

Preface

In the Name of Allah, the Beneficent, the Merciful

The subject under discussion is the knowledge of the Principles of Jurisprudence (*Usul'ul Fiqh*). The study of Principles of Jurisprudence is tantamount to a preparation to the study of Jurisprudence.

The knowledge about the Principles of Jurisprudence is more profound than the knowledge of Jurisprudence itself. The relationship between the study of Jurisprudence and its Principles is the same as it is between the study of Logic and Philosophy.

For example, everybody knows that the price of a certain commodity shows an upward trend while that of another remains static. This knowledge is superficial but the knowledge as to why the prices show an upward trend is a deep-rooted knowledge. The Holy Qur'an and the Sunnah of the Holy Prophet gives us precise commandments and edicts to adhere to the teachings of Islam in every walk of life; but all of these commandments have not been explained in detail.

It has been so because events and situations pertaining to relevant human activity and behavior vary; but to arrive at conclusions regarding various general rules and regulations, a guideline in the form of principles has no doubt been laid down.

Hence, the study of the Principles of Jurisprudence viz. the principles of deducing laws has become very important as well as a fascinating subject. The work on this subject started from the second century of the Hegira with a view to making correct deductions from Islamic injunctions for practical purposes.

In short, the Principles of Jurisprudence is the study of those rules that are used in deducing Islamic laws from the Book of Allah (Qur'an) and the Traditions of the Holy Prophet (*Ahadith*).

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The need for 'Ilm'ul Usul

A man who believes in Allah, Islam and the Islamic law and who knows that being a slave of Allah, the Almighty, he is accountable to Him for all his actions, has no alternative but to lead his life in every

respect in accordance with the law of Islam. His common sense demands that he should base all his personal actions as well as his relations with others on Islamic teachings, and for all practical purposes take that position which his knowledge of himself that is the knowledge that he is a slave of Allah and has to obey the law sent by Him to His Prophet, enjoins upon him.

In view of this, it is essential that in his practical life man should know clearly what he should do and what he should not.

Had all the injunctions of Islam been quite clear and easy to understand, everybody could determine himself what he should do in a given case.

Everybody knows that it is his duty to follow the Islamic law. He has to do whatever has been enjoined by it and has to refrain from whatever has been declared improper by it. As for the acts which have been declared permissible, he is at liberty to do or not to do them, Therefore if all the rules of Islamic law as to what is obligatory, forbidden and permissible were clear and definitely known, there would have been no doubt regarding the practical attitude that a man should take to observe the Islamic law in any given situation. In this case, there would have also been no need of any wide scale research or study.

But owing to many factors including our remoteness from the time when Islamic law was enunciated, in many cases the religious instructions are not very clear and appear to be complicated. Consequently in these cases it is very difficult for a layman to make a decision based on the understanding of Islamic law.

Naturally a man, who does not know whether a particular act is obligatory, forbidden or permissible according to Islamic teachings, cannot be sure what practical attitude he should adopt in regard to that particular act.

For this reason it is necessary to set up a science that may look into each and every case and state with proof what practical attitude one should adopt in regard to it according to the Islamic law.

The science of jurisprudence has come into being for this very purpose, it determines and specifies the practical attitude in each specific case in accordance with Islamic Law. This specification is supported by arguments and proofs. The jurist endeavors to find out a rule of law for every occasion and every incident in life, It is this process which is technically called *Ijtihad*.

To find out the rules of law actually means the delineation of practical attitude towards Islamic law. This delineation is substantiated by means of supporting arguments. By practical attitude we mean the faithful observance of the law of Islam, which is the duty of everybody.

Hence the science of Islamic jurisprudence means the science of the arguments adduced in support of the fixation and delineation of practical attitude towards every specific situation in conformity with the shariah (Islamic law), the faithful observance of which is our obligatory duty. The fixation of practical attitude through arguments is what we call *Istinbat* (deduction) in the matter of Islamic law.

Thus it may be said that the science of Islamic jurisprudence is the science of deducing the rules of Islamic law; in other words, it is the knowledge of the process of deduction. The science of jurisprudence uses two methods to determine the practical attitude by means of a proof that removes any ambiguity or complexity from it:

1. Indirect Method: That means proving a rule of law by discovering that it has been specifically prescribed by Islam and thus fixing clearly the practical attitude enjoined on man by his duty in regard to the observance of Islamic law. If we can prove that a certain action is obligatory, we can be sure what our attitude should be to it and can know that we must take that action.

2. Direct Method: In this method a proof is adduced to determine the practical attitude, but not through the discovery of a clear decision in a particular case, as we observed in the indirect method. Here we cite a direct argument to determine what the practical attitude should be. This is done in the case in which we are unable to find a firm legal decision and do not know whether a particular act according to the Islamic law is obligatory, forbidden or permissible.

In this case we cannot successfully employ the first method in the absence of enough legal proof, but have to resort to other arguments which may help us in determining our practical attitude and in deciding what we should do so that we may be able to follow the teachings of Islam earnestly and may not be slack in our duty which Islam has imposed on us.

In both these methods the jurist deduces the rules of Islamic law and fixes the attitude to be taken vis-à-vis the Islamic law. He adduces a proof to support his opinion either in a direct or an indirect way.

The process of deduction in the science of Islamic jurisprudence is so vast that it covers every event and every happening in human life. A rule has to be deduced to cover every eventuality and every occasion. For this purpose the jurist employs the above-mentioned two methods.

It is this process of deduction which comprises the science of jurisprudence, and in spite of its multifold variety consists of a number of common elements and general rules, which put together, form the basis of the process of deduction, which constitutes the science of jurisprudence.

The common elements forming the basis of deduction require the institution of a special science for their study and processing to meet the requirements of jurisprudence. This science is called *'Ilm'ul Usul'ul Fiqh* (the science of the principles of jurisprudence).

Definition of 'Ilm'ul Usul

On this basis *'Ilm'ul Usul* (the science of the principles of Islamic jurisprudence) may be defined as the science dealing with the common elements in the procedure of deducing Islamic laws. In order to grasp this definition it is essential that we know what are the common elements in the procedure of deduction (*Istinbat*).

Now let us cite a few examples of this procedure so that through a comparative study of these, we may

arrive at the idea of the common elements, in the procedure of deduction.

Suppose, for instance, that a jurist faces the following questions and wishes to answer them:

1. Is it prohibited for one who is fasting to immerse himself in water?
2. Is it obligatory on an individual who inherits wealth from his father to pay its khums?
3. Does prayers become null and void because of laughter during that time?

If the jurist wants to reply to the first question, for example, he would say, "Yes, immersion in water is prohibited for one who is fasting". The jurist derived this law of Islam by following a tradition narrated by Ya'qub ibn Shu'ayb from Imam Ja'far Sadiq (a). "Imam Sadiq (a) said, neither a mohrim (one in the state of ehram, i.e. ready for pilgrimage) nor one who is fasting should immerse himself in water". A sentence framed in this way indicates, in common parlance, according to philologists, to prohibition. The narrator of this tradition, Ya'qub ibn Shu'ayb, is reliable and trustworthy.

And although a reliable and trustworthy narrator may, in rare cases, err or deviate (since he is not infallible), the Almighty Law-giver has prohibited us from attributing error and deviation to any reliable and trustworthy narrator, and has declared such narrations to be taken as true. He has also ordered us to follow them without paying any attention to the slight possibility of error or deviation. Thus the conclusion is drawn from the above that immersion in water is prohibited (haram) for one who is fasting, and the *Mukallaf* (responsible person in the eyes of Islamic law) must abstain from it while fasting in accordance with the law of Islam.

The jurist will reply to the second question in the negative, i.e. that it is not obligatory for a son to pay khums on the legacy (received) from his father, because there is a tradition in that behalf, narrated by Ali ibn Mahziyir, in which Imam Sadiq (a) has defined the kinds of wealth on which the payment of khums is obligatory. In common parlance this sentence clarifies that the Almighty Law-giver has not imposed khums on legacies that are transferred from father to son. Although the possibility exists that the narrator, in spite of his reliability and trustworthiness, may have erred, the Almighty Lawgiver has ordered us to follow the narrations of the reliable and trustworthy narrators, and to disregard the slight possibility of error or deviation on his side.

Thus the *Mukallaf* is not bound to pay khums on wealth inherited from his father, according to the Islamic law. The jurist will reply to the third question in the affirmative i.e. "Laughter nullifies prayers". This reply is based on the tradition narrated by Zurarah from Imam Sadiq who says, "Laughter does not invalidate ablution (wuzu) but it invalidates prayers". In common parlance, this would mean that a prayer (salat) in which laughter occurs will be deemed null and void, and will have to be repeated obligatorily.

In other words this means the nullification of the prayer. And the narration of Zurarah falls among those which the Almighty Law-giver has commanded us to follow and for which He has given clear and revealing proofs. Thus it is obligatory on the worshipper, according to the Islamic law, to repeat the prayers in which laughter occurred, as that is required of him by the Islamic law.

By examining these three juristic standpoints we find that the laws, which the jurist derived, belong to different categories. The first concerns fasting and the one who fasts; the second khums and the economic system of Islam; and the third prayer and some of its limits. We also see that the proofs on which the jurist relied are all different. Regarding the first law he relied on the narration of Ya'qub ibn Shu'ayb, for the second on that of Ali ibn Mahziyar and for the third, on that of Zurarah. Each of these narrations has its own text and special verbal construction, which is essential to study in depth, and to clearly define. However in the midst of this variety and these differences in the three standpoints, some common elements are found in all the three cases. These common elements were utilized by the jurists in all the three procedures of deduction.

Among those common elements is the recourse to common parlance (al-'Urf al-'Am) to understand a text (al-Nass).¹ Thus the jurist relied for his understanding the text in each case on the manner in which the text would be understood in general usage. This means that general usage is a valid proof and a competent source in fixing the exact meanings of words. In terms of *'Ilm'ul Usul*, it is called Hujjiyah al-Zuhur al-'Urfi,² or the validity of general usage as a proof. So Hujjiyah al-Zuhur al-'Urfi' is a common element in the three procedures of deduction.

Similarly, another common element is found and that is the command of the Almighty Law-giver, to accept and follow the narrations of the reliable and trustworthy narrators. The jurist in each of the three cases of deduction discussed and came up against a text transmitted by a reliable and trustworthy narrator. In those texts the possibility of error and deviation exists, since the narrators were not infallible. However, the jurist disregarded this possibility, nay, ignored it completely, on the basis of the command of the Almighty Law-giver to accept and follow the narrations of the reliable and trustworthy narrators.

To this common element we give the name Hujjiyahtul Khabar or the validity of a reliable transmitted text as proof. Thus Hujjiyahtu'l Khabar is a common element in all the three cases of deduction discussed above. Had it not been so, it would have been impossible for the jurist to derive the prohibition of immersion in water in the first case, or that the payment of khums being not obligatory in the second case or the nullification of prayers by laughter in the third instance.

Thus, we arrive at the conclusion that the procedure to deduce the law consists of particular as well as common elements. By "particular elements" we mean those elements

that vary from case to case. Thus the narration of Ya'qub ibn Shu'ayb is a particular element in deriving the prohibition of immersion in water (for one who is fasting) because it does not enter into other operations of deductions. In such case other particular elements take its place as for example, the narration of Ali ibn Mahziyar and Zurarah. By "common element" we mean the general rules which enter into different operations of deduction on a variety of subjects, as are the elements of Hujjiyah al-Zuhur al-'Urfi and Hujjiyahtu'l Khabar.

In *'Ilm'ul Usul* the common elements are studied in the process of deduction which are not confined specifically to anyone legal problem. And in *'Ilm'ul Fiqh* (the science of jurisprudence) the particular

elements are studied in each case of the process of deduction that concern that legal problem particularly.

Thus, it is left to the jurist to scrutinize meticulously, in every legal problem, the particular narrations, which are connected with that problem and to study the value of those narrations and to endeavor to understand the texts and words in the light of common parlance. On the other hand, the specialist in *'Ilm'ul Usul* deals with the examination of the validity of common parlance in itself as a proof (i.e. *Hujjiyahtu'l 'Urf al-'Am*) and of the validity of a reliably transmitted text as a proof (i.e. *Hujjiyahtu'l Khabar*). He poses questions along the following lines: Is common parlance valid proof? What are the limits within which recourse to common parlance is obligatory? On what evidence is the validity of a reliably transmitted text established as a proof? What are the general conditions in a reliably transmitted text by virtue of which the Almighty Law-giver confers upon it the status of validity as a proof and deems it as acceptable evidence? And there are other such questions pertaining to the common elements in the process of deduction.

In this light we can conclude that *'Ilm'ul Usul* is the science dealing with the common elements in the process of deduction. It is the science which discusses the elements which enter into different cases of deduction to derive laws on a variety of subjects, as, for example, al-Zuhur al-'Urfi and al-Khabar as a proof are two common elements which were relied upon in the derivation of the laws concerning fasting, khums and prayers (as discussed above).

'Ilm'ul Usul does not only define the common elements but it also fixes the degrees to which they may be used in the process of deduction and the inter-relationships existing between them, as we shall see in the forthcoming discussion. It is through this that the general system of deduction is established. Hence, we deduce that *'Ilm'ul Usul* and *'Ilm'ul Fiqh* are inter-connected in the process of deduction. *'Ilm'ul Fiqh* deals with the process of deduction whereas, *'Ilm'ul Usul* deals with the common elements in the process of deduction. A jurist delves into *'Ilm'ul Fiqh* and endeavors to derive a law of the *Shari'ah* by adding the particular elements for that case in a legal discussion to the common elements obtained in *'Ilm'ul Usul*. A specialist in *'Ilm'ul Usul*, on the other hand, studies the common elements in the process of deduction and places them at the search of the jurists.

The Subject Matter of 'Ilm'ul Usul

Every branch of knowledge usually has a basic subject matter on which all its discussions are centered and around which they revolve, aiming to discover the characteristics, conditions and laws pertaining to the said subject matter. Thus, for example, the subject matter of physics is nature and the discussions and researches of physics are all connected with nature, so we attempt to discover natural conditions and natural laws. Similarly the subject matter of grammar is the word, as it discusses the various cases and conditions of words. Thus the question arises, as to what is the subject matter of *'Ilm'ul Usul* to the study of which we devote all our attention, and around which all its discussions revolve.

If we keep in mind the definition which we have mentioned above, we conclude that *'Ilm'ul Usul* in reality, studies the same process of deduction which the jurists study in *'Ilm'ul Fiqh*, and all the discussions of *'Ilm'ul Usul* are connected with the close examination of this process and also bringing out their common elements. Thus the process of deduction is the subject matter of *'Ilm'ul Usul*, in view of its being a science of studying the common elements which enter into processes, such as, the validity of al-Zuhur al-'Urfi and al-Khabar as proofs.

'Ilm'ul Usul is the Logic of 'Ilm'ul Fiqh

Your knowledge of logic would no doubt permit us to cite the science of logic as an example in discussing *'Ilm'ul Usul*. As you know, the science of logic studies, in reality, the process of thinking, whatever may be its kind or scope or academic field, and establishes a general system that must be followed by the process of thinking in order that it should be correct. For example, the science of logic teaches us how we must proceed in reasoning, in view of its being a process of thinking, in order that our reasoning be correct. How do we prove that Socrates is mortal? How do we prove that the sum of the angles of a triangle is equal to two right angles? How do we prove that a lunar eclipse is caused by the earth coming in between the sun and the moon?

The science of logic replies to all these questions through the general methods of reasoning like analogy and induction, which apply to these different fields of knowledge. Thus the science of logic is the science of the very process of thinking as it lays down the general methods and elements for it.

From this angle, *'Ilm'ul Usul* resembles the science of logic apart from its discussing, a special category of thinking i.e. the process of legal thinking to derive laws. *'Ilm'ul Usul* studies the general common elements which the process of deduction must include and be in conformity with, in order to arrive at correct deduction, the conclusions, which the jurists will accept. Thus *'Ilm'ul Usul* teaches us how we derive the rule of immersion in water for one, who is fasting, How do we derive the rule of purifying a thing with the water of a cistern i.e. Kur.3

How do we derive that the Idd prayers are obligatory? How do we derive the prohibition of defiling a masjid? How do we derive that a sale affected through coercion is null and void? All these questions are clarified by *'Ilm'ul Usul* by setting up general methods for the process of deduction and pointing out the common elements in it.

Thus, we can call *'Ilm'ul Usul* "the logic of *'Ilm'ul Fiqh*" because the former plays an active part in *'Ilm'ul Fiqh* analogous to the positive role performed by the science of logic in different sciences and in human thought generally. On this basis it is the logic of *'Ilm'ul Fiqh*, or in other words, "the logic of the process of deduction".

We conclude from all this that *'Ilm'ul Fiqh* is the science of the process of deduction and *'Ilm'ul Usul* is the logic of that process, which brings out its common elements, and establishes a general system on which *'Ilm'ul Fiqh* must rely.

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1. By al-Nass or text here, we intend the words transmitted from the infallible Prophet or Imam.
 2. In the terminology of 'Ilm'ul Usul, Hujjiyah means the validity as a proof to justify the master punishing his servant if he had not acted according to it and to justify the servant seeking release from punishment by his master if he had acted thereby. So every proof having this dual capacity is deemed as Hujjah in the terminology of 'Ilm'ul Usul. Apparent words of the master belong to this category. That is why it is called Hujjiyah.
 3. 1 Kurr means water which takes 27 cubic span space (3x3x3). It is better to make it 42 -78 cub. ft. Note: 1 span = 9 inches.

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