

Module II:
The
Transmission of
Islam



Learning Objectives

- 1] Know the ideal way of learning Islamic Law (*Fiqh*).
- 2] Know the rulings and parameters of taking from multiple schools of law (*talfiq*).
- 3] Know the different ranks of the *Mujtahids*.
- 4] Know the basics of *istifta* ('seeking a fatwa')
- 5] Constructing a holistic understanding of Islam's legal tradition.

Orienting Ourselves

- This religion of Islam has been preserved—in beliefs, laws, ethics, and spirituality.
- This preservation has been through transmitters.
- Those who transmitted the Law are called *Mujtahids*.
- The *Mujtahids* had natural differences based on language, logic, and capacities for applying the revealed texts (Quran and Sunna) to new issues.
- As these *Mujtahids* taught and delivered legal rulings, their positions and legal reasoning were recorded by their students and later codified.
- These became the seed for what we now call *Madhahib* ('ways of going'—schools of Islamic law).
- There were many schools of Islamic law, but all but four have died out.
- The surviving schools are those of Imams Abu Hanifa, Malik, Shafi'i, and Ahmad b. Hanbal.

The Four *Madhabib* are:

- 1] Collective *ijtihad* traced to the legal methodology of their founders (*Musnada*).
- 2] Based on refined legal principles that remove subjectivity from their rulings. (*Mu'assala*)
- 3] Repositories of internal scholarly weighing of proof texts—the advanced works in each school discuss the primary text proofs for their positions. (*Mudallala*)
- 4] Well-structured, holistic, internally consistent. (*Muttasaqa*)
- 5] Codified, presenting a sound structure for laymen, students, scholars, judges, and muftis. (*Munaqqaha*)

Which *Madhab* is Best?

For the non-*Mujtahid* this question is meaningless, because what measure are they using to determine which is best? What criteria?

What makes one 'best' is determined by its *Usul* (legal methodology and approach to understanding the primary texts), but the differences between the *Usul* of the Four *Madhahib* are matters of *Ijtihad*, so any preference is relative and *Zanni*. (A Hanafi scholar will believe that Hanafi *Usul* is best; a Maliki scholar will believe that Maliki *Usul* is best, and so on...)

Questions of *Usul* and internal scholarly discussions are not the immediate concern of the non-*Mujtahid*, ordinary layman, who simply wants to learn how to worship correctly.

Must a Layman Follow a *Madhab*?

- A layman (non-*Mujtahid*) is required to follow qualified scholarship.
- A qualified scholar is one who has formal legal training, which can only be through one of the four *Madhabs*.
- Therefore, a layman who learns *fiqh* or asks a mufti, is receiving from one of the four schools.
- There is nothing legally binding for a non-*Mujtahid* to follow a particular legal school in every matter ('The *madhab* of the layman is the *madhab* of his mufti')
- However, for structure, ease, and consistency, it is best for a layman to learn their basic *fiqh* from a single school.
- A layman who aspires to become a scholar must learn from a single *madhab*. He or she will not become grounded in *fiqh* by abandoning the tried and tested methodology of learning from within a single legal school.

The Ranks of *Mujtahids*

- 1] ***Mujtahid Mutlaq Mustaqil*** (Absolute Independent Mujtahid). These are the Mujtahids deriving law directly from the Quran and Sunna and establishing their own Usul, or legal framework. Absolute Mujtahids: Imams Abu Hanifa, Malik, Shafi'i, and Ahmad b. Hanbal.
- 2] ***Mujtahid Mutlaq Muntasib*** (Absolute Mujtahid Ascribed to a School). These Mujtahids operate according the Usul of the school to which they belong. Examples: Imams Abu Yusuf, Muhammad al-Shaybani, Zufar (Hanafi); Ibn Majishun, Ash-hab, Ibn al-Qasim (Maliki); Buwayti, al-Muzani (Shafi'i).
- 3] ***Mujtahid fil-Masa'il*** (Mujtahid in Issues). These follow the arch-principles of a school and transmit its rulings, but apply the Usul of the school to new issues or to issues the Imam did not discuss. Examples: Imam al-Tahhawi (Hanafi); Ibn Abi Zayd (Maliki).

The Ranks of *Mujtahids*

4] ***Ashab al-Takhrij*** (Those who Extract Rulings). These extract rulings from the past fatwas of the Imams and develop principles based on pre-existing material in the school.

5] ***Ashab al-Tarjih*** (Those Who Establish the Preponderant Rulings in the School). These scholars establish, through Ijtihad, the strongest view within the school when there are intra-madhab differences. Examples: Quduri (Hanafi); Nawawi (Shafi'i); Khalil (Maliki); Buhuti (Hanbali).

6] ***Ashab al-Tamyiz*** (Those Who Discern). This is the Mujtahid who works within the school to determine what the Imam actually said, and when there are conflicting narrations from him, to establish the strongest of the two.

7] ***Mujtahid fil-Fatwa***. This is the Mujtahid who masters the rulings of his particular school of law and understanding the strongest view on which fatwa and qada is based, and conveys them.

Practicalities...

- How do I learn *Fiqh*?
- Must I stick to a single school in all issues?
- Can I pick and choose among the four schools?
- How do I get answers to my questions?
- What is the process of fatwa?



How Do I Learn *Fiqh*?

Any of the four schools of law are valid to follow, and which one chooses to follow is a matter of personal preference and circumstances. You should consider:

- 1] Which *madhhab* you can learn properly, given your life circumstances.
- 2] Which *madhhab* has the most resources in your locality (teachers, books, etc.).
- 3] Which madhab is the easiest to learn and for which there are teachers to answer questions.
- 4] Your personal inclination.
- 5] Your family and community background.

How Do I Learn *Fiqh*?

- 1] **Complete this program!**
- 2] Understand the foundations of ritual worship (purification, prayer, fasting, zakat, and Hajj) and then the foundations of transactional law (e.g, buying and selling, marriage and divorce, etc.).
- 3] Understand key concepts properly (definitions, pillars, conditions).
- 4] Apply these concepts to reality and learn how the basics of *Fiqh* impact your daily life.
- 5] Review your Fiqh once or twice a year to keep everything fresh.
- 6] 'Practice makes [near] perfect.' –living the *Fiqh* keeps it fresh.

Must I Stick to a Single School in All Issues?

- 1] Some scholars say it is obligatory to stick to the *Madhhab* of a particular Imam because the layman believes that it is the truth and therefore it is obligatory for him to act in accordance to his belief.
- 2] Most scholars say: *Taqlid* of a particular Imam in every issue is not obligatory. It is allowed for him to make *Taqlid* of any *Mujtahid* he wants.

Mixing Between *Madhabib*

There is a strong difference of opinion about *talfiq*, or mixing between *Madhabib*.

Some forbade it. Others allowed it unrestrictedly. Others allowed it with conditions.

Islamic laws are three types:

- 1] Those built upon ease and leniency.
- 2] Those built upon caution and prudence.
- 3] Those built upon securing the greatest benefit for people and averting harms.

Mixing Between *Madhabib*

#1: Those built upon ease and leniency

These are the rulings for ritual worship. It is allowed to mix rulings in these. One can make wudu' and pray according to the structure of the Hanafi school, and fast according to the principles of the Shafi'i school etc.

As for Zakat and worship that relates to wealth, one must exercise caution so that the rights of the poor are not neglected. Mixing between schools for one's financial benefit at the expense of the poor is a forbidden form of mixing.

Mixing Between *Madhabib*

#2: Those built upon caution and prudence

This is the area of forbidden things and acts. Example:

- In the Hanafi school, it is allowed for a woman to offer herself in marriage without her guardian/wali [but there must be a legally valid reason and the groom must be a kuf' (compatible)].
- In the other three schools, marriage is invalid without the permission of her guardian.
- In all four schools, at least two witnesses are required.
- In the now extinct Madhab of Imam Abu Thawr, witnesses are not required (a wali is).
- If a person a] takes the Hanafi view that doesn't require the guardian, and b] takes the position of Imam Abu Thawr that witnesses are not a condition, they have fallen into fornication.
- The marriage is invalid according to ALL of the schools. For the Hanafi school, because there were no witnesses. For the other schools: because there was no wali and no witnesses. For the extinct Thawri school: because there was no wali.

Mixing Between *Madhahib*

#3: Those built upon securing the greatest benefit for people and averting harms

This is the area of *Siyasa Shar'iyya* (Governance): Criminal law, prescribed punishments and discretionary punishments, marriage, divorce, international relations, war, etc. In this area, the ruler may mix between the Madhahib in a way that secures the greatest benefit and averts harms.

Mixing Between *Madhahib*: Conclusion

Purposely following the easiest from every *madhab* without necessity or legitimate need is forbidden. This is forbidden by means of ‘cutting off the avenues of evil,’ preventing the means of anarchy and unfettering from the obligations of the Shariah.

‘When the *Mukallaf* (morally responsible individual) takes the dispensations from all of the legal schools to apply to everything in his life that requires a measure of struggle, and when he takes every scholarly opinion that agrees with his desires, he has unfettered himself from the demands of Godfearingness (*taqwa*), and has flung headlong into following his vain desires, and demolished the foundation set by the Shariah...’ –Imam Abu Ishaq al-Shatibi

How Do I Get Answers To My Questions?

1] You, the *Mustafti*, describe the question as accurately as possible to the Mufti.

2] The Mufti then takes the following process to approach the answer:

- Understand the question (*tasawwur*)--if he doesn't understand the nature of the question, his answer will be far from the mark. This includes knowing the circumstances and location of the questioner.
- Perform a literature search--based on his training, he knows where to find the answer. Each *madhab* has its own hierarchy of authoritative works on which fatwas are based.
- Select the relevant fatwa works for further review. Many fatwa works will have the answer readily available (e.g., Mi'yar in the Maliki school, 'Alamghiri in the Hanafi school).
- Extract the relevant ruling from those sources.
- Critically analyze the information in those sources to determine the exact ruling, sifting through any conflicting views to determine what is 'relied upon' for fatwa.
- If needed, consult with scholars to check, verify, and discuss the details of the question and the relevant rulings.
- Give the verdict (fatwa) based on the authoritative text.

At most, the present day Mufti is a transmitter.

How Do I Get Answers To My Questions?

What happens in the absence of an authoritative text?

1] Mufti resorts to making *Ijtihad*. If he is not qualified to do so then it's impermissible. The person must be qualified to make *Ijtihad* within the Madhhab to give preference to one view over the other. Otherwise, he conveys the relied upon position of the Madhhab and gives weak opinion based on the circumstances of the individual only if the conditions are met.

2] Consult a learned person from another school and convey the relied upon position of the other school for the novel issue.

Example: **What does one do for 'Isha in Scandinavia when there is no sunset in the summer?**

If you go to a Maliki mufti, he will take a view from the Shafi'i school because a) the issue is not mentioned in the Maliki works, and b) the Shafi'i *usul* on prayer times is similar, so we come to the ruling: We pray based on the prayer times of the closest city that has a sunset.

Onwards!

The Fiqh of Fasting

