

## Chapter 2: History and Development

The history and development of Uṣūl al-Fiqh and Fiqh in general passed through four primary eras:

1) The Era of the Prophet 2) The Era of the Rightly Guided Caliphs 3) The Era of the Companions and elder Successors and 4) The Era of Codification.

### 2.1: The Era of the Prophet ﷺ

This era begins with Muḥammad ﷺ being appointed as the last and final messenger, thirteen years before the migration to Madīnah, and ends with his leaving this world in the 11<sup>th</sup> year after migration. This era is considered to be the most important time in the development of Fiqh and Uṣūl al-Fiqh simply because this was the era of divine revelation.

Divine legislation, the law as revealed by Allah ﷻ and explained by His Messenger ﷺ was completed during the lifetime of the Prophet ﷺ. As Allah ﷻ says in Sūrah al-Mā'idah, "This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion." The foundation of Fiqh throughout history has always been and will always be revelation, which is made up of both the Qur'ān and Sunnah. There were only two sources of law or legislation; the Quran and the Sunnah.

The nature of revealed law in Makkah was very different than the nature of revealed law in Madinah. During the Makkan period, the first 13 years of the Prophet's mission, revelation focused primarily on what is known as uṣūl al-dīn, principles of religion. These are the fundamental aspects of belief; belief in the oneness of Allah ﷻ (tawḥīd), the concept of prophethood, and life after death. It also includes morals, values, and character. For example, justice, fairness, excellence, gratitude, honesty, modesty, humility, patience, forbearance, and integrity. Makkan law focused on building the individual in terms of faith and character. During this time only a few practical legal rulings were revealed and not in great detail. For example, prayer and zakāh were legislated in Makkah but the specific rulings regarding them were not detailed.

The nature of revelation changed after migration. Madani revelation focused heavily on detailed legal rulings of human actions. Verses were revealed regarding:

1. acts of worship such as prayer, zakāh, fasting, and ḥajj
2. transactions such as sales, lease, other contracts, and the prohibition of interest

3. crimes such as murder theft, adultery, and false accusations
4. family law such as marriage, divorce, and inheritance
5. politics such as international relations and treaties.

The Quran would lay down general principles for all these rulings and then the Prophet ﷺ would explain the particular details through his speech, actions, or approvals.

However, the Prophet ﷺ would not explain every minute detail as is done today in the books of Fiqh. He would not say that the farā'id of wuḍū' are four and these are the sunnan and these are the mustahabbāt. Rather, the Companions (ra) would see him perform wuḍū' and do it exactly as he did. They would observe his prayer and then pray just like him. They performed ḥajj with him and learned the rites of ḥajj through observation.

Another unique feature of this era is that the law was not revealed all at once. It was revealed gradually over a period of 23 years taking shape slowly. For example, initially prayer was an obligation in the morning and the evening and later on it was made obligatory five times a day. Initially the amount of zakāh was not set; it was up to the individual to pay how much they were able to or wanted to. Similarly, alcohol was not outright forbidden; rather, the prohibition went through a gradual process. Some laws were revealed in response to certain things that took place or questions posed to the Prophet ﷺ. Others were revealed without a specific cause or question. The main point to remember is that the source of all these laws was revelation; either directly through the Qur'ān or indirectly through the Sunnah of the Prophet ﷺ.

During this time the Prophet ﷺ also exercised his own ijtihād as did some of his companions (ra). Mu'ādh ibn Jabal (ra) narrated that when the Prophet ﷺ sent him to Yemen he asked, "How will you judge when the occasion of deciding a case arises?" He replied, "I shall judge in accordance with Allah's Book." He asked, "(What will you do) if you do not find any guidance in Allah's Book?" He replied, "(I shall act) in accordance with the Sunnah of the Messenger of Allah (ﷺ)." He asked, "(What will you do) if you do not find any guidance in the Sunnah of the Messenger of Allah (ﷺ) and in Allah's Book?" He replied, "I shall do my best to form an opinion and I shall spare no effort." The Messenger of Allah (ﷺ) then patted him on the breast and said, "Praise be to Allah Who has helped the messenger of the Messenger of Allah to find something which pleases the Messenger of Allah."

Ijtihād in this period was still considered to be a part of revelation. Whenever the Prophet ﷺ exercised his own judgment Allah ﷻ would either affirm it or guide him to something better. Allah ﷻ would reveal that the better solution was other than that which he had adopted.

As for the Companions (ra), they would make ijtiḥād in response to situations that they faced in the absence of the Prophet ﷺ. Later, when they met the Prophet ﷺ they would explain what happened and tell him what they had decided. Sometimes the Prophet ﷺ would approve their conclusions, in which case they would become part of the Sunnah. If he did not approve their conclusion he would explain what was better and that would become a part of the Sunnah.

In summary, it can be said that during this time legislation depended on two forms of divine revelation: 1) Recited Revelation (Qur'ān) and 2) Non-recited Revelation (Sunnah).

In terms of codification, the Qur'ān was recorded in its entirety during the life of the Prophet ﷺ, however, it was not compiled into a single book. Some of the Companions (ra) used to write down aḥādīth of the Prophet ﷺ, but it would be their own personal notes or collections.

## 2.2: The Era of the Rightly Guided Caliphs

This era started after the Prophet ﷺ left this world in the year 11 A.H. and lasted for about 30 years, until 40 A.H. As mentioned earlier, divine revelation was complete during the time of the Prophet ﷺ in the form of the Qur'ān and Sunnah and they served as the primary sources for the legal judgments and rulings of the jurists among the Companions. During this era the primary sources of Islamic Law were: 1) The Qur'ān, 2) The Sunnah, 3) Ijmā' (Consensus) and 4) Ijtihād (Personal Opinion).

During this era two new sources of Islamic Law naturally evolved and developed. As Muslim society progressed and expanded, the companions faced situations and problems that they did not face during the time of the Prophet ﷺ and it was necessary for them to determine the legal rulings for them. The jurists (fuqahā'a) amongst the companions took on the responsibility of determining the rulings of these new issues and occurrences, using their skills of reason in the light of the Qur'ān and Sunnah.

Their methodology was straight forward and built upon the methodology that the Prophet ﷺ approved for Mu'ādh (ra) when he sent him to Yemen. If something new came up they would first look to the Qur'ān. If they could not find the ruling in the Qur'ān they would turn to the Sunnah

of the Prophet ﷺ. If they could not find the ruling in the aḥādīth then they would gather the companions and try to reach a collective decision. If no collective decision were reached, the jurist companion would give their own opinion.

This methodology was captured by Maymūn ibn Mahrān when he summarized Abū Bakr's (ra) methodology of arriving at legal judgments. "Whenever a dispute was referred to him, Abū Bakr used to look in the Qur'ān; if he found something according to which he could pass a judgment, he did so. If he could not find a solution in the Qur'ān, but remembered some relevant aspect of the Prophet's Sunnah, he would judge according to that. If he could find nothing in the Sunnah, he would go and say to the Muslims: 'Such and such a dispute has been referred to me. Do any of you know anything in the Prophet's Sunnah according to which judgment may be passed?' If someone was able to answer his question and provide relevant information, Abū Bakr would say: 'Praise be to Allah Who has enabled some of us to remember what they have learnt from our Prophet.' If he could not find any solution in the Sunnah, then he would gather the leaders and elite of the people and consult with them. If they agreed on a matter then he passed judgment on that basis. If none of the above resulted in a satisfactory answer he would then do ijtihad and form his own opinion. When Abu Bakr (ra) would form his own opinion he would say, 'This is my opinion. If it is correct then it is from Allah and if it is wrong then it is from me and I seek forgiveness from Allah.'" From this quote we can see that his methodology was Qur'ān, Sunnah, Ijmā', and exercising personal opinion (ra'y) based off legal reasoning (qiyās) or benefit (maṣlaḥah).

'Umar ibn al-Khaṭṭāb (ra) followed pretty much the exact same methodology in arriving at rulings and judgments. He wrote to one of his judges, Shurayḥ, "If you find something in the book of Allah then judge according to it and do not turn towards anything else. If something comes to you that is not in the book of Allah then judge according to what the Messenger of Allah ﷺ established as a Sunnah. If something comes to you that is not in the book of Allah or the Sunnah of the Messenger of Allah ﷺ then judge according to what the people have agreed upon. If something comes to you that is not in the book of Allah, nor in the Sunnah of the Messenger of Allah ﷺ nor has anyone spoken about it before you, then if you want exercise your own judgment do so and if you want to refrain then refrain. And refraining is better for you." Something very similar is also narrated from ibn Mas'ūd (ra) and ibn 'Abbās (ra).

It can be seen from these narrations that the jurists amongst the Companions of the Prophet ﷺ pretty much followed the same methodology in deriving rulings for new issues that they faced.

Here it is important to understand what exactly is meant by ra'y, or their personal opinion. Ra'y is inclusive of many things that were given very specific technical names later on like analogical reasoning (qiyās), public benefit (maṣlahah) and blocking the means (sad al-dharā'i). The Companions of the Prophet ﷺ had a very clear methodology that they adopted in order to issue legal verdicts (fatāwā). Sometimes they were based on public interest or taking precautions to prevent wrongdoing.

Not all the Companions of the Prophet ﷺ were considered to be jurists or qualified to give legal rulings. There are about 130 Companions, both male and female, who were known to have given fatwā. There were seven who gave more fatāwā than others: 1) 'Umar ibn al-Khaṭṭāb, 2) 'Alī ibn Abī Ṭālib, 3) 'Abdullāhibn Mas'ūd, 4) 'Ā'ishah, 5) Zaid ibn Thābit, 6) 'Abdullāhibn 'Abbās and 7) 'Abdullāhibn 'Umar (ra). Then there were others who gave less such as Abū Bakr, 'Uthmān ibn 'Affān, and Abū Mūsā al-Ash'arī (ra).

Amongst the Companions (ra) there were two inclinations or tendencies towards using ra'y; those who employed it frequently and those who employed it sparingly. It can be said that this was the initial foundation of the two main schools of thought or legal methodology that emerged in the third era, the School of Ḥadīth and the School of Ra'y. This attitude was not necessarily related to how they viewed ra'y, it was more of a personal choice.

This difference in approach was even seen during the time of the Prophet ﷺ. There is the famous ḥadīth of Banū Qurayzah. The Prophet ﷺ told his Companions, "Do not pray 'aṣr prayer until you reach Banū Qurayzah [a village near Madīnah]." A group of them were delayed on the way and the time for 'aṣr prayer was almost finished. Some of them decided not to pray until they arrived, taking the Prophet's words literally. Others from the group insisted: "We will pray. The Prophet ﷺ didn't mean that we should skip the prayer." After they arrived, they informed the Prophet ﷺ what had happened, and he didn't criticize either of them for what they did.

Whenever there is ijtihād it is natural for there to be disagreements. Another jurist will either agree with the conclusion or disagree with it. It should not be surprising that there were differences of opinion amongst the companions (ra), but their differences were few and rare.

During this time period the Qur'ān was compiled into a single book and copies of it were made to send across the Muslim world, which had expanded well beyond the Arabian Peninsula. The aḥādīth of the Prophet ﷺ were still not formally codified and compiled at this time.

### 2.3: The Era of the Companions and the Elder Successors

This era began after the time of the Rightly Guided Caliphs, around the year 41 A.H and lasted until the beginning of the second century A.H., right before the fall of the Umayyad Dynasty. Legislation during this time period was very similar to what it was during the time of the Companions (ra). Meaning, the methodology of the Companions (ra) and their students, the Tābi'ūn (r), in deriving legal rulings was very similar. They would first look to the Qur'ān, then the Sunnah, then Ijmā' and lastly Qiyās.

During this time period Muslim society progressed and expanded even more bringing about many unprecedented issues and cases that needed to have legal rulings. With the growth and expansion of Islamic lands there was a need for individuals to go to these new places to teach people their new religion.

During and after the time of 'Uthmān (ra) many of the jurists amongst the Companions of the Prophet ﷺ were sent to different parts of the Islamic world as teachers and judges. There were six major centers of the Islamic world:

- 1) Makkah: 'Abdullāh ibn 'Abbās (ra)
- 2) Madinah: 'Abdullāh ibn 'Umar (ra), Mujāhid ibn Jabr (r), 'Aṭā' ibn Abī Rabāḥ (r), and Ṭāwūs ibn Kaysān (r).
- 3) Kufa: 'Abdullāh ibn Mas'ūd (ra), 'Alqamah al-Nakhaī (r), al-Aswad ibn Yazīd (r) and Ibrāhīm al-Nakhaī (r).
- 4) Basra: Abū Mūsā al-Ash'arī (ra), Anas ibn Mālik (ra), Muḥammad ibn Sīrīn (r).
- 5) Sham: Mu'ādh ibn Jabal (ra), 'Ubādah ibn al-Ṣāmit (ra), Abū Idrīs al-Khawlānī (r) and 'Umar ibn 'Abd al-'Azīz (r).
- 6) Misr: 'Abdullāh ibn 'Amr ibn al-'Āṣ.

The development of fiqh and legislation and its expansion during this era can be attributed to three main factors:

### 1) Widening of the scope and application of fiqh and increase of disagreements

The scope of fiqh expands and grows with the occurrence of new events, incidents, and circumstances and these constantly change depending on the time and place. In addition to that Islam had spread to foreign lands that had their own unique customs, traditions, societal, and economic practices. Every jurist takes into consideration the circumstances and society they live in when giving rulings as long as it does not go against the Sharī'ah. 1) Spreading out of the Fuqaha 2) Difficult to establish Ijma' 3) Every city learned fiqh from its Faqih.

### 2) Spreading of the Narration of Hadith

During the time of the Prophet ﷺ and the Rightly Guided Caliphs the narration of aḥādīth was limited because there was not a great need for it. As the companions (ra) spread across the Muslim world so too did the narration of aḥādīth. Not every Companion was equal when it came to aḥādīth, some had memorized more than others. Some had heard more than others and some narrated more than others. The increase in narration of hadith had a huge influence on fiqh. Narrations were being used more often to derive and establish rulings.

### 3) The emergence of the Traditionalists and the Rationalists

As mentioned earlier, the jurists amongst the Companions (ra) can be divided into two broad categories; those who were extremely hesitant in doing their own ijtihād and expressing their own personal opinion so used it sparingly and those who would do their own ijtihād whenever the need would arise. The first group feared contradicting the letter of the Qur'ān and Sunnah so they were hesitant in going beyond what the text said.

During this time period both of these tendencies became more defined and their methodologies started to become more refined. This led to the emergence of two informal schools of legal thought or methodology, the Rationalists (Ahl al-Ra'y) and the Traditionalists (Ahl al-Ḥadīth). There were differences between them concerning source methodology and issues of case law. Both of these schools had their origins in the approaches of the Companions (ra), but it was during this time that their differences in matters of fiqh became clear. Slowly, people started grouping themselves on the basis of their differences in deriving legal rulings from their sources.

Historians write that the Traditionalist school was a continuation of those Companions whose fear of contradicting the letter of the Qur'ān and Sunnah made them circumspect to the point where

they very rarely went beyond the text itself. For example, ‘Abdullāh ibn ‘Umar (ra) and ‘Abdullāh ibn ‘Abbās (ra). The Traditionalist school became widespread in the ḥijāz and specifically Madīnah. It can be said that the Traditionalist School organically developed and evolved into the School of Madīnah, which then developed into the School of Imām Mālik. One of the reasons why it became widespread in Madīnah is because of the abundance of aḥādīth and familiarity with the fatāwā of a number of Companions.

The leading scholar of this camp was al-Imām Sa‘īd ibn al-Musayyab (r) (94). There were seven successors who are considered to be the seven jurists of Madinah who carried on the teachings of the Companions from that area: 1) ‘Urwah ibn Zubair (94) 2) Sa‘īd ibn al-Musayyab (94) 3) al-Qasim ibn Muḥammad (94) 4) Abū Bakr ibn ‘Abd al-Raḥmān ibn al-Ḥārith (94) 5) ‘Ubaydullāh ibn ‘Abdillah ibn ‘Utbah ibn Mas‘ūd (98) 6) Khārijah ibn Zaid (99) and 7) Sulaymān ibn Yasār (107). They were known as the Seven Jurists (al-Fuqahā’a al-Sab‘ah). As mentioned above their methodology and approach continues to evolve and develop culminating in the School of Imām Mālik (r).

The Rationalist school was an extension of the school of ‘Umar and ‘Abdullāh ibn Mas‘ūd (ra), who were the most wide ranging in their use of ijtihād. ‘Alqamah ibn Qays al-Nakha‘ī (62) was influenced by them, the uncle and teacher of Ibrāhīm al-Nakha‘ī, who taught Ḥammād ibn Abī Sulaymān, who was the teacher of Imām Abū Ḥanīfah (r). The rationalist school gained popularity in Iraq and organically developed into what is known as the School of Kūfah. The School of Kūfah was the foundation for the School of Imām Abū Ḥanīfah (r).

The jurists in this camp felt that legal interpretations should not be limited to the letter of the texts but also the spirit. They felt it was their responsibility to uncover the higher meanings and wisdoms behind the laws and to make connections between them. The reason why this methodology became popular in Iraq is because of the number of Companions who were influenced by ‘Umar (ra).

Both of these informal schools agreed on the importance and status of aḥādīth within the framework of Islamic Law and accepted that it was the most important source of law after the Qur’ān. At the same time, the traditionalists also agreed with the rationalists on the need for having recourse to reason and ijtihād for those issues that were not explicitly mentioned in the Qur’ān and ḥadīth.



## 2.4: The Era of the Mujtahid Imams and Codification

This era started in the beginning of the second century A.H. and lasted till about the middle of the 4<sup>th</sup> century A.H. During this time period Fiqh as a discipline went through expansive growth and refinement. It flourished and developed into an independent discipline. This was the era of expert jurists, the great mujtahids, who laid down the foundations of their respective schools of thought. Every school of thought in reality is a juristic methodology of approaching the Qur'ān and Sunnah and extracting rules from them. This was also the era of the great scholars of ḥadīth. Both the study of fiqh and ḥadīth were codified and became disciplines that were taught and studied. Books were compiled and written. Because of all this advancement in the field of Islamic Studies this era is known as the Golden Era of Fiqh, the Era of Codification, and the Era of the Mujtahidūn.

This expansive growth and development can be attributed to a number of different factors:

1) The 'Abbāsīd Caliphs gave a lot of care and importance to fiqh and fuqahā'.

The 'Abbāsīd Caliphs were fond of jurists and would consult them fairly often. For example, the Caliph Rashīd had asked Imām Abū Yūsuf (r), the famous student of Imām Abū Ḥanīfah (r), to establish a system of laws for the financial affairs of the state. In response he wrote his famous book *al-Kharaj*. The Caliph Manṣūr tried to convince Imām Mālik (r) to make his *Muwaṭṭa'* the official book of law for the Caliphate as did Hārūn al-Rashīd after him. This care and importance from the government level allowed the jurists to flourish.

2) The expansiveness of the Muslim State

Muslim rule stretched all the way from Spain to China. This added a lot of richness to fiqh. Each area faced its own unique circumstances, issues, conditions, and culture that played a role in the development and advancement of Fiqh.

3) The work of the great Mujtahid Imāms; Imām Abū Ḥanīfah, Imām Mālik, Imām al-Shāfi'i, and Imām Aḥmad (r).

4) The codification of Ḥadīth

By this time a number of the most famous collections of ḥadīth had been compiled and authored. One of the earlier works is the *Muwaṭṭa'* of Imām Mālik (r). This era marked a new phase in the development and documentation of ḥadīth. One of the most distinctive features of this period

was to separate the ḥadīth of the Prophet ﷺ from the sayings of the Companions and Successors. The ḥadīth compilers of this era on the whole observed the principles of Uṣūl al-Ḥadīth that had already gained recognition and the methodological guidelines that were developed. This was the era in which Ḥadīth Studies flourished and books on different disciplines were written.

It was in the second half of this century that the six most famous and well-recognized books of ḥadīth were compiled: *Ṣaḥīḥ al-Bukhārī*, *Ṣaḥīḥ Muslim*, *Jāmi' al-Tirmidhī*, *Sunan Abī Dāwūd*, *Sunan ibn Mājah*, and *Sunan al-Nasā'ī*. These books make up the six canonical books of ḥadīth known as al-Ṣiḥaḥ al-Sittah (The Six Authentic Books) or al-Kutub al-Sittah (The Six Books).

Through the tireless effort of the luminaries of the first three centuries of Islam, the Sunnah of the Prophet ﷺ was gathered, analyzed, organized, codified, and preserved for future generations. Many of these works have been passed on from generation to generation and are still read, studied, explained, and commented on in seminaries and universities throughout the world.

5) The emergence of the formal legal schools of thought.

As mentioned earlier, the School of Abū Ḥanīfah emerged from the School of Kūfah, and the School of Imām Mālik (r) was born out of the School of Madīnah. Imām al-Shāfi'ī (r) was influenced heavily by both schools, being a student of both Imām Mālik (r) and Imām Muḥammad ibn Ḥasan al-Shaybānī (r), one of the foremost students of Abū Ḥanīfah (r). He then developed his own methodology and framework for deriving Fiqh from its sources. As a matter of fact, the first person to write a book on Uṣūl al-Fiqh is Imām al-Shāfi'ī (r). That is why he is considered to be the father of Uṣūl al-Fiqh. The School of Imām Aḥmad (r) was born from the School of Ḥadīth or the Traditionalists.

Each school of thought produced its own jurists who would then produce works that served as the basis of future works within the same school. Each school specified its methodology for interpreting texts and deriving legal rulings from them. Each school developed an independent set of principles and methodology that it used to derive legal rulings from the Quran, Sunnah, Ijmā', and Qiya's. Because of several factors four schools of thought gained widespread acceptance and prominence: 1) Ḥanafī, 2) Mālikī, 3) Shāfi'ī, and 4) Ḥanbalī. It is through the tireless efforts of these amazing jurists that Fiqh was codified, organized, and preserved for future generations. Many of these works have been passed on from generation to generation and are still read, studied, explained, and commented on till this day.

