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Main Features Of Islamic Law And The Role Of "Usul Al Fiqh" In It

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ABSTRACT

The term fiqh or as it is called jurisprudence, generally, have been discussed from a long time ago. However, the word "fiqh" belongs to more Islamic law and it has many implicit rules, meanings and certainly it makes a point to the Muslim people how to manage with their way of life. In short, in this article those kinds of implicit and explicit points are widely observed according to the works of the world's prominent scholars.

KEYWORDS

Fiqh, faqih, Ijma, Muslim, Qur'an, comparison, Islamic jurisprudence, Shariah, Hanafi school, al-Fuqaha, al-Mutakallimun, al-Mamzudj, mutalaf, West Africa, Central Asia, Middle East.

INTRODUCTION

Fiqh is a great value achieved by Islamic jurisprudence, the peoples of the East and Islamic culture. It covers not only religious-legal and spiritual-moral issues, but the entire way of life of Muslims [1, p. 209].

The basis of Islamic jurisprudence is the phrase "fiqh", which means "knowledge" or "understanding" when translated from Arabic [2, p. 213]. Although the word "fiqh" in the dictionary means "to comprehend", "to

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realize", "to understand", it refers not only to knowledge but also to deep understanding, perfect and detailed understanding. Thus, a "faqih", that is, a scholar of jurisprudence, must know and memorize the rules of the Shariah, as well as know all their causes and wisdoms, and understand the purposes of the Shariah. Therefore, a person who knows the rules of the Shariah in a simple way is not considered a faqih, even if he is called a scholar.

As for al-fiqh, it should be noted that it appeared much earlier than other Islamic sciences. Although all the main branches of modern jurisprudence (civil, family, criminal, administrative or constitutional law) are called differently, in fact they can be called different branches of jurisprudence [3, p. 21]. Part of al-fiqh is devoted to the rules of prayer and other religious practices, while the other includes practical rules that are necessary in the life of every Muslim.

THE MAIN FINDINGS AND RESULTS

The science of jurisprudence gradually developed into an independent entity, separated from the sciences of recitation, tafsir, and hadith [4, p. 23].

Islamic law is based on the principles of justice set out in the Qur'an and a number of additional sources. It regulates various spheres of human and social life consists of legal criteria that coordinate the interaction of people with each other and with the authorities.

There are four common sources from which Shariah rulings are derived, and the four scholars of the Sunni school of thought agree that the Quran, the Sunnah, the ijmo, and the analogy are as follows [5, p. 7]. According to Ibn Khaldun, ijma and comparison were found during the time of the Companions, and with them the methods of fiqh reached four [6, p. 359].

Verse 59 of Surat an-Nisa 'of the Qur'an proves the authenticity and orderliness of these four main sources:

That is, "O you who believe! Obey Allah, and obey the Messenger and those in authority among you. If you can't agree on something (on the religious issue) – if you believe in Allah and the Last Day, then refer him to Allah and His Messenger. That is better and the solution is more beautiful (work)" [7, p. 87].

The method al-Fiqh is based on three methods and they have their own characteristics.

A) - al-Fuqaha (plural of the word faqih - jurist) - Hanafi school.
B) - al-Mutakallimun (plural of the word mutakallim - theologian) - Shafi'i school.
C) - al-Mamzudj (mixed) [8, p. 11].

In this combination, it is appropriate to use the word "method" in the sense of "evidence" because jurisprudence is rationally based on evidence [9, p. 14].

In addition, several mutalaf; if some sectarians acknowledge their origin; there are sources that are not recognized by some denominations [5, p. 7].

Over time, Islamic law as a separate legal system has become increasingly important around the world. This type of law emerged and was formed during the Arab Caliphate and did not extend beyond the Arabian Peninsula for a long time. Its development process ranged from the patriarchal-religious community of Arab statehood to the evolution of major empires. The abolition of the Arab Caliphate did not undermine the position of Islamic law; on the contrary, it took on new

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dimensions and became the basic law in a number of countries in Asia and Africa that converted to Islam in the Middle Ages [10, p. 34].

Muslim law is one of the basic modern legal systems with its own legal culture, ideology and science [11, p. 14].

Muslim law is a living, universal doctrine that is flexible and requires a comprehensive consideration of any issue that arises. An in-depth knowledge of jurisprudence will enable scholars to prioritize correctly, consistent solution of complex problems; to defend the principles of faith when necessary and facilitates religious practice where permitted.

Muslim law embodied elements of the earlier legal cultures of the East, i.e., legal customs and traditions. Institutions of the Iranian legal system were also used during the Umayyad dynasty, as well as Byzantine and partly Roman law. In the creation of the pillars of Sharia, this connection between Eastern and Western civilizations is felt, albeit in part [12, p. 42]. The rule of law in Islamic law was founded by the Prophet and the four righteous caliphs who followed him. Also, the holy books of Muslims - the Qur'an and the Sunan - have been collected by interpreting the rulings, words and deeds of our Prophet Muhammad (saas).

Sharia law was originally called the law of confession [13, p. 14], the theoretical and normative parts of which covered not only legal rules but also morals. In the early stages of the development of the Shari'ah, special attention was paid not to human rights, but to his duties before Allah.

In the eighth century, when the Shari'a clashed with feudal forms of social relations, it underwent a process of transformation from divine legal thinking - from rationalist, random methods of adopting legal norms - to logical-systemic rules. Sometime later, in the ninth century, jurists introduced into Muslim law a rational assessment of normative behavior, where human actions are assessed as legal actions, but this does not mean deviating from the conservative principles set out in the Qur'an and Sunnah. Any Muslim outside his country had to observe and respect the fundamentals of Islam. Gradually, with the spread of Islam, Sharia became the legal system of the world. This set it apart from the laws of the Western European states, which were characterized by their peculiar character, limited scope of action, and internal discord.

Sharia law has also spread beyond the borders of the near and Middle East to the countries of Central Asia and the Caucasus, the North, as well as partly to East and West Africa, and a number of countries in Southeast Asia. However, such a proliferation of Islam and Sharia has led to the emergence of specific features and differences in the interpretation of individual legal institutions and in the resolution of legal disputes. Later, two main trends emerged in Islam [14, p. 40].

The division in the Shari'a was Sunni and Shiite. The struggle between these spheres is reflected in the legal norms concerning various aspects of the life of the state and society. Shiites, for example, advocated the transfer of state power by inheritance and the consolidation of secular and religious power in the hands of priests and imams. The Shiites only accepted the legends that came from the reign of Caliph Ali [15, p. 207]. Representatives of the Sunnis, in turn, were divided into independent law schools, and the names of prominent Muslim jurists: Hanifis, Malikis, Shafi'is, Hanbali became widely known. The

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most common of these were the Hanafi schools of law in Egypt, Turkey, and India.

Shiites are also divided into a number of independent schools [16, p. 69]: the Ismailis, the Jafari, and the Zaidi. Extremely comprehensive thinking and Islamic practice have caused some confusion over people's understanding of the fundamentals of the Qur'an. After all, the main idea of the Shari'a is that the peculiarity of the living conditions is that it applies only to the Muslim and the relationship between Muslims.

The Shari'a code consists of three parts: praying (duties related to religious worship), muamalat (pure legal norms), and torment (punishment system). At the same time, the rules are firmly established, they determine all the norms of human relations in the family and society, regulate civil law relations, the process of resolving property disputes. There was also a certain system of punishment for violating Sharia law.

The main unit of Sharia in Muslim law is fiqh (the doctrine of Muslims on the rules of conduct, as well as a set of social norms), the process of its development consists of several stages [17, p. 142].

The first stage is the period of the Prophet Muhammad ibn Abdullah's (saas) activities in the path of Islam (610-632 AD). The only source of Muslim law at that time was the Qur'an, and later the Sunnah. The Qur'an was the basis for the formation of the Shari'ah, and the application of this principle by the Prophet in daily life (sunnah) was to explain the principles set out in the Qur'an. Thus, Islamic law prohibits immorality, adultery, drunkenness, and usury. Commercial cases involving fraud are condemned. In short, Islam has rejected all situations that are harmful to human beings and has endorsed aspects that are beneficial [18, p. 401]. The legal part of these important norms was formed during the life of our Prophet and later these norms became the source. But they were not enough to systematically manage all Muslim relations.

The second period of the development of jurisprudence lasted from the time of the righteous caliphs, that is, from Abu Bakr until the death of the fourth caliph, Ali (d. 632–661). During this period, the sphere of influence of Islam expanded and the main task of jurisprudence was to have a positive impact on the culture and customs of the occupied territories. In this regard, the need to address the many problems that have arisen among the indigenous peoples has also been a major impetus for the development of fiqh.

During this period, new ways of solving problems were formed by the caliphs. A unified system for assessing the legitimacy and fairness of Muslim movements has been developed. This includes the following sequence of actions:

1) Seeking solutions from the Qur'an;
2) If there is no answer in the Qur'an, in the search for a solution - the use of the Sunnah, the words and actions of the Prophet;
3) if there is no answer in the Sunnah, then a meeting of the leading Companions of the Prophet can be convened and a unanimous decision can be made as a result of the discussion (ijmo);
4) if unanimity is not reached, the opinion of the majority may be taken into account;
5) If the meeting did not reach a decision, then the caliph can conclude it on the basis of his interpretation - ijtihad.

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This ijtihad became a precedent and was later used in resolving similar situations.

The third period coincides with the reign of the Umayyad dynasty. This period is characterized by the emergence of various conflicts and many new trends. One of the representatives of this movement was the famous Caliph Umar ibn Abdul Aziz [19, p. 313]. Some call him the fifth righteous caliph because he gave instructions to start collecting the hadiths of the Prophet Muhammad. During this period, the number of ijtihad increased significantly and the hadiths began to spread.

In 750-950 AD, during the Abbasid dynasty, Islamic law developed significantly. During this period, the number of sects gradually decreased and the main directions were preserved. The peculiarity of each sect is that this ijtihad, peculiar to this school of legal thought, arose, and each school began its own way, and its followers began to call themselves by the names of the sect.

From 1258 to the middle of the nineteenth century, the field of jurisprudence underwent a certain process of stagnation. The process of unification and revival, which began in the 19th century, continues to this day. This includes the weakening of sectarian fanaticism, the processes associated with the widespread use of comparative jurisprudence in modern educational institutions where the religious traditions of Muslims are studied.

Thus, by the end of the Middle Ages, the doctrinal and normative foundations had become more complex, and the Sharia, which had undergone significant changes, had become a very complex and extraordinary legal phenomenon. Today, Muslim law is a legal system that is part of the global legal culture [20, p. 317]. There is no Islamic country in the world whose legal system has not been affected by Sharia law.

The main sources of Muslim law

1. The primary source of Islamic law is the Qur'an. Translated from the Arabic language, the Qur'an is a sacred book for Muslims, meaning "reading aloud." According to Islamic teachings, this is a collection of revelations sent by Allah to the Prophet Muhammad. The verses of the Qur'an were conveyed through the angel Gabriel for almost 22 years [21, p. 27].

From the ninth to the tenth centuries, religious and legal schools began to form as the basis for Muslim law, ijtihad was banned, and theoretical teachings became the main source of Islamic law. Judges began to refer to the works of jurists in addition to the Qur'an and Sunnah to resolve a particular legal situation [22, p. 102].

The role of these theoretical teachings remained until the middle of the nineteenth century. In the nineteenth century, a detailed codification of jurisprudential norms took place, a new source of law emerged, and the role of Sharia courts diminished. The adoption of Western legal institutions and concepts defined the dualism of the legal systems of Muslim law countries. Later, in the twentieth century, Muslim law retained its position in the Arabian Peninsula and the Persian Gulf countries and acted as a legal norm regulating social relations in the form of jurisprudence.

By the middle of the twentieth century, the legal systems of the Europeanized Arab countries began to take shape, with some deviations, on the basis of two basic models, the Roman-German and the Anglo-Saxon [23, p. 33].

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2. Another authoritative and binding source of law for all Muslims was the Sunnah ("sacred tradition"). It consists of many stories about the rulings and actions of Muhammad (saas) and includes legal layers that reflect the development of social relations in Arab society.

The complete editing of the hadiths took place in the ninth century, and six collections of Sunnah were created [24, p. 193]. Sunnah has different definitions in the Shari'a. Circumcision is not superior to the law, but rather a set of events that need to be modeled in life processes. The evolution of the socio-political and religious views of the Prophet has been analyzed by scholars and their extensive use in the derivation of the basic principles of the Shari'a, which allows finding a balance between the laws of religious education and the development of society. Such features are ideal for showing the most moderate solution in overcoming multifaceted problems in human life. It is because of these features that true Muslim scholars are able to find judgments that are sufficiently responsive to the demands of the times, given the achievements of civilization. And Muslim law can fully answer this with its humane features.

Ijtihad is a set of facts that do not require proof, and is a set of rules of conduct based on a rational interpretation of the vague rules of the Qur'an and Sunnah, or the gaps between these sources. On its basis, most of the rules governing human relations have been formed. It can be said that such freedom to assess secular problems is not given to everyone, but the essence of ijtihad is to find an answer to a question that does not have a ready solution that is in accordance with the Shari'ah [25, p. 76].

Other insignificant sources of law were added to it as a source of law supplementing Sharia law. Due to the widespread use of the method of "ijtihad" in the Middle Ages, Muslim law was actively developed theoretically. More precisely, the founders of the above-mentioned basic law schools later spread this doctrine through the works of their leading followers and students.

These additional resources were also needed for areas where Islam had spread. They were distinguished by their cultural and socio-economic life from the simple way of life of the Arab people. As a result, they were forced to reconcile these events with Shariah standards and Islamic rules. For example, these areas had rivers, crops, and special financial laws were needed. In this context, there was a need for opinion and comparison to determine the verdicts [26, p. 26].

That is why Muslim jurists do not create a new code of conduct for the mujtahid, but only seek it. He first finds a solution that is in the Shari'a - if it is not in its clear rules, then it can be based on the fact that it is reflected in its vague instructions or general principles and goals. All sources of Islamic law are closely intertwined, and if they do not specify this in the sunnah, they can help regulate certain human behavior.

Thus, according to some modern researchers, the main issue in Islamic law is to determine the general parameters that exist in the sources and relationships between people on a religious basis, and the legal details are secondary [27, p. 55].

3. Ijmo is the general opinion of influential Muslim jurists.

It can be said that in the third place in the hierarchy of sources of Islamic law is the ijmo,

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which is considered to be "the general opinion of influential Islamic jurists." The ijmo belongs to the group of authoritative sources of Sharia, along with the Qur'an and Sunnah. The ijmo consisted of various conflicting views on religious and legal issues, expressed by followers of Muhammad (saas) or later the most influential Muslim jurists. The interpretation of the text of the Qur'an or Sunnah is an approximate content of this third source. But it could also be created by forming new norms that were no longer related to Muhammad (s.a.v.).

Ijmo provides independent rules of conduct and is mandatory. As one of the main sources of Sharia, its legitimacy stems from the instructions of our Prophet Muhammad (saas).

Also, the role of this source in the development of Sharia is that it allowed the ruling religious elite of the Arab Caliphate to create new legal norms adapted to the changing conditions of feudal society, taking into account the specifics of the conquered countries [28, p. 255].

The ijmo cannot establish norms not specified in the Qur'an and Sunnah. It affirms a clear legal interpretation of the provisions of these two main sources of Sharia. According to jurists [29, p. 508], ijmo is used to deepen and develop the legal interpretation of divine sources. Its connection with the Qur'an and the Sunnah was legitimized, and a number of conditions came into force even after the death of the Prophet.

The Qur'an and Sunnah are the main sources. Based on the basic rules contained in them, scholars have established the norms of fiqh. The ijmo now represents the sole dogmatic basis of Islamic law [30, p. 199]. The Qur'an and Sunnah are its only historical basis. The third source of Islamic law is of great practical importance. Only in writing to the ijmo, the norms of the law, regardless of origin, should be applied. Al-Ijma is accepted by all Sunni sects as a source of law, but there are also disagreements among them over the scope of issues that can be resolved based on this source and the range of individuals whose opinions can be considered authoritative.

According to the method of expression and communication, al-ijma is divided into three categories: 1) "speaking aloud", 2) "practical execution", 3) "keeping silence".

The first two unanimous opinions are considered credible and the decisions made on the basis of them are not subject to appeal and the issues concerning them are not reconsidered. A third unanimous opinion has been expressed and the matter accepted in respect of it may be reconsidered in the future.

Thus, the basic schools of Islamic law had different attitudes towards "unanimity" (al-ijma). The Hanafis considered only their hadiths, the opinions of Muhammad's (saas) companions, to be unanimous, and the Iraqi Mujata Hids unanimously accepted the "loud" and "practical" rulings; Maliki and the Shafi'is - not only the Mujtahids of Madinah and the Shafi'is considered their unanimous views to be independent, but also a source of additional law. The Hanbalis recognized all three categories of consensus and individual statements of the Mujtahids of Madinah [31, p. 211].

4. Comparison is a judgment in matters of law.

Qiyas is the source of Islamic law and can be described as "a ruling made by similarity in rules".

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There are no direct texts of the Shari'ah. Authoritative sources, such as the Qur'an, the Sunnah, and the unanimous opinions of the Companions of our Prophet (saas), confirm the correctness of the use of analogy.

Scholars distinguish four main things [32, p. 120] on which the conditions of the Shari'ah are related:

1) Asl - a position of similarity;
2) Far - a position of similarity;
3) Hukm - the legal norm of the first rule concerning the second;
4) Illa - the general interrelated bases of the two rules that led to the appointment of this legal norm by the Shari'a.

Thus, Muslim jurists were "able to combine revelation with the human mind". As stated in the definitions of analogy: The rule set out in the Qur'an, Sunnah or ijma 'may apply to matters not directly provided for in the sources of this law. Although Islamic law is based on the principle of authority, the possibility of a rational interpretation of the sources of Islamic law has been created due to the existence of reasoning on the basis of similarity; but it cannot establish basic norms.

There are two types of comparisons: explicit and implicit [33, p. 316]. When the reason for the process is determined by the legislator of Muslim law, a clear comparison is understood as such a comparison. A covert analogy implies a situation in which the legislature cannot determine the cause of any judgment and it is difficult to understand. This reason is understood with discount, i.e., based on the conclusion of reason.

All scientists and researchers explain the origin of this source differently. Some acknowledge the idea of the influence of the philosophical and legal teachings of conquered peoples. The reason for this was that citizens began to use the legal techniques of Greco-Roman law [34, p. 292].

Others believe that analogy arose in the first century of Islam, when there were disputes between supporters of the use of logical, rational methods of resolving religious issues based on historical sources, the Qur'an and the Sunnah. Legal issues are also analyzed as an opportunity to resolve this or that question through the personal opinion of the Muslim [35, p. 337].

There are also Hanafi theologians and jurists who combine analogy with the concept of "paradise". Other Sunni sects do not recognize this, and the representatives of the Muslim school of law, the Zahiris, interpret it in their legal practice as "external sources of the Qur'an and the Sunnah", "a clear meaning and a literal understanding" [36, p. 302].

Hence, the science of Usul al-Fiqh explains the rules that a faqih must follow when making a decision, because he must not make a mistake [37]. The rules of fiqh (al-kawa'id al-fiqhiyya) are a set of similar principles that can be combined in the rules of fiqh.

CONCLUSION

It should be noted that Muslim law does not exist without the religion of Islam, nor can Islam develop without Muslim law [38, p. 42].

But fiqh alone is not enough for the lives of Muslims; technically fiqh is aimed at judging a person's life. He does not delve deeply into the spiritual, ideological, and moral aspects of human life. These areas are covered by another area of knowledge, namely Muslim ethics. It lays the foundation for honesty, righteousness,

happiness in this world, as well as for God's salvation and satisfaction in the hereafter [39, p. 37].

The narrations of the Prophet and the Caliphs contain strict instructions on the observance of human rights towards prisoners of war. Islamic jurists, relying on sources, forbid Muslims to torture the enemy, to kill civilians and those who go to military operations not voluntarily but forcibly; extermination of those retreating from the battlefield, prisoners and the wounded; torture of prisoners of war, destruction of civilian property and economic blockade, use of poisonous substances during hostilities, attacks on churches and other holy places [40, p. 54], - such as acts of inhumanity.

Although Muslim law has many religious sources, citizens can vary in the importance of all rules, regulations, and laws. It should be noted that Muslim law has been developing over the centuries, providing new solutions and rational solutions to the problems of Sharia. At present, the formation of "modern" Muslim law, which differs from the established principles of Sharia, is taking place.

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