

The ninth lecture

The third topic: The Islamic system - the Islamic Sharia system -

This complete system comes on top of the comparative legal systems from which many theories and rulings were derived and borrowed that are still applied to this day. This system established a strong modern state at various levels and in all fields. There is a difference between what comes from the people and what comes down from the Lord of the people.

The first requirement: sources of Islamic legislation

The sources of Islamic legislation are the evidence on which Islamic law is based, and these sources are evident in the hadith of the Messenger of God, may God bless him and grant him peace, to Muadh bin Jabal when he appointed him as judge of Yemen, and he said to him, "What do you decide?", Muadh said: "By the Book of God." He said: "If you do not find it?" He said: "I will judge according to the Sunnah of the Messenger of God." He said: "If you do not find it?" He said: "I will strive to find my opinion." Then the Messenger of God, may God bless him and grant him peace, said: "Praise be to God who guided the Messenger of God to what pleases God and His Messenger."

Accordingly, the sources of Islamic legislation, according to this hadith, are the Qur'an, the Sunnah, and "ijtihad of opinion," and its meaning includes consensus and other sources attached to it, such as analogy, approval, and transmitted interests, as will be explained later.

The first section: The Holy Qur'an

It is the word of God Almighty revealed to the heart of our master Muhammad, may God bless him and grant him peace, with clear Arabic words and true meanings, and it is written between the two covers of the Noble Qur'an, beginning with Surat Al-Fatihah and sealed with Surat Al-Nas, preserved from all distortion and passed down from generation to generation, orally and in writing, so its words and meanings are from God Almighty. It was communicated to the people through the Messenger of God, may God bless him and grant him peace.

The Holy Qur'an is considered the first source and basis for legal rulings, as it occupies the forefront and is the highest in the pyramid of these sources. It is inconceivable that another source would come with something that contradicts what is stated in the Holy Qur'an, otherwise it would be invalid. Jurists agree that the Qur'anic verses related to transactions were revealed to the Messenger, may God bless him and grant him peace. He was greeted in Medina after the Hijra, where seventy verses were revealed relating to personal status, thirty verses regulating criminal matters, twenty verses relating to judiciary and sovereignty, and seventy verses dealing with the rest of the various transactions.

The texts of the Holy Qur'an include two types of rulings:

- **Final rulings:** They indicate a ruling that must be understood in a way that does not tolerate any interpretation, meaning that there is no room for suspicion that it means a ruling other than that ruling. An example of this is the Almighty's saying: "The adulterer and the adulterer, flog each of them with a hundred lashes." This text is definitive in indicating that the punishment for It is flogging for the adulterer, so it is not conceivable to say that he has another punishment. It is also clear that the number of lashes is one hundred, so it is not conceivable to say that their number is less or more than that.
- **Presumptive rulings:** They indicate a meaning, but they may indicate another meaning, and therefore they leave room for difference in their interpretation. They may be interpreted as meaning that what is intended by them is the first meaning, or they may be interpreted as meaning that what is intended by them is the second meaning, and an example of this is the Almighty's saying: "And the thief, male and female, cut off their hands as punishment for what they have earned, a punishment from God." The word "hand" may refer to the palm, and it is possible that the arm is from the elbow joint, and it is possible that the arm is from the shoulder joint. Therefore, the jurists disagreed about determining what constitute a punishment for theft.

Regarding criminalization and punishment, the texts of the Qur'an include two sections of rulings:

- **Detailed section:** Explains the elements and punishments of some crimes with precision, detail, and provisions. The matter relates to the most important and most dangerous crimes, which are hudud crimes, retaliation, and blood money. The verses related to these crimes include a detailed statement of the provisions of these crimes, and hudud crimes are crimes whose punishments are specified by law, and they are seven crimes, which are: theft. Adultery, drinking alcohol, prostitution, slander, apostasy, and hostility. As for retaliation crimes, they are related to physical assaults that befall a person, such as intentional or unintentional murder, beating, and wounding. The punishment for intentional murder is retaliation with blood money, while wounding and beating are punished similarly.
- **A general section:** It refers to actions that are harmful to society or dangerous to it, and therefore are worthy of criminalization and punishment in and of themselves. This is what is known as ta'zir crimes that fall outside the scope of hudud crimes and retaliation, and for which there is no text specifying their punishment while proving their criminalization and forbidding their commission or commission, so the verses What falls under this section explains the field from which ta'zir crimes are derived without detailing the

provisions of this type of crime, such as hudud crimes, retaliation, and blood money, because this type of crime changes with changes in spatial and temporal circumstances, so the Holy Qur'an established the principle of its obligation to be criminalized, leaving the detailing of that to the judge and the statutory legislator. Who has broad discretion to determine the punishment for these crimes.

Among the things that fall within the framework of the crime of ta'zir, for which there are Qur'anic verses forbidding usury, consuming people's money unlawfully and bribery, insulting and calling people names, suspicion, spying and backbiting, exaggerating the measure and the balance,

The comprehensive verse in this area is the Almighty's saying: "And do not approach immoral acts, whether apparent or hidden," and the Almighty's saying from the one who said: "Indeed, God commands justice and goodness and giving to relatives, and forbids indecency, evil, and transgression. He admonishes you, so that you may remember."

The second Section: The Sunnah of the Prophet

It is the second original source of Islamic law after the Holy Qur'an. It is derived from it and complementary to the provisions contained therein. It includes the words, actions, and reports of the Prophet, may God bless him and grant him peace.

It is everything that came from the Messenger of God, may God's prayers and peace be upon him, whether saying, doing, or declaring. It is of three types: a verbal Sunnah, an actual Sunnah, and a declarative Sunnah, and there is no difference between them in terms of the rulings it decides as long as they emanate from the Messenger of God, may God's prayers and peace be upon him. Every ruling mentioned in one of these types is obligatory to follow, as its words come from him, may God bless him and grant him peace. As for their meanings and the rulings they contain, they are either a direct revelation or an acknowledgment of them from God Almighty.

In its legislative meaning, the expression of the Sunnah is limited to what was issued by the Messenger of God, may God bless him and grant him peace, and it has the character of legislation, that is, it is limited to the legislative aspect that establishes general rules and regulatory provisions that must be followed and applied in Islamic society, to exclude from it what was issued by the Messenger of God, may God bless him and grant him peace. In accordance with his human nature, or in accordance with his human experience in managing the affairs of life, or what was specific to him and not to other Muslims.

The necessity of adhering to the Sunnah and applying the provisions it contains is established in many Qur'anic verses, including the Almighty's saying: "O you who

have believed, obey God and obey the Messenger and those in authority among you. If you dispute over anything, refer it to God and the Messenger if you believe in God and the Last Day.

That is better and better in interpretation.” And His saying Glory be to Him who said: “And if they had referred it to the Messenger and to those in authority among them, those of them who derived it from them would have known it.” And His Almighty said: “It is not for a believing man or a believing woman, when God and His Messenger have decided a matter, to have any choice regarding their matter.” And his also said: “But no, by your Lord, they do not believe.” Until they make you judge in what is disputed between them, and then they do not find within themselves any embarrassment at what you have decided, and they submit completely.”

And the Almighty said: “Whatever the Messenger gives you, take it, and whatever he forbids you, abstain from it.” All of these verses indicate that submission to the Holy Qur’an necessarily requires submission to the Sunnah of the Prophet.

Submission to the latter is explicitly stated in the Qur’an and commanded to be done obligatorily and compulsorily. Everything that both the Qur’an and the Sunnah stipulates of a ruling or meaning is from God Almighty, and the difference is limited to the fact that the words of the Qur’an are from God Almighty, while the words of the Hadith are from the Messenger of God, may God bless him and grant him peace.

The role of the Sunnah in relation to the Qur’an is that it establishes a ruling contained in it, or elaborates a general ruling contained in it, or creates a ruling about which it was silent, so it is either established, detailed, or established.