari’ah has established the right of promoting and attaining knowledge and prohibited things that demise the role of the intellect such as intoxicants, drugs.

Preserving the Nafs is given precedence over protecting Intellectual as can be seen in allowing the drinking of intoxicants or the use of sedatives to save human life.

(4) Annasl (Progeny):

Ensuring the Integrity and continuity of life is the reason the institution of marriage received much emphasis and attention in Shari’ah. Prohibition of unlawful relationships between men and women is the Shariah way of protecting that institution.

(5) Al-Mal (Wealth):

Wealth is the last objective because the intent of its acquisition is to serve the above 4 objectives. Rulings of Shari’a came to promote the write to acquire wealth and to ensure its distribution. The Shariah also legislated a large number of prohibitive rulings to protect wealth/property.
The Historical Development of Islamic Jurisprudence

First Stage: During the life of the prophet (peace be upon him)

When the prophet (peace be upon him) was alive, he was the source of knowing the rulings whether these rulings were taken from the Quran or from his sunna (including his actions, sayings, and consent). The injunctions of the prophet (salla allahu alayhi wasallam) were considered to be divine even if it was an understanding of a verse in the Quran or an interpretation as Allah says in the Quran: {We have revealed unto you the reminder (thikir) to clarify to people what was revealed onto them..}. However, not all the companions (sahaba) were close to the prophet (peace be upon him) to ask him about the legal rulings of cases happening to them, as they might be traveling or living far from the prophet’s residence, so what did they do?

The Sahaba would make their best discretion (ijtihad) based on what they know of the rulings and general Islamic principles until they go back to the messenger (salla allahu alayhi wasallam) and ask him about what they did. He would either approve of their action, or correct them if they were wrong. He did not however deny their right to make (ijtihad). An example of this is what happened to Ammar ibn Yasir (May Allah be pleased with him) when he said: The messenger (peace be upon him) sent me for a mission, and I experienced a state of major ritual impurity (janaba), and could not find water, so I rubbed my body in dust as a camel would do. When I told the prophet salla allahu alayhi wasallam of what I did, and he said: “it would have been sufficient for you to do that with your palms and he touched the ground once, wiping his right hand with the left (to remove sticking dust) and rubbed his hands and face” Narrated by Imam Bukhari and Muslim

There were times when the sahaba would be in a group and have different opinions on a certain issue or situation. The Prophet salla Allahu Alayhi wasallam would correct one of the two positions, or approve both conflicting opinions. An example of approving two different opinions is evident in the case where the prophet salla allahu alayhi wasallam ordered the Muslims to march towards Bani Quraytha (a jewish tribe living in Madina) by saying: “No one shall pray ASR except in the quarters of Bani Quraytha”. Indeed, the Muslims rushed to get there on time, but Asr time was about to end before they were likely to reach their destination.
Some of them prayed, interpreting the messenger’s saying as being an incentive for people to rush, and not an order or permission to delay their prayer passed the prescribed time.

Another group literally followed of the command of the messenger (alayhi assalatu wassalam) and indeed prayed it late at the time of Isha after arriving to the quarters of Bani Quraytha. When the messenger peace be upon him was made aware, he did not condemn any of the two groups. This implies the possibility of having two sound yet conflicting opinions for a single situation.

**Second Stage: From the death of the Messenger (salla allahu alayhi wasallam) till the death of the 4 Imams may allah be pleased with them**

After the death of the messenger (alayhi assalatu wassalam) and the expansion of Islamic reign, the sahaba’s need to exercise ijtihad was increasingly broadened for two essential reasons:

First: Exposure to new societies raised issues and created scenarios that did not happen during the life of the messenger (Salla allahu alayhi wasallam) and therefore had no direct relevant revelation.

Second: Not every single companion (sahabi) was knowledgeable of all aspects of the sunna, as it was not possible for every single person to witness or listen to the messenger (Salla allahu alayhi wasallam) at all times. The sunna, unlike the Qura'an, was not yet compiled. That lead some of the sahaba to give their opinions on issues they have not personally came to know that another companion have narrated a ruling by he messenger (alayhi assalatu wassalam).

Also, the dispersion of several companions around the Muslim cities, especially after the death of Umar ibn Al-Khattab (radiya allahu anh), lead to the formulation of two main schools with distinct Fiqhi methodologies.

* The school of Hadith in al-Hijaz (Mecca, Medina). It was called this name since most of its scholars were heavily dependent on hadith narration. Also, the nature of the early Muslim community did not change much to require a lot of ijtihad.
* The school of personal interpretive judgement/opinion (Ra’iyy) in Kufa. It was named the school of opinion because of the frequent use of personal interpretive judgement (Ra’iyy) to derive rulings of new conditions that: were not addressed in a hadith, or the hadith was not known due to the presence of fewer number of sahaba than found in Mecca or Medina.

The difference between both schools was apparent in the beginning, but it started to converge as time passed by, especially when hadith later became documented. Scholars have exerted enormous efforts to clarify/filter/examine sound transmissions and fabricated ones. Thus, the need for making legal discretion by opinion was lessened, and it was only restricted to issues where there is no text.

It’s important to note that practicing ijtihad in understanding the meanings of Quran and hadith text was present amongst scholars of the two schools.

At this stage, the scope of Fiqh widened, and became a science on its own, and great scholars were prominent in that field, the most reputable of which are the 4 Imams who are:

1- Abu Hanifa, Annu’man ibn Thabit (80-150 A.H): called the greatest Imam (Al-Imam Al-A’tham), of Persian descent. He was considered the head of the school of Ra’iyy. He theorized the idea of ‘preferential analogy’ (istihsan) as a source of Islamic law (Shari’a), and to him the Hanafi school of jurisprudence is attributed.

2- Malik ibn Anas Al-Asbahi (93-179 A.H): The imam of Madina, combines in his juristic approach the use of hadith and Ra’iyy. He’s the founder of the idea of considering ‘benefit’ (Maslaha Mursala) as a source of legislation, and to him the Maliki school is attributed.

3- Mohammad ibn Idrees Ashaf’ei Al-Qurashi (150-204 A.H): His juristic school (math-hab) is closer to the people of Hadith, despite the fact that he was a student to the companions of Abu Hanifa, and Malik. The Shaf’ei school is attributed to him.

4- Ahmad ibn Hanbal Ashaybani (164-241 A.H): He is a student of Imam Shaf’ei and his math’hhab is closer to the people of hadith as well.
Prior, during and after the era of those four great Imams, there were many other
great scholars. From the times of the companions there were: Abdulla ibn Mas‘ud,
Abdulla ibn Abbas, Abdulla ibn Umar, A‘isha and Zayd ibn Tabit. From the generation
following the companions (Tab‘ieen) there were: Sa‘eed ibn Al-Musayyab, Ata’ ibn
Rabah, Ibraheem Annakha‘, Al-hasan Al-basri, Makhoul, Tawous. Also, the teachers
and contemporaries of the 4 imams are of no less status such as Imam Ja‘far
Assadiq, Al-Awza‘i, ibn Shubruma, Allayth ibn Sa‘ad, and others.

However, the four imams had many more students who documented their work,
organized it and researched it further. Some students summarized the opinion of
their Imam and presented them to the general masses in an easy-to-read and
understand format. Muslims found it helpful to understand legal rulings in a
structured manner through the writings of the students of the four Imams. These
books were taught in the masajid for many years. For most Muslims the easy to
understand legal rulings presented throughout the teachings of juristic schools,
eliminated the need to research the books of Quranic interpretation (Tafseer) or
hadith texts.

**The Third Stage: Since the death of the 4 Imams till the fall of the Ottoman Empire**

The opinions of the 4 mathahib were well received and soon became the backbone of
Islamic jurisprudence. Later Scholars studied and taught them. Fiqh continued to
expand to the point where the scholars became occupied with devising solutions to
assumptions rather than dealing with reality. Fiqhi debates amongst the different
schools intensified to the extent that some followers of these mathahib would only
consider their juristic school to represent Islam as opposed to considering them as
rulings and opinions formulated within the boundaries of Islam.

Different scholars from the 4 mathahib issued legal religious rulings (fatwa) that the
avenue for making ijtihad should be blocked so that unqualified individuals would not
be given the opportunity to misguided others by their teachings, and ruin the great
traditions left behind by these great imams. This is how imitation (Taqleed) started.
The scholars’ efforts were concentrated on: providing evidence to the opinion of the
juristic schools, and ijtihad within the boundaries of a math’hab, and choose between
several opinions in the same math’hab.
Thus, the study of fiqh was revolving in a vicious circle. One jurist (faqeeh) would write an explanation of a book in the math’hab in elaboration, then comes another to abridge it, a third one would come only to write a commentary on the abridged version, and a fourth would comes to write footnotes on the commentary, and so on.

The issues of Ibadat in fiqh enjoyed most of the scholars’ attention, while issues of fiqh relating to reviving conditions such as governance and issues of transactions were somewhat ignored.

This state continued till the end of the 19th century. When the western thought started infiltrating the Muslim world, it encountered feeble defeated intellects. They accepted many western ideologies that were contrary to Shar’ia and in many cases ended up giving them an islamic title. The official Islamic fatwa council issued rulings allowing orphans to eat from usurious income, and justified new laws allowing equal inheritance shares for men and women. The stagnation of fiqh was a direct result of fanatic juristic following which led to the downfall of the Ottoman Khilafa.

During this period, many scholars called for the condemnation of single imam following (taqleed. Others started adopting opinions different from their juristic school teachings. Commitment to a single mathahab however remained to be the norm for the Muslim masses.

**The Fourth Stage: From the downfall of the Ottoman Khilafa till today**

This stage has seen greater divergence between two approaches of Fiqh:

**The "Math’habi" approach:** It’s the approach of the followers of the 4 juristic schools who block the avenue of ijtihad, and view that following one of these schools is obligatory.

**The "Salafi" approach:** They have the opinion that every Muslim should deduce the rulings directly from the Quran and the Sunna, prohibiting Muslims of imitating any scholar in studying Fiqh.

The clash between those two directions existed prior to this stage, but it has intensified during this period.
The issue became the subject of heated debates and discussions amongst scholars and seekers of knowledge, and even amongst the Muslim masses. Many books and articles were published. The frequency of dialogue between the two opinions had a great impact in bringing closer the two sides and helped to constrict the scope of disagreement. Issues of differences could have been settled if it was not for some extreme voices from both sides that stir reactionary opinions.
Principles of Taqleed

The First Principle:- The permissibility of imitation (Taqleed)

Imitation (Taqleed) is defined as the following of a scholar’s opinion with no knowledge of the evidence used to qualify its validity, which is permissible for the general Muslims for the following reasons:

1- Allah subhanahu wa ta’ala says in the Quran {Ask the people of knowledge if you do not know} Sura Annahl: 43. This is an injunction from Allah Ta’ala to ask scholars (people of knowledge), and the least degree of a command indicates permissibility, therefore, a Muslim is allowed to ask scholars and follow their sayings.

2- Allah subhanahu wa ta’ala says in the Quran {It was not befitting that all the believers enroll in the army, let a group from amongst them take the duty of acquiring understanding in the religion, and warn their people when they come back so that they may take heed} Attawba: 122. This Aya is a clear text that it is not possible for all Muslims to study Fiqh, so let a group be dedicated for that purpose, and teach their fellow Muslims. If it was possible for every Muslim to do that, there would not have been prevented in this verse.

3- The real life example of the companions (radiya Allahu Anhum) and they are the best generation; a few of them were considered qualified fuqaha’, and the majority used to ask them and follow their sayings without necessarily asking for evidence. Also, the messenger (salla Allahu alayhi wasallam) would often send one of the sahaba to a tribe to teach them Islam and the Quran. Those tribes would follow the sahabi without asking for evidence. This is considerend a consensus (Ijma’) from the Sahaba for the permissibility of following a qualified scholar to exercise legal discretion (Mujtahid).

4- The logic of reality and reason: What would an average Muslim –who’s busy earning his/her living-do? What would a specialist in his/her area do if they were confronted with a question? Should we ask them to refer to books of Quranic explanation (tafseer) and hadith books to find if there was a text on the subject matter? Then, they have to understand the meaning of the text and how applicable is it to the case at hand. If there were several texts on the same issue, can they make ijtihad in choosing the strongest explanation.
This ability does not come about until a thorough study of shari’a sciences is undertaken. Ijtihad requires the study of several sciences in depth, and this is not attainable for most people. An individual studying is more prone to error and deviation than a scholars who dedicated their lives to learn the tools of ijtihad.

5- The reality of the followers of the salafi school: many of the scholars following this view differ in judging many rulings due to different understandings, or different assessment of hadith. Each of these scholars find people who follow their opinions and trust their judgement. One may say that this is not taqleed, but rather an informed following (ittiba’) because the follower is acquainted and persuaded with the evidence. The counter argument is: if the evidence is so clear, how come the other scholars didn’t know it or did not get convinced? How signifnicat is it to for an average person to be persuaded by an evidence of a particular scholar if another scholar rejected it while in spite of knowing that evidence? What is the difference in this case between a ittiba’ that is not based on sound principle, and the following of an imitator (muqallid) who admits his/her incapacity to accept or reject the evidence? It’s unanimously agreed upon that taqleed is permissible, even if some extremist thinkers reject it, while realistically accepting it in another format.

**The Second Principle: Taqleed is not obligatory**

One of the mistakes that were prevalent during the time of bigot following of juristic schools is the division of Muslims into (Mujtahid) and (Muqallid), then blocking the means of ijtihad. Therefore, everyone –including scholars and students of knowledge- became a ‘muqallid’. Thus, the incentive and motive to deeply study sciences of shari’a was weakened. The utmost aspirations of scholars was to justify and find proofs, no matter how weak, to the reasoning of their school, since they as “muqallid” are not allowed to reach a ruling different from the math’hab. Imam Al-Izz ibn Abdissalam in his famous work “The foundations of rulings” (Qawa’id al-ahkam) criticized scholars who realize the weakness of an opinion from their math’hab, and yet adopt it ignoring stronger evidence from the Quran, authentic Sunna and sound analogy.

It is not to be understood from the above discussion that the door of Ijtihad is open for everyone to exercise without possessing the qualities to do so. Our intention is to assert that taqleed is necessary and permissible, but it stays within the limits of
permissibility, and is not obligatory except for an average Muslim who has no capacity to study and research.

As for those who have the capacity to study/research, or have the potential to acquire it, they should move from taqleed to ittiba’. Knowledge of the evidence and being persuaded by it does not qualify one to ijtihad, but it allows him/her, and sometimes obligates him/her to ignore the weak opinion of their mathab and adopt a strong opinion from another mathathab or another scholar. We can call this status as the status of ‘insight’ (darajatul-Nathar) as phrased by Imam Hasan Al-Banna. Darajatul-nathar means the degree of being able to assess the different views, understand their evidence, and evaluate them in reference to the primary sources.

**The Third Principle: Taqleed is not confined to the 4 jurist schools.**

One of the things that prevailed during the period of juristic fanaticism is the confinement of taqleed to the 4 jurist schools. This was not based on a shar’i evidence that prevents taqleed any others. The 4 schools were documented and taught by scholars, and easily delivered to knowledge seekers. There was a common comfort that the taught opinions were those of the Imam or the Math’hab. As for other opinions- outside of the 4 Imams-, it was difficult for people to ascertain the authenticity of the opinions. For this reason, the work of the other scholars did not enjoy the same service as that of the four Imams. There were no students to compile it, or elaborate on it. There were no written commentaries to make it easy for people to learn it. For these technical reasons, the scholars (Ulama) at that time, ruled that taqleed should be confined to these four schools.

Nowadays however, many classical Islamic texts have been published and became more readily available. The opinions of many sahaba, tabi’een, or other mujtahid imams –prior/contemporary/after the 4 Imams are now available, with enough confidence of its quotation. There is no reason not to follow these opinions as long as a Muslim scholar- who has enough qualification and insight (Nathar)- found it to be of stronger evidence than the 4 mathahib’s evidences.

Imam Al-Izz ibn Abdissalam said: “The critical issue is for the person who imitates, muqallid, to prove the authenticity of the math’hab. If the authenticity of the source is established, it is fine for the muqalid to follow this math’hab, even if it was not one of the 4 known mathahib.”
The Fourth Principle: It is permissible to follow one mathhab for the common Muslim:

One of the mistakes also common during the math’hab fanatism era, was that some scholars made it obligatory to follow one math’hab (some meant for life and others meant in all issues). As a reaction to that, other scholars considered it haram to commit to one math’hab. Both opinions are baseless.

1. The strict adherence to one math’hab and prohibiting the following of another, whether in general or in specific questions, before or after performing the act, has no evidence to support it. In sharia’ah, nothing is obligatory save what was clearly stated by Allah and his messenger. We are obliged to abide by shar’i rulings only. These rulings have permitted those who do not know to ask qualified scholars without limiting their number. For a single issue, the companions used to ask a number of the knowledgeable ones amongst them without limiting themselves to one. The scholars of the Sahaba did not oblige the individual who asked to abstain from asking anyone else. This continued to be the case even during the time of the 4 Imams themselves. None of the 4 Imams prevented their students from adopting other opinions. The idea of committing to one juristic school and prohibiting the following of more than one emerged at a later stage.

2. Saying that it is ‘haram’ to commit to one math’hab and considering it a type of polytheism (Shirk) also has no evidence. If a Muslim trusted a scholar’s aptitude and piety, and wanted to consistently follow his/her opinion, there is nothing in Allah’s law (Shari’a) that prevents them from doing so, whether this scholar was one of the 4 Imams or others. However, it is not permissible to believe that a person has an obligation to follow one particular Imam. Also, if the person chooses to change to another math’hab at any time, there is nothing that prevents them from doing so (For exceptions to this rule please refer to the chapter on ‘talfeeq’ later on).

The Fifth Principle: A qualified scholar has to abide by the strongest evidence.

A Muslim who is knowledgeable enough to reach the level of qualification of considering shar’i rulings, is obliged to follow the evidence in every issue they study and research. Such person should study the evidence of all opinions and choose the one consistent with the Quran and Sunna, even it that leads to adopting opinions
from several mathahib, or making ijtihad in new issues not addressed by previous scholars.

This is not to say that there is any religious forbiddance for this person to continue to follow one math’hab with regard to a particular issue until they have researched and arrived to a conclusion. Three is also no harm in following one mathahab on all the other issues that have not been researched. It may take a scholar months to study and research a single issue. Until the qualified scholar reach an opinion and become convinced of the the evidence, there is no harm in taql eed of one juristic school. Once a scholar had the opportunity to study the issue and arrive at a conclusion he/she would have to act. If the conclusion was that the opinion of the Imam he/she followed prior to onducting the research, the scholar would remain consistent with that opinion. If the research proved that the opinion of another Imam is more consistent with the Quran and Sunnah, than that of the Imam followed prior to the research, the scholar would be obliged to stronger opinion.

**The Sixth Principle: The permissibility of integrating opinions (Talfeeq)**

Talfeeq is defined as: adopting opinions of several mathahib in a single issue and reach a different conclusion from all of them. Let’s explain the question of talfeeq through the following summarized situations:

1) following the ruling of a math’hab in one issue, and following another in another issue unrelated to the first. This is permissible according to the majority of scholars who do not prescribe to the obligation of following one mathahab for lifetime. An example of this case, is a Mulsim who prays according to the Shafi’e school, pays Zakat according to the Hanafi school, and fasts according to the Maliki school.

2) Following more than one math’hab in similar issues. For example, if one performs thuhur prayer according to a math’hab, and perform Asr prayer according to another mathhab. This is also acceptable according to the majority of the scholars who do not who do not prescribe to the obligation of following one mathahab.

3) Following more than one math’hab in a single issue/act. For example, if a Muslim man makes Wodou’ and wipes only part of the head following Imam Shafi’e, then touches a woman and does not it consider that to nullify the Wodou’ following Imam Abu Hanifa and Malik. The later scholars of these jurist schools say that this Wodou’ is not acceptable according to Imam Shafi’e since it was nullified by the touching,
neither is it acceptable according to Imam Abu Hanif since a part of the head was wiped and not necessarily a quarter (as it is according to Hanafi school). They would also conclude that it is not acceptable according to Imam Malik since only a part of the head was wiped and not the whole head as it should be according to the Maliki school. Those scholars would conclude that since the Talfeeq in this particular case has led to a conclusion not accepted by any jurist school, it is not permissible. This conclusion should be examined in the light of the following:

a) If a qualified scholar makes Talfeeq based his/her understanding of the evidence it should be permissible. This aspect should not be an issue of dispute.

b) If the common Muslim makes Talfeeq it should also be permissible since the math’hhab of the common Muslim is in fact the math’hhab of the qualified scholar he/she refer to (mufti). The common Muslim is not required to know the opinion of the different math’ahib and their differences. When the Sahaba (may allah be pleased with them) used to ask their scholars about an issue, they did not necessarily ask the same scholar about everything related to that issue. Their scholars did not prohibit them from asking others on related aspects to the issue they have given an opinion on. This means that the sahaba (the best generation) made talfeeq and would ask whoever they meet of the scholars amongst them and then ask others without much research or concern about the correlation of the issues.

c) As for the aforementioned example of Wodou’, it could be answered as follows: The wodou’ itself was valid according to Imam Shafi’e, and therefore it’s a valid ruling. Imam Shafi’e’s juristic school does not represent a Shari’a by itself, it is merely a door through which one enters to the Allah’s shari’ah. In the same token, If someone touched a woman while in a state of woudu, the woudu can remain valid since it is permissible according to Imam Abu Hanifa, which represents an opinion within the boundaries of Allah’s shari’ah and not a different one.

d) It is not consistent with the principles of islamic legal rulings to limit the permissibility to a group, and deprive others of the same dispensation. Permitting the scholars to make talfeeq and prohibiting the common Muslim, would lead to a situation where what is halal for some is haram for others. This would not be
consistent with the basic principle of Islamic legal rulings where the halal is halal for all and the haram is haram for all.

e) The following scholars issued fatwa of the permissibility of ‘talfeeq’ or an integrated ruling: Sheikh Tartousi, grand scholar (Allama) Abou Asso‘oud, Allama ibn Nujaim, Allama ibn Arafa Al-maliki, Allama Al-Adawi, and many others.

Following dispensations (permission to disobey a general rule) while exercising Talfeeq:

Some people may resort to following dispensations and out-of-norm opinions out of desire and seeking ease.... Is that acceptable too?

The vast majority of scholars forbid this type of Talfeeq because it was inclined with whims and desires. It’s blameworthy in Shari’a to follow one’s whims. Imam ibn Abdil Barr claims (not proven) that there is a Consensus (Ijma’) on this issue.

Some scholars said it was permissible to follow dispensations in mathahib, as there’s nothing in Shari’a that forbids it. Imam Al-kamal ibn al-humam says in his book ‘Attahrir (a reputable book in Fundamentals of Jurisprudene): “ A muqallid can follow whomever they wish, even if they followed the easiest opinion in every issue. I am not aware of any text or reasoning that prohibits it. I am also not aware of any shar’ie blame for a person who follows an easy opinion given by a qualified mujtahid. The messenger salla allahu alayhi wasallam loved to bring ease to his Umma.”

Our opinion is that there is no difference -in Islamic legal rulings- between a dispensation or firm rulings (a’zeem) as long as they have valid proofs and sound evidence. If talfeeq is accepted in principle, it makes little sense in prohibiting it when seeking dispensation with valid foundations. However, it could be said that it’s disliked if there was no need or excuse, and it would be permissible if there is a need or a reason. The messenger (Salla Allahu alayhi wasallam) whenever he was given the choice between two things, choose the easier as long as it was not sinful. The fundamental principle is that the Muslim is permissible to choose from the different scholarly opinions, and in doing so he/she would not be choosing a haram or sinful opinion In Sha’a Allah.
It should be noted that talfeeq is exercised only in ‘thanni’ issues that require discretion. Qate’i issues are not at all a subject for talfeeq or dispensation. In addition, if talfeeq and following dispensations leads one to commit a sin then it becomes Haram. For example, if a Muslim practiced talfeeq and following dispensations in a manner that leads them to permit fornication, drinking liquor, or other clear-cut prohibitions, Talfeeq becomes haram.

1 According to Imam Shafi’e the mere touching of a woman nullifies wudu’, while according to Imam Abu Hanifa and Maliki it does not.
SOURCES OF ISLAMIC JURISPRUDENCE (Part 1)

By: Sh. Ismael Mukhtar

Primary:
(1) QURAN (2) SUNNAH

Secondary:
(3) IJMA (4) QIYAS

DALEEL:
O you who believe!

(a) obey Allah

(b) and obey the messenger

(c) and those charged with authority (Uli-Al-Amr) among you

If you differ in anything among your selves,

(d) refer it to Allah and His messenger

if you do believe in Allah and the last day; that is best, and most suitable for final determination (verse 59 Surah 4)

1- QURAN

Definition: Word of Allah (KALAMU-ALLAH) send down to Prophet Muhammed through the angel Gibreel in its precise meaning and precise wording in order to be:
* the source of guidance

* to be recited as an act of worship

* to be a sign and proof for the prophet
AHKAM OF THE QURAN

1- Beliefs or articles of faith. (Ahkam Eitiqadiya)

2- Morals and ethics. (Ahkam Khuluqiya)

3- Human deeds and actions. (Ahkam A’malia)

Human deeds and actions.

a- I'badat (rituals)

b- Mua’malat (non-rituals - transactions)

1. Family issues (70 verses)

2. Civil transactions (70 verses)

3. Crime & Punishment (30 verses)

4. Judicial procedures (13 verses)

5. Constitution (10 verses)

6. International relations (25 verses)

7. Economy & Finance (10 verses)

* Concept of Thawabit & Mutaghairat

Transmission and indication:

1) Worood (transmission)

a) Qat’ee

b) Zanee

2) Dalala (indication, implication)
a) Qat’ee

b) Zanee

** Quaran is: Qat’ieeu Al-warood

Qat’ieeu & Zanieeu Al-dalala

2- SUNNAH:

**Definition:** The sayings (Aqwal) of the prophet, his actions (Afa’l) and his consent or approval (Taqreerat) towards the actions of other people.

**Daleel:**

“He who obeys the Messenger, obeys Allah” (verse 80 surah 4)

“But no, by the lord, they can have no (real) faith, until they make you judge in all disputes between them and find in their souls no resistence against your decisions, but accept them with the fullest conviction” (verse 65 Surah 4)

“Nor does he say of (his own) desire. It is no less than inspirations send down to him” (verse 2-3 Surah 53)

Various sayings of the prophet

Consensus of the companions

Need for elaboration

“And we have sent unto you that you may explain to people what sent for them” (Surah 16 Verse 44)

The relation of Sunnah to Quaran

a) To re-emphasize

b) To explain and elaborate

c) To establish new rulings
**No contradiction between Quaran and Sunnah.**

**Transmission and indication.**

1) Warood (transmission)
   a) Qat’ee
   b) Zanee

2) Dalala (indications, implication)
   a) Qat’ee
   b) Zanee

** Sunnah is: Qat’eeatu & Zaneeatu Al-warood Qat’eeatu & Zaneeatu Al-dilala **

**Kinds of authentic Sanad**

a) Mutawatir

b) Ahad

c) Mashhoor

(See Appendix 1)

**Deeds and actions not meant to be followed**

1- Deeds that are of natural human behavior.

2- Deeds based on personal experiences.

3- Deeds that are known to be unique.

Exception: Where there is Daleel that indicates it was meant to be followed.

** Needs a careful consideration from qualified scholars who have deep knowledge of the Sunnah**
SOURCES OF ISLAMIC JURISPRUDENCE (Part 2)

AI-IJMA':
Definition: The consensus of all the mujtahids at a particular time after the prophet Mohammad (PBUH).

REQUIREMENTS:
1- Presence of qualified mujtahids.
2- All agree with no exception.
3- Expression of opinion explicitly.

DALEEL:
Verse 59 Surah 4 (mentioned earlier): “Whosoever contends with the Messenger after guidance has been plainly conveyed to him and follows a path other than that of the believers, we shall leave him in the path he has chosen and land him in Hell. What an evil refuge” (verse Surah)

My ummah will not have consensus on something that is wrong.

Consensus can’t come without evidence.

KINDS OF IJMA:
1- Sareeh (Explicit)
2- Sukuti (Silent)

Sareeth is considered qat’ee
Sukuti is considered zanee

Did Ijma really happen?

* Yes, at the time of companions

* Preference of some scholars “I don’t know of any dissenting view”
**AL-QIYAS:**

**Definition:** Referring a case with no ruling text to a case with a ruling text that have a similar I’la.

**DALEEL:**

Verse 59 Surah 4 (mentioned earlier)

The quran frequently uses qiyas

Eg. resurrection after death, fate of disbelievers...

The messenger frequently used qiyas.

Eg. Hajj question

A born baby denied by father etc.

The Sahaba frequently used qiyas.

Eg. Abubaker’s leadership.

Various other situation.

Logic:

Texts are finite, events are infinite

Human welfare (Maslaaha) requires it

Common sense

**PILLARS OF QIYAS:**

-Al-Asl (Original case)
-Al-Fara’ (The new case)
-Hukm Al-Asl (The ruling on original case)
-Al-I’lla (Reason for original ruling)

* Rejecters of Al-Qiyas (The Zahri school of thought)