

Part Five: Dealing with Evidences

This is the end of the journey we've been studying

Chapter I: The Conflict of Evidences (Ta'arudh al-Adillah):

The Conflict of Evidences (Ta'arudh al-Adillah)

- A case when two or more evidences appear to be partially or fully contradicting one another while reaching a conclusion regarding the rulings of Fiqh that cannot be easily reconciled.
 - o E.g: one evidence indicates a thing to be halal, while the other evidence indicate the same thing to be haram and etc
 - o E.g: one evidence may permit certain things, while the other evidence may not!

How do you deal with such conflicts?

Note:

- The contradiction or conflict between the evidences is not an actual conflict in evidences; it is only a contradiction in the understanding of the Mujtahid (supreme jurist) to these evidences. It is a conflict in the mind of the Jurist.

Example:

- Abdullah ibn Busr reported his sister as-Sammā' heard the Messenger of Allah صل الله عليه وسلم saying: "Do not fast Saturdays unless it is obligatory." (as-Sunan)
- The Messenger of Allah صل الله عليه وسلم once entered the house of one of his wives Juwayriyah on Friday while she was fasting. He asked her: Did you fast the day before? To this she replied no. "Are you fasting tomorrow (Saturday)?" He asked. "No" she replied. The Messenger then said: "Then break your fast." Al-Bukhārī
 - o Most likely this fast wasn't obligatory because he told her to break her fast
 - o However, the first ḥadīth was a clear text from Rasulullah صلى الله عليه وسلم

Explanation: In order to reconcile between these conflicting evidences, the ulema follow certain steps.

- In the 1st ḥadīth, by saying : "Do not..", the Prophet صلى الله عليه وسلم is directly speaking to us
- It is textual evidence in a form of Naṣṣ (explicit) and direct speech that demands a binding prohibition on fasting Saturdays.
- The second ḥadīth is another textual evidence in a form of Dhāhir (implicit) that allured to the permissibility of fasting on a Saturday.

The 1st Methodology is Reconciliation (I'māl ud dalīlayn)

- Use both evidences and overlapping methodologies to come to a conclusion to what the ḥadīth means, so you are not neglecting either evidence. In other words, you may use both of the ḥadīth at the same time in a certain way. For example, the first hadith refers to any Saturday except the condition, if you are fasting on Arafat
- Reconciliation of the two evidences is made by trying to apply them both at the same time in two different contexts. For example, applying the rules of 'ām vs. Khās or Mutlaq vs. Muqayyad.
- The first ḥadīth is 'ām (general) and the second has the power of Mukhassis (specifier). Therefore, the ruling inferred here states that fasting Saturday is prohibited if it was only singled out with a fast and not when it is combined with another day.
- Another supporting evidence is a similar ḥadīth Abu Hurayrah, the Messenger of Allah صلى الله عليه وسلم said: "Do not single Friday out with fasting unless you are fasting a day before or a day after." Al-Bukhārī and Muslim, and the day after is Saturday.

The 2nd Methodology is Abrogation (an-Naskh)

- If applying both evidences to the same scenario was not possible, the next step will be Naskh. In order to apply an-Naskh, an indication of time within either one of the two evidences or from a third evidence should be present. If so, the later evidence will have the power of abrogating the rule of the former evidence. So we look for evidence that would put the ḥadīth in chronological order. Usually the latest one 'would be the updated rule and it would abrogate the earlier ḥadīth. This abrogation is termed in an-Naskh in Arabic.

Example:

- Zaid ibn Thābit reported that the Messenger of Allah صلى الله عليه وسلم used to order his companions to make wudu if they ate cooked food (made over fire). Muslim.
 - Ruling therefore would be that, eating anything cooked required a renewal of wudu
- Jābir reported: "The last of the two things I recall from the Messenger of Allah صلى الله عليه وسلم abandoning the making of wudu from eating cooked food." Abu Dawood.
 - The clue here is the word "LAST". This was the last thing we remember him doing for this case
- The second ḥadīth is obvious that NOT making wudu was the LAST thing he did of the two i.e. making or not making after eating food altered by fire. This indication in ḥadīth Jābir makes it the later and most updated ruling.

- However, some 'ulema prefer to not completely void the previous ḥadīth, so they did takhsis to this and ruled it mustahab (recommended). So instead of cancelling and voiding this ḥadīth completely, they say it is recommended to make wuḍū. So this is a partial abrogation because it has been downgraded and the ḥadīth still stands.

The 3rd Methodology is Overriding by evaluation- (at-Tarjīh)

How do you do this? One looks for supportive evidences outside of the case that proves one's evidence is stronger than the other. This decides which evidence would be overridden and or outweighed.

- When no chronological indication is clear, a decision is sought based on using supplementary evidences, textual or rational, to choose between the two evidences to decide which one is more judicially appropriate to be taken in consideration (rājih). This means the ruling derived from the overridden evidence (marjūh) will be annulled. For example:
 - To rule one is weak or weaker than the other. In other words, the authenticity of the ḥadīth is put into question
 - To use a different Qur'ānic qirā'at to support one of the two evidences.
 - The Naṣṣ overrides the Dhāhir
 - The direct speech overrides the indirect statement as the latter is an interpretation
 - What takes priority prohibition vs. command?
 - Majority of the fuqaha says the observation of prohibition takes preference over command because of the hadith of Rasulullah صلى الله عليه وسلم : do as much as you can of my command but stay away completely from haram, or abstain from my prohibition
 In the minority opinion, one contemporary scholar, sheikh Albani, took the prohibition of fasting on Saturday due to this rule, even though the hadith on fasting is in Sahih Al-Bukhārī

Neutrality (at-Tawāquff)

- When no other mean of reconciliation is possible, then no specific ruling can be given on the issue until further supporting evidences are brought to the discussion of that particular issue. Until then, the answer given will be "Allahu A'lam" and it is put aside until further investigation occurs.

Dismissal (Tar'h)

- In some cases the jurist will dismiss both evidences and choose to resort to weaker evidence somehow linked to the case under study. In many scenarios jurists usually resort to Qiyās (reason) against irreconcilable two textual evidences.
 - o However this is not very usual, there are not many cases where the evidence has been dropped for qiyas. It is just used as a possible option in the theory of law.
- Another option is ikhtiar: selection – instead of dismissing both evidences, the ‘alim chooses one of the two evidences for something he feels strong about it; he cannot explain it (istihsan) therefore he uses inclination and intuition to establish the law and it is very controversial and some scholars like Imam Shafi is of the opinion that this is wrong.

Chapter II: Methodology of Practicing Law

Different Approaches of Law:

1. Ijtihād: Linguistic meaning: Exerting an effort, struggling in doing something.

Juristic Definition: Ijtihād is a technical term that describes the extensive process a Mujtahid goes through to derive, independently, a legal decision from the legal evidences. It is not influenced by anyone else’s opinion.

Around 300 to 400 hijri, they called the era of Ijtihād to end so that more and more Ijtihād could be done. They felt there was no room for more opinions. However, the ‘ulema said this was the biggest mistake as it led to the recycling of opinions and theories and they never moved forward. This is why the ‘ulema could not move further at the end of the Ottoman empire. They did not use printing machines in the 1800 because they thought it was bid’ah and it would cause trouble. As a consequence, knowledge was not spread.

Today it is the exact opposite; everything is seen as a new issue.

- Ijtihad Mas’alah –Ijtihād at a micro level. An example would be an answer on 401K being ḥalāl or harām. The scholar would do research on the issue at hand.
- Ijtihad Jam’i: Collective ijtiḥād. Scholars coming together to find one opinion or recommendation

Note: Mujtahid is a Muslim jurist who is competent to interpret the law in practical situations using Ijtihād or his independent thought. He could be a specialist in a specific area of law, known as mujtahid muqayyad (confined).

The Complete Opposite:

2. Taqlīd: Imitation or uncritical following. Some call this blind following.

Definition: Taqlīd is a technical term that describes the practice of following the legal verdicts (fatwas) of a legitimate and qualified authority in his exposition and interpretation of the law without necessarily examining the legal basis or reasoning of that verdict. Taqlīd is actually favorable in the case of a lay person who doesn't know much about usool and shariah, etc.

- Cannot execute anything on your own

A Higher Degree of Taqlīd:

3. Ittibā': Following or critical following

Definition: Ittibā' is a technical term that describes an educated form of Taqlīd, a critical following or the practice of following the legal verdicts (fatwas) of a legitimate and qualified authority in his exposition and interpretation of the law while examining the legal basis or reasoning of that verdict.

- The commencement of fiqh – the earlier stages – was based on ittiba'
- You can become a critical follower through learning and increasing your knowledge

4. Talfīq: Mixing or making one thing out of two or more.

Definition: Talfīq is joining between the sayings of two mujtahids or more in one issue of Fiqh that neither would independently approve. Some jurists consider Talfīq in the case of more than one issue.

- “fatwa-shopping” is one category of this. The majority of the ‘ulema do not allow this without the investigation of evidences. Follow evidences, not opinions.

Example: A follower of the Shafi'i school who makes wuḍū according to Imam ash-Shafi'i and then not breaking that wuḍū by touching a woman according to Imam Abu Hanifa.

Categories of Talfīq:

- To practice Talfīq in one particular issue of Fiqh, such as wuḍū
 - This is NOT allowed if you do it out of laziness or looking for loop holes
 - If you do it out of knowledge, this is critical following
 - The practice of the muhadditheen. They never followed the school of thought but rather the evidences
- To practice Talfīq in one subject of Fiqh, such as Tahāra or marriage.
 - This is the controversial aspect of talfiq. You cannot mix and match and create your own madh-hab and principles.

- The principles on which the madhhab place these rulings in a specific subject will be the same so if you take some rulings and leave some others, then you're breaking the principles
- To practice Talfiq by choosing from different schools of thought in different subjects of Fiqh.
 - If you're doing this with knowledge and looking at the evidences, then this is allowed but if you're looking at opinions then it is not allowed
- Living in America, it takes us back to the age of the establishment of fiqh – it is very impossible to follow one madhhab

Qabeelat Durban