



RULINGS OF
ISLAMIC LAW
A SIMPLIFIED PRESENTATION

◆ CHAPTER 2: ◆

ISLAMIC LAW

(FIQH)





Chapter 2

Islamic Law (*Fiqh*)

Definition of *Fiqh*: Linguistically speaking, the Arabic term '*Fiqh*' has several meanings, including 'understanding' and 'profound and accurate understanding'. In an Islamic context, it means 'knowledge of Islamic rulings on practical matters based on detailed evidence.'³¹

The subject matter of *Fiqh* is the description of different forms of worship and transactions and their Islamic rulings: obligation, prohibition, recommendation, reprehension and permissibility. These apply to all that a person does including prayer, fasting, zakat, commercial transactions such as selling, hiring, letting, gifting or mortgaging, killing, theft, jihad, etc.

Compared with man-made codes of law, Islamic *Fiqh* has a number of special features and qualities that make it unique and superior to all codes. We can identify these qualities by looking at the sources of Islamic law.

³¹ [Abd al-Rahim ibn al-Hasan, *Nihayat al-Sul*, vol. 1, p. 24.



Sources of Islamic legislation

One: Textual sources

1. The Qur'an. It embodies the Islamic faith and the revelation that explains the faith Allah wants all people, in all ages, to adopt. It is indeed the first resort to which a scholar must refer when considering a ruling on any question. It is equally applicable to all people in all generations. Allah commands people to follow and implement His rulings of permission and prohibition outlined in the Qur'an. He says: 'Follow, [O mankind], what has been revealed to you from your Lord and do not follow other than Him any allies.' (7: 3).
2. The Sunnah. This is the second source of Islamic legislation, ranking next to the Qur'an. It is defined as 'everything authentically reported to have been said, done or approved by the Prophet (peace be upon him)'. Scholars are unanimous that the Sunnah is binding and serves as a source of legislation. It is unanimously agreed that the Sunnah must be implemented provided that its authenticity is established and it is not exclusive to the Prophet (peace be upon him) himself. Its verdicts of permissibility and prohibition are equally valid as the Qur'an.

Two: Sources requiring scholarly endeavour (i.e. *ijtihad*)

1. Unanimity (i.e. *Ijma* []): This means the consensus by all scholars who are qualified to exercise *ijtihad*, i.e. scholarly endeavour, in any particular period after the era of Prophethood, to arrive at a practical ruling.³²
2. Analogy (i.e. *Qiyas*): This means applying the ruling specified by a religious text on a certain matter to another matter for which no text refers, provided that the same reasoning applies to both of them.³³
3. Subtle analogy (i.e. *Istihsan*): Discarding the verdict of a clear analogy in preference of a subtle one, or discarding a universal verdict in preference of a peculiar one, provided that such a process is based on firm evidence.³⁴
4. Interests without rulings (i.e. *Masalih Mursalah*): This refers to matters that bring benefit to people but there is no religious evidence that approves or disapproves of them. Nor are there cases to which they may be compared in order to arrive at rulings concerning them through analogy. However, a ruling on such a matter is important

³² Al-Shawkani, *Irshad al-Fuhul*, p. 71; Ibn Qudamah, *Rawdat al-Nazir*, p. 67.

³³ Al-Shawkani, *ibid.*, p. 198.

³⁴ Al-Shafi [i, *Al-Risalah*, p. 505; Abu Ya'la, *Al-Uddah fi Usul al-Fiqh*, vol. 4, p. 1,394; al-Razi, *Al-Mahsul*, vol. 6, p. 1,215.

because it brings some benefit or prevents some harm, which is the ultimate aim of Islamic law.³⁵

5. Customs of Muslims (i.e. *al-Urf*): This refers to what people traditionally do or say and is not contrary to any religious text. Tradition and habit, which means something repeatedly done, signify the same thing, and they apply to speech and deeds.³⁶
6. Statements by the Prophet's (peace be upon him) Companions': A statement by a Companion of the Prophet (peace be upon him) relating to something that cannot be determined by reasoning or research, such as essential religious matters and worship practices, is accepted as valid. It is considered to have been learnt directly from the Prophet (peace be upon him). Hence, scholars consider such a statement as a *hadith* with a chain of transmission going up to the Prophet's (peace be upon him) Companion, without being expressly attributed to the Prophet (peace be upon him). As such, it is part of the Sunnah, although it appears to be a Companion's view.³⁷
7. The laws of earlier divine religions: This refers to legislation given by Allah to past communities through their own Prophets (peace be upon them all). Muslim

³⁵ Al-Amidi, *Al-Ihkam*, vol. 4, p. 216; al-Shawkani, *Irshad al-Fuhul*, p. 218.

³⁶ A.F. Abi Sinnah, *Al-Urf wal-Adah fi Ra'y al-Fuqaha'*, p. 8.

³⁷ Al-Amidi, *Al-Ihkam*, vol. 3, p. 195.

scholars have studied such laws and whether they apply to us or not.³⁸

8. Prevention of what leads to the prohibited (i.e. *sadd al-dhara'i* []): This aims to prohibit any means that leads to something forbidden that involves harm. According to scholars of *Fiqh* methodology *dhara'i* [] means whatever is done in order to facilitate doing something forbidden that involves causing harm. What facilitates something forbidden is forbidden, just like what facilitates something obligatory is obligatory.³⁹
9. *Al-Istishab*: This means giving something its original ruling, as it was recognized, unless there is evidence confirming that this original ruling has been subject to change. Alternatively, it may be defined as considering the original ruling continuing for the present and the future until something appears to change it based on evidence. In essence, what was established in the past should normally remain valid for the future.⁴⁰

³⁸ Al-Juwayni, *Al-Talkhis*, vol. 2, p. 266; al-Sarakhsi, *Al-Usul*, vol. 2, p. 99; Abu al-Khattab, *Al-Tamhid*, vol. 2, p. 417.

³⁹ Ibn Hazm, *Al-Ihkam*, vol. 2, p. 180; al-Zarkashi, *Al-Bahr al-Muhit*, vol. 8, p. 89; Ibn [Abd al-Salam, *Qawa'id al-Ahkam*, p. 182; Ibn al-Qayyim, *I'lam al-Muwaqqi'in*, vol. 3, p. 121; Ibn al-Subki, *Al-Ashbah wal-Nazar*, vol. 1, p. 119.

⁴⁰ Al-Shawkani, *Irshad al-Fuhul*, p. 237.



The Leading *Fiqh* Scholars (Founders of the four schools of *Fiqh*)

1. Imam Abu Hanifah

Imam al-Nu[man ibn Thabit, more widely known by his nickname Abu Hanifah, was born in Kufah, Iraq, in 80 AH/700 CE. He was of Persian origin, but Arab by birth and upbringing, and belonged to a rich and very religious family.⁴¹

He memorized the Qur'an at a young age, learning its recitation under [Asim ibn Abi al-Nujud of Kufah, who was one of the best known reciters of the Qur'an. He frequented the circles of a large number of Kufah scholars, from whom he learned about *Fiqh* and *Hadith*.

In the beginning he was interested in scholastic theology, but he did not pursue that branch for long, turning his attention to *Hadith* and *Fiqh*. He learnt the *Hadith* under [Ata' ibn Abi Rabah and Nafi[, the disciple of [Abdullah ibn [Umar. His main teacher was Hammad ibn Abi Sulayman, and he continued to attend him until he passed away. Following the death of Hammad, after having spent 18 years with him, Abu Hanifah replaced his teacher. He was 40 at the time.

⁴¹ Al-Makki, *Manaqib Abu Hanifah*, pp. 9-10; al-Sayrami, *Akhh ar Abu Hanifah*, p. 3.



Abu Hanifah then started to explain his methodology of arriving at rulings for different questions, and his approach to *Fiqh*. His views gained acceptance and he secured wide popularity.

It should be made clear that Abu Hanifah learnt from a large number of leading scholars. He is best known as the leading scholar of the school that gives prominence to personal reasoning, and he was the main *Fiqh* scholar in Iraq. Imam al-Shafi'i said of him: 'In *Fiqh*, all of us are indebted to Abu Hanifah.'⁴² Abu Hanifah died in 150 AH (768 CE).

Methodology of the Hanafi school

Explaining his methodology of arriving at rulings, Abu Hanifah said: 'I refer first of all to Allah's book, the Qur'an. If I do not find in it what is applicable, I refer to the Prophet's (peace be upon him) Sunnah and the authentic reports of his guidance that are well known. If I find nothing in either Allah's book or the Prophet's Sunnah, I refer to his companions, taking the view of whomever I prefer and leaving aside others, but I would never discard all their views in preference to anyone else's view. If I find nothing and the matter is left to people like Ibrahim and al-Sha'bi, (naming a few others), I look into the question myself, just like they did.'⁴³

⁴² Al-Khatib al-Baghdadi, *Tarikh Baghdad*, vol. 13, p. 346; al-Mazzi, *Tahdhib al-Kamal*, vol. 29, p. 433; al-Dhahabi, *Siyar A'lam al-Nubala'*, vol. 6, p. 403.

⁴³ M. Abu Zahrah, *Abu Hanifah*, p. 239; al-Khatib al-Baghdadi, *Tarikh Baghdad*, vol. 13, p. 365; al-Mazzi, *Tahdhib al-Kamal*, vol. 29, p. 433.

2. Imam Malik ibn Anas

Malik ibn Anas ibn Malik (93–179 AH/712–794 CE) was born in Madinah in the same year the Prophet's (peace be upon him) Companion Anas ibn Malik died. He spent all his life there, and was very devout, intelligent and courageous. He would not hesitate to express his views, fearing nothing, which led to him being severely punished and flogged in later life, due to his verdict that divorce under duress is invalid. The torture he was subjected to resulted in dislocation of his arm and caused him to suffer from incontinence until he died.

Malik was brought up in Madinah, where the Sunnah flourished, as the city was the place where a large number of the children and grandchildren of the Prophet's (peace be upon him) Companions still lived. Indeed, some of his 900 teachers were drawn from among them, but the main figures who influenced him greatly were [Abdullah ibn Hurmuz, his first teacher from whom Malik learnt to say, 'I don't know' whenever he was unclear about a question, Nafi [, the disciple of [Abdullah ibn [Umar, Muhammad ibn Shihab al-Zuhri and Rabi[ah ibn [Abd al-Rahman, known by his nickname Rabi[ah al-Ra'y. When Malik relates a *hadith* quoting Nafi [, this is considered the best chain of transmission, as it means Malik, Nafi [, and [Abdullah ibn [Umar were quoting the Prophet (peace be upon him). It is called 'the golden chain of transmission'. Al-Zuhri was the first scholar to collate the

hadiths, as he was instructed to do by the Caliph, [Umar ibn [Abd al-[Aziz. When Rabi[ah died, Malik said: ‘The sweetness of *Fiqh* has gone.’⁴⁴

Imam Malik attained a very distinguished position as a scholar of *Fiqh* and *Hadith*, and was recognized as a leading authority in both. He was one of the first scholars to produce an anthology of *Hadith*, which he included in his authoritative work, *Al-Muwatta’*. In *Fiqh* he always cared for people’s interests. Speaking of him, Imam al-Shafi[i said: ‘When scholars are mentioned, Malik comes at the top. I am indebted to no one more than I am indebted to Malik.’ Imam Ahmad said: ‘Malik is among the leading scholars. He is an imam in both *Hadith* and *Fiqh*. Who is to compare with Malik in his following of our predecessors and combining his learning with sound reason and fine manners?’⁴⁵

Methodology of the Maliki school

Imam Malik did not write down the methodology he followed in arriving at rulings. However, the methodology is mentioned in the relevant books authored by scholars of his school, as they studied the detailed questions he looked into. The sources the Maliki school relies upon are the Qur’an, the Sunnah, the unanimity of the people of Madinah, analogy, statements by the Prophet’s (peace be upon him) Companions, interests without

⁴⁴ M. Abu Zahrah, *Malik*, p. 63.

⁴⁵ *Ibid*, p. 88.



rulings, customs of Muslims, prevention of what leads to prohibitions, *istishab*, and subtle analogy.⁴⁶

3. Imam al-Shafi'i

Abu [Abdullah Muhammad ibn Idris al-Shafi'i (150–204 AH/768–820 CE) was born in Gaza and was only two years old when his mother took him to Makkah, where his father's family came from. He was brought up by his mother, who was a very devout woman, and by the age of seven, al-Shafi'i had completed memorizing the Qur'an, and by 10 he had memorized *Al-Muwatta'*, the *Hadith* and *Fiqh* anthology of Imam Malik. At a young age he joined the desert tribe of Hudhayl, one of the most eloquent Arabian tribes, where he learnt much of their poetry and stayed with them for some years. When he returned to Makkah, he had attained a superior standard of eloquence and knowledge of Arabic.

He studied under the scholars of Makkah, learning *Fiqh* under Muslim ibn Khalid al-Zanji, the top scholar at the Haram in Makkah. Al-Shafi'i excelled in *Fiqh*, *Hadith* and Arabic, and was authorized to give rulings when he was only 15, and he became a teacher at the Haram. He then travelled to join Imam Malik in Madinah, where he read *Al-Muwatta'* under him. He stayed in Madinah until Malik's death in 179 AH (794 CE), and at the age of 29 al-Shafi'i travelled to Iraq, where he became familiar with the *Fiqh* heritage of Abu Hanifah. He

⁴⁶ A. al-Baji, *Ihkam al-Fusul fi Ahkam al-Usul*, pp. 480–1.



studied Abu Hanīfah’s books, the main source of Hanafi *Fiqh*, under Imam Muhammad ibn al-Hasan, and thus combined his learning of the Hijaz *Fiqh* with that of Iraq. During his studies, al-Shafiʿi had several debates with Muhammad ibn al-Hasan. He returned to Makkah where he wrote his book, *Al-Risalah*, the first work ever on *Fiqh* methodology. He then travelled to Baghdad again where he was met by Imam Ahmad ibn Hanbal who studied under him. Leading scholars of Baghdad attended al-Shafiʿi’s circle and were influenced by his methods. ‘Ahmad ibn Hanbal said of him: “Al-Shafiʿi was like the sun in this world, and like good health for people.” Can there ever be such great scholars?’⁴⁷ His contemporaries called him the Imam of the Sunnah and the champion of *Hadīth*.

Methodology of the al-Shafiʿi school

Imam al-Shafiʿi arranged the basis for rulings into five classes:⁴⁸

1. The Qur’an and the Sunnah: Imam al-Shafiʿi places the Sunnah at the same level with the Qur’an, as it explains the Qur’an and provides details of what is mentioned in general terms in the Qur’an.
2. The unanimity of scholars on matters to which no text in the Qur’an or the Sunnah applies: He defined unanimity as the agreement on a specific ruling of all Muslim

⁴⁷ Ibn al-Jawzi, *Sifat al-Safwah*, vol. 2, p. 142.

⁴⁸ M. Abu Zahrah, *Al-Shafiʿi*, p. 184 ff.

scholars, who are qualified to exercise *ijtihad*, at any particular time after the Prophet (peace be upon him) had passed away.

3. Al-Shafi'i upholds the statement of any Companion of the Prophet (peace be upon him), provided there is no disagreement among the Prophet's (peace be upon him) Companions on the same matter. He would not take anyone's view in preference to that of the Prophet's (peace be upon him) Companions.
4. When the Prophet's (peace be upon him) Companions disagreed on a ruling, he adopted the view that is closest to the Qur'an, the Sunnah and analogy.
5. Analogy with a clear verdict in the Qur'an or the Sunnah: Analogy means applying a stated verdict to a question that carries no verdict, provided that the reasoning for this verdict applies equally to both questions.

4. Imam Ahmad ibn Hanbal

Ahmad ibn Hanbal (164–241 AH/782–856 CE) was born in Baghdad, which was at the time the capital of learning, with numerous scholars of Islamic studies and all other branches of study, and the capital of the Islamic state. He was recognized as highly intelligent and very devout, and began his learning at a young age and memorized the Qur'an. He lost his father when he was young and thereafter relied on his own efforts. As he grew up he earned a reputation for hard work, perseverance and patience in adversity. Older scholars recognized that he

had great potential. Al-Haytham ibn Jamil is quoted as saying in reference to him: ‘Should this lad live to old age, he will be the scholar of his time.’⁴⁹

Methodology of the Hanbali school

Ibn al-Qayyim explains the methodology adopted by Imam Ahmad in his rulings. It has five constituent elements:

1. Texts: When a text applies to a question that text constitutes the basis of his verdict. This is universally agreed by scholars.
2. The rulings of the Prophet’s (peace be upon him) Companions, whenever they agreed on a question.
3. When the Prophet’s (peace be upon him) Companions disagreed, he would choose the view he considered closest to the Qur’an and the Sunnah, but he would not depart from what they ruled. If his view was different from all their rulings, he would report their views, without giving preference to any.
4. Ahmad relied on *hadiths* that were lacking in authenticity when there was nothing under the same heading in conflict with these. Such *hadiths* must not be odd or contrary to the established truth, and must not include in their chains of transmission anyone who is considered unreliable. According to Ahmad, the Sunnah includes all authentic

⁴⁹ Al-Dhahabi, *Tarikh al-Islam*, vol. 5, p. 1,013.



hadiths, the Prophet's (peace be upon him) Companions' rulings, and *hadiths* that are lacking in authenticity.

5. Analogy: Ahmad only resorted to analogy when necessary, i.e. when he was dealing with a question to which none of the above sources of evidence applied.⁵⁰

The main reference works of the four schools

One: the Hanafi school

Among the best known works that explain the Hanafi school of *Fiqh* is Ibn [Abidin's *Radd al-Muhtar [ala al-Durr al-Mukhtar*; Mas [ud al-Kasani's *Bada'i [al-Sana'i [fi Tartib al-Shara'i [*; and Ibn al-Hammam's *Fath al-Qadir*.

Two: the Maliki school

One of the most important reference works of the Maliki school is Sahnun's *Al-Mudawwanah*, in which the author reports Imam Malik's rulings and statements as transmitted by [Abd al-Rahman ibn al-Qasim. The most important work that expresses the views of this school is *Mukhtasar Khalil*, which has been annotated and explained by various scholars. These include al-Dardir's *Al-Sharh al-Kabir*, with further annotations by Ibn [Arafah al-Dusuqi; Muhammad Al-

⁵⁰ Ibn al-Qayyim, *I [lam al-Muwaqqi [in*, vol. 1, pp. 29–32.



[Abdari al-Mawwaq's *Al-Taj wal-Iklil*; and al-Hattab's *Hashiyat Mawahib al-Jalil fi Sharh Mukhtasar Khalil*.

Three: Al-Shafi'i school

Imam al-Shafi'i wrote a voluminous work called *Al-Umm*, and the works of reference that expound the Shafi'i school include the annotations later scholars add to Imam al-Nawawi's *Minhaj al-Talibin*. The most important of these are: 1) Muhammad al-Ramli's *Nihayat al-Muhtaj ila Sharh al-Minhaj*; 2) Ahmad al-Haytami's *Tuhfat al-Muhtaj fi Sharh al-Minhaj*; and 3) al-Khatib al-Shirbini's *Mughni al-Muhtaj ila Sharh al-Minhaj*.

Four: the Hanbali school

Among the most important works of this school is al-Mardawi's *Al-Insaf*, in which the author takes particular care of including the various reports by Imam Ahmad and gives comparative assessment of these reports. Other famous works include Ibn Muflih's *Al-Furuq*, and those by later scholars include Mansur al-Bahuti's *Kashf al-Qina* [an *Matn al-Iqna*].