

In the name of Allah, the Beneficent, the Merciful.

Jurists and their differences

Fatwa and Mufti

By Qazi Fazlullah

Islam is the Deen of Allah, Deen of all the Messengers and Prophets and also the Deen of humans in general and those who accepted it are called Muslims. As we know today the conditions of the Muslims have degenerated to its lowest. On one hand a continuous propaganda is going on against them that they are a threat to the world's peace which has put them not only on defense but also in fear and on the other hand they themselves do not have Islamic knowledge. The world has become a global village where people come across one another frequently as a result they see each other practicing the Deen in different ways causing in one another objections and confusions. Due to this happening on a large scale many of the Muslims who fall into confusion do not know how to defend their beliefs and practices of Deen. With this being said how will they defend their Deen and convey the message which is the duty of each and every single Muslim, otherwise living in a non Muslim country is not justified. Here we are not going to defend Deen and to answer the objections coming from non Muslims ignorantly and arrogantly rather we want to educate Muslims regarding what they are confused in. The confusion is when Islam is one then why are these differences evident. The easy answer to this question is that the laws of each and every country are one and the same but to explain the same we are in need of the attorneys and courts as well and for the said purpose we do pay large amounts of fees to them. Then not only the attorneys interpret the laws differently but the courts even take this interpretation in one case and the other one in another case. This practice and procedure is as ancient as human history itself. There is no one making objection to this procedure. To make an objection to one of these interpretations and applications is reasonable however regarding the procedure no one has any reservation because it is logical, reasonable and unavoidable. Same is the case of the difference of the Fuqaha and Jurists in Islam as Quran and Sunnah are not laws rather they are sources of law and the laws are to be deduced there from. Islam also left a vast field for human intellect as well because Islam is a natural Deen and Deen of nature and intellect is a natural instinct. The commands of Islam are not so exhaustive that straiten their life leaving no space for tis natural instinct based on which the whole world has become subservient to them and they have become bound to the commands of Islam, nor these commands are so

ambiguous that they have given a free hand to human intellect to follow perceptions and desires. On one hand they are bound to confine themselves to these commands and on the other hand they have been given the right to have their discussions on the basis of reasons, rules, facts and experience however they are subject to a set of principles which have eternal application and may not be violated on superficial grounds of expediency on human assessment. This means that this field is not open for everyone like any other field of knowledge and science. It is only for one who has the required knowledge of the field concerned and that qualified person also does not have unlimited power in this regard as beyond the limits specified in this regard he can not work and will fall prey to the errors due to human reasoning becoming confused by human deficiency and desire. Allah the Sole Creator has delegated humans with limited power. Where the commands are certain and clear in giving one meaning then this must be followed in words and spirit. One may or may not know the reasoning and philosophy behind it as it is an order from the Sovereign and Supreme authority and for such things it is said that Deen is obedience and not convenience. As we know that Allah has given intellect to almost everyone but the very nature and ability of everyone is different. The type of knowledge, company, circumstances, experiences, opportunities, training someone has. All these have its own contributions in his approach even in the common fields of life and in physical sciences, regarding this Allah said, "It is we who apportioned to them their means of livelihood in this world exalting some of them above others so they may make each other to his service" 43:32. Now means of livelihood are three as under;

1. Mental ability
2. Physical power
3. Material sources

People earn by these three and making others to give them services. Then human beings by nature have three characteristics which distinguishes them from other animals. These characteristics are because of the intellect and intellectual approach;

1. All other animals seek their material needs only but humans are looking for intellectual requirements also.
2. All animals fulfill their needs in its very initial form however humans are looking for the beauties therein, animals are eating grain in its raw form while humans cook it and make it delicious to eat. Animals live in their nests and holes in the initial form in contrast to humans who beautify and make luxurious their dwellings.
3. Due to human nature clubbed with intellect humans try their best to achieve a lot by little efforts because they want to make life as easy as possible. Some humans whose intellects are polished with knowledge, skill and experience invent things which make life easier and there are other humans who are looking for the same ease but can not manage to do the same. When they come across these inventors and their inventions and find out its advantages and benefits they start following these inventions by using them blindly. This is nothing but “Ijtihad” by the inventors and “Taqleed” by the followers. We already have come to know that these two types of people are found in every field and every science.

Regarding the knowledge of Deen this same way is applied. There will be the “Mujtahideen” and there will be the “Muqallideen” i.e. Imams and their followers. This is reasonable and logical. There are a few well known terms used by the Jurists in the light of Quran and Sunnah which are called “Deen”, “Shariah”, and “Fiqh.” Even though these three are interchangeable however for academic purposes we say that Deen is Islam as a whole while Shariah means the rules and laws mentioned in the text of Quran and Sunnah very explicitly while Fiqh means the rules and laws derived and deduced by the known Jurists of the Ummah. Shariah is not changeable but a Fiqhi issue could be changed under the same rules of deduction if situation happens. The well known Jurist of the time in whom the scholars rely upon as Hafidh Ibn Qayyim said because deduction of a Fiqhi rule is according to circumstance and when the circumstances are changed then the rule could be changed as well. Imam Abu Dawud relates that a thief in the battlefield may not be given

the punishment as this will provide an opportunity to the enemies to rejoice or it will discourage the person concerned which can bring a rift or at least a weakness to the rank of Muslims. Umar, Hudaifa and Abu Darda said that it is good to suspend the punishment to prevent the criminal from going to disbelief. Alqamah said that Waleed Ibni Otbah drank wine in which Hudhaifa said the punishment in the field is suspended. Abu Dawud related that Shibr Ibni Autaq's shield was stolen in the field and the thief was caught however Shibr said that if I would not have heard the Prophet not say not to cut the hand of the thief in the field than certainly I would have done so. Now when circumstances are considered in Shariah then the same may be considered in Fiqh however in Shariah this consideration is only in extreme unavoidable circumstances like the battlefield while in Fiqh this field is more vast. The Prophet of Allah would deduce where there was no text available. Yes later on his deduction was either approved by Wahi (divine revelation) or repealed. In his time the companions would deduce when they were in a situation where they needed a solution and they were not close to the Prophet to ask him and later on when they asked the Prophet of Allah he either approved their opinion or corrected them. He approved their deduction. After the Prophet the Wahi discontinued and as we know that nature is evolutionary and certain issues arise which need solutions so Abu Bakr, Umar and Uthman had a shura (legal consultation) of Sahabah asking their opinion regarding these issues including religious solutions and as mainly the major Sahabah would stay in Madinah so in majority of the cases either they refer to the Hadith of some of them or when they did not have one they gave their opinion and based on this the Caliph made his decision and issued a declaration therein. In the time of Ali when the capital was moved to Kufa and he gave a choice to Sahabah to move and live where they want, due to this they were dispersed to different cities and areas. The people would approach them in their respective areas for Fatwas regarding issues they were facing and they were bound to give their religious opinion as in deduction the circumstances are of important factor therefore in one issue we find different

opinion of different Sahaba and mainly new issues were arising there in Kufa as the capital is the place of different people of different areas and cultures frequenting it. The state and Khalifah is in much more need of deduction to find a solution for new issues as he is the review point, therefore many issues arose and the solutions were deduced for it and different opinions appeared therein due to different circumstances. In the time of the first 3 Khulafa there were not big differences that happened as their center was Madinah the blessed city of the Prophet and all major Sahabah were there as well to find out a solution for a newly arising issue and to a great extent this was the case in the time of Ali however the disputes between Ali and Muawiyah caused some rifts nevertheless as they were the major Sahabah so they were committed to Deen. After Muawiyah the nature of the rulers were changing and they were getting involved constantly in whims and desires and also in enjoyments and entertainments. They would have musicians and magicians in their sitting rather than having scholars. They were practicing Deen also but as political disputes were getting aggravated and the rulers would have religious support for their side and even for their wrong doings so they would ask the popular Jurists to give such a fatwa which can help them in the situation however God fearing scholars not only refused, they started collecting the Juristic work of Sahabah and Tabieen and also they laid down rules for Tafseer, how to interpret the Holy Book, rules for Hadith, how to avoid any fabrication and also rules for deduction, how to derive a ruling for a new issue. They were beaten, humiliated and tortured to death, specially the four famous Imams who were Imam Abu Hanifa, Malik, Shafi, and Ahmad. These great Imams and their students did a boundless job in that they preserved their work and safeguarded Deen. May Allah bless their souls Ameen. When the rulers found that these people and their followers will never compromise on Deen, they started grooming their own so called scholars to find them solutions of their choice. In defense to this these well known, popular and accepted Jurists fixed some requirements of a Jurist eligible to deduce and after some time the scholars agreed upon that there is no

Mujtahid Mutlaq after this time as all the three generations which the Prophet said are the best ones started to vanish. One column was left open for deduction as new issues will arise and for this there are two ways;

- a. Literal interpretation of the text meaning to stay as close to the text as possible and these people were called as Madrasatul Hadith. Imam Malik, Shafi and Ahmad are related to this school of Jurisprudence
- b. Liberal interpretation of the text which means to look at the merit and purpose of the text in abundance. Imam Abu Hanifa is considered to be from this group.

This does not mean that the first group was not deducing or giving their juristic opinion. They were not in that much need of derivation due to residing in areas where rarely new cultures would approach and the solution to issues were already found in text. Also the second group never skipped text however they tried to their best to interpret it in a way which gives solutions for issues and to deduce as new cultures were coming to the capitol very frequently. The center for the first group was Madinah, while for the second group it was Kufah. None of these Imams has ever said or gave anything against Quran and Sunnah. The only thing they did is as follows;

Now as the level of knowledge is different, the approach is different and the same is the case of circumstances therein, sometimes they differ with one another so the Mujtahid is bound to express what they find in their deduction otherwise they are committing a sin. That is why sometimes they have more than one saying regarding the same issue because the situation changed so their deduction changed as well. Their differences are mainly that of a suitable or more suitable solution and in a very few issues that is of lawful and unlawful. Even in such a situation the scholars have said if in a disputed thing or issue one Imam said this is lawful and the other one said unlawful then that unlawfulness is the like of the unlawfulness proven in the text of Quran and Sunnah.

How they differed and why?

1. To explain an Ayah of the Quran in an applicable way and in accordance with the rules of interpretation
2. To explain a Hadith in an applicable way and to make a patch up in different Ahadith relating to one and the same issue and if it is not possible then to give priority to one Hadith over the other in accordance with the rules they have laid down for the said purpose.
3. To deduce solutions from Quran and Sunnah for a new issue that has arisen in accordance with the rules of deduction.

Sometimes one word literally has more than one meaning. One Imam took one meaning and the other Imam considered another meaning. For example the word “Qur’u has two meanings;

1. Menses period
2. Purification period

The Hanafites and Hambalites said that Iddat (waiting period of a divorced woman) of a non pregnant woman in case of divorce is three periods of menses, while Malikites and Shafites said that it is by purification periods. Every Imam supported his idea with certain supports so the first group said that divorce should be given when she is pure. The question is if the period would be counted or not so it is counted then certainly a portion of that is already passed so there the iddat will be less than three and if not counted then it will be more than three but they supported their point of view with verse 65:1, “ O Prophet! When you (the Muslims) divorce women divorce them for their waiting period and keep count of the waiting period and fear Allah, your Lord.” They translated the word “Li” with “Fi” which means “then divorce them in their waiting period” and divorce in the Sunnah way perhaps when she is pure and that is considered waiting period as well however Abu Hanifa and Ahmad say that the actual word is “Li” meaning “for waiting period” also meaning the after effect of divorce. They also

said in the Ayah Allah said “thalathata Quru,” the count number is used feminine and this is a rule that the counted thing must be masculine and in Arabic “Haid is feminine and “Tuhur” is masculine so surely Quru means purification period. Abu Hanifa and Ahmad say that there is another rule to the rule of masculine and feminine which is that it implies only to the word and not the meaning. Quru is masculine and this is a secondary thing that what its meaning is, menses or purity? Abu Hanifa and Ahmad supported their idea with the Hadith of Nisa’i and Abu Dawud, Aisha said, Ummi Habeebah had irregular menses so she asked the Prophet about it. He told her not to pray in the days of her Quru. This is known that prayer is not allowed in menses so Quru means menses. Also Ibni Majah narrated from Aisha that I told Bareera to observe a waiting period of three menses which means that waiting period is on menses. Another example is that of wudu breaking when someone touches a woman because of the word “laamastum” used in Quran. There Imam Malik and Shafi and Ahmad said it means touching a woman will invalidate the wudu. This is another issue that they have a different concept of touching. Imam Abu Hanifa said it means sexual intercourse and he supported his idea with a Hadith narrated by Bukhari that Aisha said my feet were there in the sajdah place of the Prophet so he pinched my feet when he was making sajdah. Also Abu Dawud related from Aisha that the Prophet used to kiss some of his wives and then pray without making wudu. Even though Quran as a whole is “Qatiuth-thubut”(certain and sure)but sometimes a word used therein is a common word having more than one meaning and more than one meaning could be meant as well as we mentioned in example one, therefore there will be more than one opinion. Also sometime one Jurist will take the literal meaning of the word while the other one will take its liberal and figurative meaning as we mentioned in example two.

1. Narration of Hadith- Some Ahadith are Qati uth thubut but still they have the same like different concepts. Majority of Ahadith are dhanni uth thubut so their research in this regard is different i.e. one Hadith is proven one near one Jurist but that is not according to the research of the other. That is why they differ with one another in the issue concerned. Perhaps the Hadith is proven and

authentic to all but they differ in its meaning and application. Sometimes there are more than one Hadith in one issue but conflicting each other so there one imam is making a patch up between these two and another one is giving preference to one of them over the other and this is when one is abrogated. The patch up sometimes is to apply both but in different times or situations or that one means that the practice is wajib while the other means it is recommended. An example is breaking wudu with “qay” (vomiting). Abu Hanifa and Ahmad said it breaks wudu as Ibni Majah narrated from Aisha that the Prophet said, “Whoever is afflicted by qay, ru’aaf, or qals should leave the prayer make wudu then continue where he left off without speaking during it. Malik and Shafi said that this Hadith is daeef (weak) and this is if considered filth even if it has not come out of the two known ways it will not invalidate the wudu. This difference is based upon another difference and that is whether filth coming out of the body breaks wudu or coming out of the two known ways? Another example is that Abu Hanifa said that “istisqa” (dua for rain) does not include formal congregational prayer as Muslim narrated, Anas said the Prophet went out for istisqa and made a spontaneous dua (supplication) for rain and did not pray while Malik, Shafi, Ahmad and even the two students of Abu Hanifa said that congregational prayer in istisqa is recommended as Muslim narrated from Abbad Ibni Tameem that the Prophet reversed his cloak and led the people in two rakat. Another example is that of two rakat of “Tahiyyatul Masjid.” The Prophet said “if anyone of you enters a masjid he should pray two rakat before sitting down.”(Bukhari) Bukhari has also narrated that “there is no prayer after Fajr until the sun has risen and after Asr until the sun has set down.” Abu Hanifa said nafi (negation) in the second Hadith is general so it prohibited all nafil prayers in these times including tahiyyatul Masjid while Malik, Shafi, and Ahmad said that this second Hadith refers to other voluntary prayers and not to tahiyyatul Masjid as the other Hadith mentions in general whatever time it can be.

2. Admissibility of certain rules- These Jurists laid down certain rules for deduction and they have differences in these rules as well, therefore differences happen because of its applicability like “Ijma” (consensus of opinions of the Jurists) is an agreed upon source near all of them and

regarding Ijma of Sahabah they said when that is proven then that is certain and reliable even like a text however after them Imam Shafi said if it? occurred ever, Imam Ahmad said never occurred and never will occur, Abu Hanifa said it occurred in certain issues and he said that Ijma after the time of Sahabah if it took place that is also certain and reliable or their differences regarding the known practice of the people of Madina, Imam Malik said their custom is a source of law while others said custom in general if it does not go against Shariah is a secondary source of law. Abu Hanifa said "istihsan" or "Qiyas i Khafi" is preferable to "Qiyas i Jali" however other jurists rejected this idea or Imam Malik said "istislah" i.e public interest is a source of law but others did not say so. Imam Shafi said "istis-habul hal" (linking to the past) is a source of law but others said not in general but only to protect ones already proven rights, based on that he can not avail new rights. "Qiyas" (Analogy) is the largest source of deduction some of them narrowed its scope while some others expanded it. Imam Ahmad gives priority to a daeef Hadith over qiyas, Imam Abu Hanifa said daeef Hadith is accepted if it does not contradict a saheeh one and does not contradict qiyas and reason as well. To all four Imams there are four sources of Islamic laws and these are;

- i. Quran,
- ii. Sunnah,
- iii. Ijma
- iv. Qiyas.

These are the primary sources while there are secondary sources which are in general as follows;

- i. Istihsan(preference) near Imam Abu Hanifa
- ii. Istis habul hal near Shafi in general and near others in status quo only
- iii. Istislah or public interest near Malik
- iv. Aatharus Sahabah near all but having differences therein
- v. Custom near all four if it does not contradict Shariah while Imam Malik said that practice and custom of the people of Madinah is prior to all these secondary sources

- vi. The laws of previous messengers if narrated in Quran or Ahadith and our Shariah kept quiet regarding that and it does not contradict any proven rule of our Shariah
- vii. Sadduz Zarari- closure of access to an illegal act, this is a source near all but not according to Abu Hanifa and same is the case of “Fathur Zarrari” opening an access to something lawful to provide ease. In this one also Abu Hanifa is very reserve

The Prophet said the best time (generation) is mine then those who followed them then those who followed them and then lie will get spread. These four known Imams are amongst these best generations as Abu Hanifa is a Tabiee while the other three are their followers. There were so many other Jurists at that time as well. They were of the equal level to these four or even greater than them but unfortunately their Juristic work could not get compilation and preservation. Allah Tala blessed these four with acceptance by providing them with such disciples and students who preserved, taught, published and spread their works. Their works are very logical and reasonable so people accepted them. Also their followers came in to rule in different parts of the world in different times and they implemented their respective “Fiqh” (Juristic approach) as law of the land becoming publicized and practical. More than sixty percent of Muslims follow Abu Hanifa as that area was ruled by his followers and the people were introduced to this Fiqh. Then as we said that for each and every science there are authentic and reliable sources and scholars whom people approach asking questions and eventually follow them without ifs and buts because they believe that the scholars know and they do not. In this regard Allah Tala said: “Then ask Ahl dhikr (knowledgeable scholars) if you do not know.” 16:43 Taqleed or following the wise, skillful and knowledgeable people is a well known practice which no reasonable person will deny it even those who deny that they do it. What about the Taqleed of a specific Jurist like Abu Hanifa, Malik, Shafi or Ahmad? The reasons being is that

- i. They are known for their knowledge work and taqwa as well
- ii. Their work is preserved in total

iii. The Muslim majority accepted them and their work and practiced it accordingly for centuries and even implemented that in various parts of the world and experienced it and they put their utmost trust in them.

Now it can be that there is a scholar having knowledge the like of them however will he lay down his own principles of deduction or will he follow theirs? Certainly not that he will put his own principles which leaves him to follow the principles of these four great Jurists. By being incapable to bring new principles he becomes a “Muqallid” (follower). How can he bring the same like piety and taqwa which these great Imams as that was the time of taqwa and ours is the time of lies as the Prophet said, “Let’s say one can bring such piety but what about establishing the trust of the people”. How will he manage to do that? It will be next to impossible. Regarding Taqleed shakhsi which is to follow one specific Imam is a must due to the work of the Imam being based on Quran and Sunnah. How can someone that is not of the level of knowledge of these Imams select and choose from their work? His knowledge should be the same level or to the level of their students or Murajjiheen. It will not be allowed for him to pick and choose from one Imam and leave the other Imam because of ease and difficulty. For someone to do that would be making a mockery of Deen. That means he is following his own desires and not the source. Giving preference to the saying of an Imam over the other in specific issues needs the preference of the source as well and this man does not have that type of knowledge to prefer one over the other. Then the general public in an area will follow whatever their Mullah (Scholar) says in each and every issue, which is again Taqleedi Shakhsi of this Scholar. The unity they claim on the basis of Quran and Sunnah will be counterproductive that in one city even if there are 100 Masaajid and everyone follows their Imam of the masjid there will be 100 madhaahib instead of one in the area. If they say we follow what Sheikhu Islam Ibni Taymiyah said, we say that he himself was a muqallid of Ahmad Ibni Hanbal. If they say we follow Hafidh Ibni Hazm or Imam Dawud Dhahiri so we say you follow a specific one or anyone in different issues, if they say follow a specific one then that is Taqleedi Shakhsi and if they pick and choose then again the question arises

on what basis? If it is on the basis of knowledge then your knowledge must be excellent to that of theirs or at least to their level and that is not possible. How can you judge the knowledge of one whose knowledge is much higher than yours? It is not sensible. If one says I follow Ahadith so by this statement he is indirectly saying that these four great Imams and their followers did not follow Ahadith? Amazing and we say what Ahadith do you follow? If he says the saheeh (authentic one), then we say how do you define a saheeh Hadith and how can you say that the Hadith I do follow is saheeh. The great Imams did not follow saheeh Hadith? Have they left it ignorantly or arrogantly. The Hadith which you take is saheeh, did you say it or somebody else? If it came from you then you are not an authority in this regard, if someone else in the past said this then this is Taqleedi Shakhsi in Hadith and not in Fiqh. Also we say that to call a Hadith a saheeh one is a matter of research of our predecessors (May Allah Bless them) and that is why in so many Ahadith these Muhadditheen differ each other as they differ in the very status of the narrators or even in the conditions of continuity of the narration chain. If he says I do take Hadith from the Book of Imam Bukhari then he takes only a little and ignores a lot as Bukhari has not put all saheeh Ahadith there as he himself said. Bukhari is not the only Book of Hadith, there is Al adabul Mufrad and Juz Raful Yadain. What about Ahadith therein his other books or the Ahadith other Muhadditheen like Muslim, Tirmidhi, and Abu Dawud narrated from Bukhari while he himself has not put it there in his book Saheehul Bukhari. We say then you are the muqallid of Bukhari and that is Taqleedi Shakhsi. Also the term saheeh is used for a specific type of Hadith and specific type of book for example Saheehul Bukhari. This term does not mean that only this Hadith may be considered which has these five characteristics;

- i. Narrated by a just integrated narrator
- ii. Having a strong memory
- iii. Narration chain has no disconnection anywhere
- iv. The authentic narrator does not contradict a narrator more authentic than him
- v. The narrator is not a weak or contradicting an authentic one

Also where will we put the Hadith Saheeh Lighairihi or Hasan Lidhatihi or Hasan Lighairihi which are the types of accepted to the Ummah. Same is the case of saheeh for a specific book yes that is a sound book but there are books not called as saheeh as they do not fall in this category however they are called sound books like the six sound books while by the name of saheeh are only known to Bukhari and Muslim. The remaining four are called Sunan. Also it does not mean that only these six books are sound and no others, even though there are daeef (weak) Ahadith therein especially in Sunan while in Ibni Majah there are a few fake Ahadith also. The weak one is Hadith but the fake one is not at all. The scholars have reservation in 80 narrators of Bukhari and 160 of Muslim however all these issues are academic.

Furthermore we say that these Muhadditheen were muqallid as well and of a specific Imam. If taqleed is shirk or haram then can we accept the narration of a mushrik or a sinner? While we already have mentioned that the first quality of a narrator is just integrated. Taqleedi Shakhsi was known to Sahaba also. The Prophet said follow these two after me i.e Abu Bakr and Umar (Tirmidhi). Some people asked Ibni Abbas in Hajj a woman in menses has not done tawaf wada he said she can go back home without making it however the people said we cannot leave Zaid Ibni Thabit for you, he says she should wait and do tawaf. This is Taqleedi Shakhsi of the people of Madina. Ibni Abbas did not object to it. Imam Bukhari narrated a Hadith that some people asked Abu Musa regarding an issue of inheritance he gave them the fatwa then they went to Ibni Masud and he said otherwise so they came back to Abu Musa and told Him about this. Abu Musa said do not ask me as long as this great scholar is amongst you. This is nothing but Taqleedi Shakhsi from Ibni Masud. Now in Deen two things are very important and these are;

- i. Riwayah - The narrations
- ii. Dirayah- The in depth understanding of what is narrated.

The Muhadditheen memorized and preserved the Riwayah and at that time that was the authentic way so Allah The Creator of the world blessed people with extra ordinary memory. They memorized

hundreds of thousands of Ahadith along with its narration chains and also all about the narrators as well. When these Ahadith were compiled by them then such like memory was not needed so no one was found the like of them. Then there are those who were the scholars of these compiled books and they would refer to these books. Same is the case of Dirayat, there were people who were blessed with extra ordinary understanding of Riwayat. They knew its status, position, explanation, interpretation and how to deduce there from and find out ways on how to apply or implement it. All this was accomplished and compiled in detail. After these great men of extra ordinary understanding others came who were not at the same level however they understood the works of their predecessors. These later men would give a ruling based upon the works of their predecessors. We can say that this has a resemblance to Takween, meaning that the people of extra ordinary understanding who knew the physics and chemistry of things in the world established formulas to bring inventions. They compiled these formulas and now scientists after them rather than abolishing proceed ahead in the light of their findings and make progress. In Tashree these findings are called Ijtihad (deduction) while in Takween it is called Eijad (invention). Something that could be invented could not be reversed rather it could be promoted. Same is the case for Ijtihad. Allah Tala says: "Surely his is the creation and his is the command" 7:54. Creation is the system of Allah and command is the word of Allah and Allah said: "There is no change for the words of Allah" 6:34. And he said: "So set your face straight for the religion sincerely (Be strictly on it) to the nature of Allah with which He has created mankind, there is no change for the creation of Allah. That is the straight religion but majority of people do not know 30:30. In this verse he not only said that there is no change to the creation but also said that Deen is nature and natural and Allah has put it in the nature of men. Now when there was a need for the basic rules and formulas to be sorted out from the text and then to deduce laws therefrom, then Allah created such like Jurists and when that job was done and there was a need of those who can apply these laws and can give priority to one thing over the other then Allah created such like people. The inventor looks into the internal characteristics of things to find out a commonality and kulliyat while the Jurists look in depth into the texts to find out the reason

for the rule therein. Both of them study things or issues first to find out what is common in these things or issues and then they deduce other issues through these commons. There is a wisdom in every that has a common therein and every common is related to an attribute of Allah therefore by practicing upon it one gets connected to that attribute of Allah. A Mujtahid has the sense of understanding of Ijtihad in his heart and mind. A Messenger is connected to Allah naturally so the kulliyat came into his mind first then the reason after. The process is that the Messengers go from direct relation with Allah then towards Allah's attributes then to actions. The mujtahid is related to the Deen brought by the Messenger first. In his mind many juz'iyat come together then he practices them, thinks about them to discover the reason and cause. After he applies the same reason to other issues which ultimately connects him to the Messenger which then connects him to Allah. In the Hadith it is said that for each Ayat there is a "zahr" (appearance) and "batn" (hidden). The appearance is the proper knowledge of Arabic language, grammar, literature etc. The hidden is the reason for a law. Then Ahadith are also Wahi like the Quran but the Prophet received the very words of the Quran and its sense as well however regarding Ahadith he was inspired with its sense and then he expressed it in his own words. He said "I have been given Jawamiul Kalim" i.e. I speak few words but the meaning is comprehensive.

- i. Bayani Taakeed if a Hadith gives a meaning the like of an Ayat.
- ii. Bayani Taeen if it fixes its one aspect out of a few.
- iii. Bayani Taqreer if a Hadith has taken away the ambiguity of the meaning.
- iv. Bayani Tafseel if it gives the detail of the unclear concept in the Aayat.
- v. Bayani ilhaq if it has mentioned the left over part of an Ayat.
- vi. Bayani Taujeeh if the Hadith has mentioned the reason of the rule in the Ayat.
- vii. Bayani Tamtheel if the Hadith has mentioned an example for the kuliyyah mentioned in the Ayat.
- viii. Bayani Taleel if the Hadith mentioned the cause and 'illat of the rule mentioned in the Ayat.
- ix. Bayani Ta'theer if the Hadith has mentioned the effects and characteristics of the rule in the Ayat.

- x. Bayan Tahdeed if the Hadith has mentioned the bounds of the rule in the Ayat.
- xi. Bayani Takhsees if the Ayat has mentioned something general but the Hadith specified that matter.
- xii. Bayani Qiyas if the Hadith has mentioned the like of the rule in the Ayat for an alike issue due to the commonality in the 'illat.
- xiii. Bayani Tafree if the Hadith has deduced something from the general formula mentioned in the Ayat.
- xiv. Bayani Istikhraaj if a Hadith has derived a formula from that specific law mentioned in the Ayat

In other words we can say that Hadith is but the interpretation and explanation of the Holy Quran. Hadith is like a membrane between Quran and Fiqh. Malik, Shafi, and Ahmad take each Hadith into consideration and give priority to one over another because of the it being more authentic in chain than the other, while Imam Abu Hanifa looks into all the Ahadith of the chapter first, especially in Ibaadaat, then he tries to find out the very spirit and commonality found therein regarding that type of Ibaadah and makes it a formula. After that he gives priority to such like Ahadith which are in conformity with that formula over the others if the chains are almost all similar. An example is the prayer and Hajj. He derived therefrom that the prayer is based on Aql (sense) and sense requires less movements while Hajj is based on ishq (passionate love) which causes a lot of loud talk and much movements. Now the riwayat which is of fewer movements in prayer those are preferable and in Hajj the riwayat which is of much movements are preferable. The very nature and spirit of these Ibaadat require that respectively. It does not mean that Abu Hanifa does not consider these other narrations; he says these specific actions are exceptions.

Fatwa, ifta, istifta and Mufti are four terms used in the field of fatwa. As all these terms are known in the field of Fiqh, therefore the actual meaning of these terms depend upon the meaning and definition of Fiqh. Fiqh is an Arabic word which means understanding, but used in the meaning of understanding in depth. This word is used in the Holy Quran and Hadith both several times. We mention only one from each of them. In the Holy Quran Allah said: "Why a party from every group (of people from the community) do not go out to avail understanding in Deen so they may warn their people and they may beware (of evil) 9:122. The Holy Prophet (SAS) said as Imam Bukhari and Imam Muslim narrated on the authority of Muawia (RA) "When Allah SWT intends khair (favor/goodness) to someone, He gives him understanding in Deen, verily I am the distributor and Allah is one who grants (things/knowledge). The word fid Deen indicates and embodies the meaning of depth in understanding, which ultimately tells us that only to understand is not Fiqh. Then the term Fiqh is defined by eminent Jurists as follows. Imam Abu Hanifa said "skillful knowledge of one about his rights and duties." This marifat (recognition) could be availed when ones soul becomes well accustomed to the study of Quran and Sunnah and the ways of deductions based upon known rules that it becomes his nature. This definition includes ilmu Kalam related to beliefs and ilmu Akhlaq (ethics) however later these two became separate sciences as well as Fiqh. Imam Shafi says that Fiqh means "The knowledge of the practical religious (legal) rules derived from its detailed sources." This definition excluded ilmu Kalam and ilmu Akhlaq or Tasawwuf. The detailed sources of Shariah are Holy Quran, Sunnah, Consensus of the opinions of the Sahaba or Jurists and Qiyas or analogical deduction. As the formation of Fiqh has a lengthy history wherefrom the four major school of jurisprudence emerged to which the majority of the Ummah is committed to follow. Imam Zarkashi defined in his book that Fiqh is skillful knowledge of the solution of events taking place from text of Quran and Sunnah or from the deductions based upon the rules of one of the madhabs. Then there are two kinds of people in the Ummah, the scholars and the general public. The public are to follow the scholars while the scholars have certain classes as follows:

1. Mujtahid Mustaqil- that kind of Jurist who has laid down basic rules and principles for deduction, like the founders of the four madhaahib and all other such like Jurists of that time and they were so many.
2. Mujtahid Mutlaq- that kind of Jurist who has the qualities of deduction like that of the first group but they did not lay down their own rules and principles for ijtihaad but followed the ways of the previous Imams in ijtihaad. According to scholars these two kinds have not been around for a long time.
3. Mujtahid Muqayyad- that scholar who deduce and give his ruling regarding a specific issue where there is no any expression of his Imam in the issue concerned
4. Mujtahidut- Tarjeeh- that Jurist who can give priority to one of the various fatwas of his Imam regarding an issue due to circumstances or give priority to one of his Imams students according to the situation he has or prefer the saying of another Imam in a specific issue where his Imam had two or more different fatwas in one similar issue, or where the Imam concerned and his student or students had different views and this Jurist considered one of them to fit the situation. Perhaps there was a stern need of a solution so he chooses the better view of another Imam over his Imam.
5. Mujtahidul Fatwa- that kind of scholar who has studied his madhab thoroughly, memorized it, knowing the preferred view in the madhab concerned. He knows the strong view of his Imam from the weak one and he can argue it to a great extent.
6. Muqallid- the follower of an Imam without knowing the source wherefrom the Imam concerned said so and so. He follows the saying of his Imam in word and spirit, and if he will not do so then he will either follow his desires or the desires of the Imam of the masjid in his community who is not a mufti and nowhere near a mujtahid. Therefore, the scholars said that taqlaad is unavoidable, logical and reasonable because a common scholar of the time does not know the text of Quran and Sunnah for every single issue to be presented by him as the source of that every single issue rather than a common lay man. That scholar also consults the books compiled

by these Mujtahideen or their followers even in Tafseer and Hadith. If a scholar quotes a verse of the Holy Quran with the interpretation of Ibni Katheer, Qurtubi, Nasafi, Razi, Suyuti etc, who were all muqallids. If he quotes a Hadith from Mu'atta of Imam Malik, Imam Muhammad, Musnad of Imam Ahmad, or Imam Abu Haneefa they were Mujtahid and from the books of Bukhari, Muslim, Tirmidhi, Abu Dawood, Nasai, Ibni Majah, Ibn Asakir, Humaidi, Hakim, Tabrani, Abu Naeem, Razeen, Darimi, Dari Qutni, Ibni Abi Shaiba, Abdur Razzaq etc. all of them were muqallid and even if they quote Ibni Hazam, Dawood Zahiri they were also either followers of their own teachers wherefrom they got Hadith and also the idea they adopted. Now it has become clear that Fatwa is a Fiqhi ruling/Juristic opinion of a Jurist of the time to a specific issue and event which has been asked by someone. The mufti gives his ruling according to the text of the question asked by someone. He may not go beyond the limits of the question concerned because such kind of detail which is not related to the question concerned creates further questions and confusions.

Ifta is that practice of the mufti giving fatwas.

Istifta means asking fatwa and mufti is the Jurist giving fatwas. Now let us know what are the qualities of the mufti, essentials of fatwa, its importance and application. Mufti is as you know the one who gives fatwa. A doctor needs some qualifications to be a doctor, an engineer and a lawyer may also have qualification in their respective fields so is the case of a mufti. In ancient times the physicians were known as Hakeems like Ibni Seena, Farabi, Sanai, Radi etc. They were well known and recognized physicians, and even surgeons of their time who did not have any institutional degrees, certificates and diplomas etc. As at that time skill in the field was enough proof. The case of the mufti was the same to be a scholar having knowledge of the Holy Quran, Sunnah, knowing the methodology of Tafseer, the principles of ilm ul Hadith, the ways of deduction, knowing Jurisprudence, studied Fiqh in detail, and knowing the grounds of Fatwa, and with all these to be an accepted scholar in the field of Fiqh by the scholars, rather than the general public. Nowadays when it is the

time of presenting license and degree the ulama also provide certificates to the mufti concerned in this field. He has studied in the field of fatwa under authentic muftis or he has practiced fatwa giving for a long time and his fatwas have been accepted and considered authentic. To set aside all these requirements of the present time and to get connection with the Aslaf (scholars of the past) the qualities of the mufti are as under:

1. He must be Muslim
2. He must be a well known or certified scholar of uloomi deenia and especially Tafseer and Usooli Tafseer, Hadith and Usooli Hadith, Fiqh.
3. Must have studied under authentic scholars and muftis and be verified by them or by other scholars of such caliber
4. Must have studied the Madhab concerned thoroughly, memorized its principles, ways of deduction in his Madhab and its application.
5. He may also know other Madhahib to a great extent so if he faced someone from the followers of another Madhab he can give a fatwa accordingly.
6. He must know the circumstances he has to give priority to a specific view of his Imam from amongst two or more views of him in the same issue or to give priority to one view of the students of the Imam concerned if the circumstances needed or to deduce upon his own according to the circumstances in the light of the rules laid down by his Imam, but there is no text of the ruling of his Imam for this specific issue or he can choose the view of another recognized Imam if he has a view in the issue concerned.
7. He must consult the specialized person of a specific field when he is asked a fatwa relating to a field where he does not have the knowledge. For example if he was asked a fatwa regarding a medical issue, he must consult a doctor in this regard to know the details to enable himself to give fatwa.

8. He must be committed with his field of knowledge by studying the Mutoon (texts of books of Fiqh) and Shurooh (commentaries written thereof) which can bring him the solutions to come to his mind at the moment when asked.
9. He may consult the Mutoon and Shurooh when he gives fatwa.
10. He must be confined to the question asked by some and may not go in details not required.
11. He may not make a hast in fatwa giving rather to ponder upon the issue concerned several time to avoid any disorder in the Muslim Community without making any compromise on the cost of Deen.
12. He must be a pious, Allah fearing, keeping in view that he will try to the best of his knowledge to find out the best solution to the question from the collections of my Imam and his followers and from my predecessors as they have tried to their best to deduce the right thing from Holy Quran and Sunnah.

Then the fatwa has its requirements as under.

1. Fatwa must be based upon an authentic authority that is Quran and Sunnah and the Fiqh deduced by the Jurists of these sources.
2. Fatwa may be in brief and confined to the question setting aside irrelevant details which are not required.
3. Fatwa may be written on the same paper on which the question is written, leaving no space in between the question and answer and so between the answer and signature and seal of the mufti to avoid any tampering by some wicked element in question or answer later on.

If a mufti could not figure out a reliable answer to a question, he may refer it to some other mufti as Sahaba and Aslaf would do. After giving fatwa if he thinks it fit to say that if it is right then it is from Allah and if otherwise then from me and satan as Ibni Masud used to say. The reference for a reliable scholar is an authentic book, while for general public the scholar is an authentic source to get

knowledge because the general public does not know books nor can they understand them easily. When an authentic mufti gave his fatwa to someone to the best of his knowledge, that person and all general public can follow it and they will get reward and so the mufti will get reward even though if he would have done a mistake unintentionally, and if he has given fatwa and that was the right one then he will get double reward as mentioned in the Hadith. Mufti in a madhab is not a mujtahid of first, second, third, or fourth category. He can be of fifth which means mujtahidul fatwa or we can say that he is a muqallid mufti who knows the madhab of his Imam to a great extent. A Hanafi mufti can give fatwa to the followers of Shafi or Malik or Ahmad according to their madhab and Imam if he knows it in detail because if he will impose his own madhab on others this will create a disorder, confusion and disturbance which are not allowed in Deen. As far as Ahli Hadith are concerned they either follow the Ahadith directly, which are compiled by Muhadditheen and most of them were Muqallideen of one of these Imams as these Muhadditheen know that these Imams were much more knowledgeable than anybody else in this field knowing the Hadith Saheeh, Daeef, Hasan lidhatihi, Hasan lighairihi, the Madallas, Shadh, Munkar, Mudtarab, Mu an an, Mudraj, Munqati, Mursal, Rajih, Marjuh, Mahfoodh, Nasikh, Mansukh etc from amongst the Ahadith and they were knowing also Haqeeqat, Majaz, Mushtarak, Muawwal, Mujmal, Mufassal, Mutlaq, Muqayyad, Muhkam, Mutashabih, Dalalatun nas, Isharatun nas, Ibaratun nas, Iqtizaun nas, Qatius suboot and Qatui ud Dalalat, Qatius Suboot and Dhanni ud Dalalat, Dhanni us Suboot and Danni ud Dalalat etc. Perhaps they will follow Imam Ibni Hazm, Imam Dawood Adhahiri or Allamah Shawkani so that is another kind of taqleed or Imam Ibni Taimiyah who was the follower of Imam Ahmad or a scholar will follow greater one than him which is also taqleed. The muqtadi from general masses will follow the Imam of his masjid or a scholar of his community which is also taqleed. The problem is where the Imams of the previous time near the time of the Holy Prophet (SAS) and His Sahabah are to be followed as far as the interpretation and application of Quran and Sunnah is concerned or the scholar of later or present time. Anyhow Ahli Hadith can choose a fatwa either from the books of Imam Ibni Hazm, Imam Dawood, Hafidh Ibni

Taimiyah, Allamah Shawkani or any other Hadith which will be authentic and Muhkam as far as there research is concerned.

Is fatwa a binding ruling? As we said that fatwa is to be given when someone asked the mufti and this ruling will be according to the text of the question asked by, however as this is not a decree given based on legal procedure which takes place in a court of law between two parties which is called qada or judgment and which has sanctity beyond if one will violate it he would be punished by the court concerned and the government as well as the case maybe. Fatwa is a Juristic opinion and viewpoint of a Jurist so the person asked it he should obey and follow it. Keeping in view the fear of Allah and the day of resurrection which is called diyanat and taqwa. If he will make a joke of a fatwa of a Jurist of a high caliber because it did not go according to his desires and wishes, he will be severely punished by Allah on the Day of Judgment. All the Muslim must follow it and if they mock at it same will be there outcome. However as far as the binding in the sense of punishment in this world is concerned there is no such sanctity behind the fatwa. The Muslims show no great respect to fatwas and they would ask the same question from every scholar to get their desire or to create disturbance in the Muslim society and rivalry between the scholars. This can cause insult to Deen especially here where the majority of the people are non Muslims and there are institutions of the opponents of Islam who need and want the Muslims to be so. As far as difference of views are concerned this is logical as we indicated to it but it needs more details. May Allah (SWT) bless all the Muslims with unity as these various interpretations of Deen are like various colors of flowers and roses which increase the beauty of this Deen and made it easy to follow. With adopting various practices of the Holy Prophet (SAS) by various Imams, Allah (SWT) kept all the practices of his Beloved Prophet alive until the last day of the universe. The Holy Prophet (SAS) said that the differences amongst my Ummah is the mercy of Allah.