

Usul al-Fiqh

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1. Introduction

Usul al Fiqh discusses both the sources (*Adillah*) of Islamic law and the law (*Fiqh*). This view is held by a group of jurists, according to 'Nurul Anwar' written by Sheikh Ahmad Ibn Abu Sayiid, known as Mullah Jaiun, who was the house tutor of Aurangzeb, the Mughal emperor. However, primarily Usul al Fiqh deals with the sources or roots of Islamic law.

Usul al Fiqh (*Usul* is plural of *Asl*), the bases or roots of Islamic Law, expound the methods by which Fiqh (detail Islamic law) is derived from their sources. In this view, Usul is the methodology and the Fiqh is the product.

Usul deals with the primary sources of Islamic law, the Quran and the Sunnah, i.e., Usul discusses the characteristics of the Quran and Sunnah, and what are the methods of deduction of law from the Quran and the Sunnah. In doing that, Usul discusses various kinds of words used in the Quran and the Sunnah in particular and Arabic language in general, such as, *Amm* (general) and *Khass* (particular), *Mutlaq* (unconditional) and *Muqayyid* (conditional), *Haqiqi* (literal) and *Majazi* (Metaphorical), various types of clear words and unclear words. Methods of deductions from the legal verses of the Quran and the legal Ahadith (singular Hadith) are what the Fuqaha (jurists) have called *Ibarah al Nass* (whereby Ahkam or rules are derived from the obvious words and sentences themselves), *Isharah al Nass* (where Ahkam are inferred from signs and indications inherent in the text), *Dalalah al Nass* (where Ahkam are derived from the spirit and rationale of a legal text) and *Iqtida al Nass* (whereby Ahkam are derived as a requirement of the provision of the text though the text is silent on the issue). For details, please read the chapters on Interpretation in Hashim Kamali's book "Principles of Islamic Jurisprudence".

Usul al Fiqh also discusses the secondary sources of Islamic law, the *Ijma* (consensus), *Qiyas* (analogical deduction), *Istihsan* (Juristic preference) and other methods of *Ijtihad* (reasoning and investigation). All the secondary sources are either directly or indirectly based on the primary sources of Islamic law, the Quran and the Sunnah. For instance, three main elements of Qiyas, that is *Asl* (original case), *Hukm* (ruling on asl) and the *Illah* (effective cause) are based on primary sources. Usul al Fiqh also discusses other main issues involving Islamic law such as the effect of custom on law or custom as a source of law, and grades of the Islamic legal provision (i.e., what is Haram, what is Maqruh; what is Farz, what is wazib and what is Mandub (recommended) and also the methods of removal of conflict (i.e., *Tad'rud*).

In some books of Usul, grammar of Arabic language is discussed at length. Of course the knowledge of Arabic language and grammar is a must for one who wants to be a *Usuliun* or a Jurisprudent. However, this is not really a subject matter of Usul.

The benefits of the study of Usul al Fiqh are many. From a study of Usul, we come to know the methods of interpretations of the Quran and Sunnah, all the secondary sources of Islamic law, the views on Usul of major scholars of the past and present, the rules of Qiyas and other methods of Ijtihad, the history of development of Islamic law and legal theory. All these make anybody who studies Usul cautious in approach to Islamic law. He develops respect for the methodology of past masters and becomes aware of the need to follow rules in the matters of deduction of new rules of Islamic law. He then is likely to avoid careless utterance and action. Ummah can produce great *mujtabid* only by study of Usul in addition to other sciences. The principal objective of Usul is to regulate Ijtihad and guide the jurist in his effort at deducing the law from the sources.

Imam Shafii is considered to be the father of the science of Usul. This is true in the sense that the systematic treatment of the principles of Usul al Fiqh was first made by him. Before him, the jurists off course followed some principles in the deduction of law but these principles were not integrated and systematized. After Shafii, many scholars have contributed in the study of Usul, of them, the most famous are: Abul Hasan al Basri (d. 436), Imam al Haramayn al Juwayni (d. 487), Abu Hamid al Gazali (d. 505), Fakhruddin al Razi (d. 606), Saifuddin Al Amidi, Abul Hasan Al Karkhi (d. 349), Fakhruddin Al Bazdawi (d. 483), Abu Bakr Al Jassas (d. 370), Sadr Al Shariah (d. 747), Tajuddin Al Subki modern times, particularly in Arab lands.

Initially two approaches developed in the study of Usul, the theoretical and the deductive. The theoretical approach was developed by Imam Shafii who enacted a set of principles which should be followed in the formulation of Fiqh. On the other hand, primarily the early and later Hanafi scholars looked into the details of law given in the Quran and Sunnah and derived legal rules or Usul principles therefrom. However, the later scholars combined the two approaches and presently the subject essentially follows the same format.