

Series of Questions Addressed to Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah,  
Ameer of Hizb ut Tahrir through his “Fiqhi” Facebook Page

Answer to Question:

## Queries on Usul Al-Fiqh

To Muhammad Ayaad

### Questions:

Assalamu Alaikum Wa Rahmatullah Wa Barakatuhu our honourable Sheikh, and warm greetings to you.

May Allah (swt) aid you and bring goodness on your hands.

### **The topic: queries regarding Usul-ul-Fiqh**

Firstly, I hope that I have not burdened you with these questions, especially as we acknowledge the magnitude of the burdens that you are carrying out, and the amount of responsibilities that you are undertaking. May Allah (swt) aid you, lead your steps on the straight path and give you and us the pleasure to witness the application of Allah’s law in the second Khilafah state (Caliphate).

As for the questions, they are as follow:

1. I read in several researches that Usoolis have more than one method, such as the Mutakallimeen (scholastics), the method of the Jurists, the general comprehensive principles (*istiqrā’ kulli*), and extraction of the branches from the usul... How can you explain these methods, and are close to any of them or do we have our own method in our usul.

2. It is mentioned in “The Islamic Personality” book Volume 3, page 11: “As for fiqh (jurisprudence), linguistically it refers to understanding (*fahm*); as in the saying of Allah (swt): ﴿مَا نَفَعُهُ كَثِيرًا مِمَّا تَقُولُ﴾ “**we don’t understand much of what you say...**” [Hud: 91], and in the terminology of jurists it refers to the knowledge of the practical Shariah rules (which are extracted from the detailed evidences. What is meant by “the knowledge of the rules” by the scholar (*‘alim*) who knows them is not only mere knowledge, but having proficiency (*malaka*) of the shar’i rules, i.e. this knowledge should deepen to the extent that the scholar acquires proficiency in these rules. Acquiring such proficiency is enough to consider the one who has it a scholar (*faqeeh*), even if he does not know all the ahkam. However, it is a necessary for him to know a collection of the shar’i rules of the branches (*furou’iah*) through deliberation/research (*nadhar*) and deduction/evidencing (*istidlal*).”

Does the term “proficiency” (*malaka*) have any linguistic or *shari’i* roots (*‘asl*), or is it a term agreed upon by the *Usuli* (Jurisprudence) scholars? And is it innate, that a person is born with, or acquired? Or does it have innate elements but is obtained through deep and long practice? Or is it something else?

3. It has been mentioned in the same book, page 42, the *Qa’ida* (legal principle) “That which is necessary to accomplish a *Wajib* is itself a *Wajib*”, in continuation to the *Wajib* topic. It was then mentioned in the same book, page 444, the topic of *Al-Qawa’id Al-Kulliyah* (whole principles) and that they are not considered evidences, but are *Ahkam Shar’iah* derived from detailed evidences, so this caused me confusion, is this *qa’ida* and the *qa’ida* “The means to haram is haram” part of *Usul* or *Fiqh*?

May Allah bless you, and reward you on behalf of all the Muslims.

## **Answer:**

Wa Alaikum Assalam Wa Rahmatullah Wa Barakatuhu

(Your message contains three questions, each question is independent itself, and we will answer briefly, by the will of Allah:

### **Answer to the first question:**

It is known that Imam Shafi'i is the founder of the fundamentals of jurisprudence and he was the first to separate it by classification, and then followed the classifications in the Science of Usul... The scholars of usul followed various types of classifications in their writings, some of them are:

1- There are some scholars when putting down the study and the rules of usul, they focused on the intellectual aspect of usul, and did not pay attention to the branches of jurisprudence in the school of thought they follow, but took the rules and controls that are likely to be valid to them on the basis of discussion of their evidences, and therefore their books are full of evidences and discussions about the study of usul, but they are limited in the branches of Jurisprudence... This style of authorship is called the method of Shafi'is or the method of Al-Mutakalim.

In this method, there is a great deal of style, called Al-Fanqala: "If I say (Fa 'In Qulta)... we said (Qulna)" in the way of the scholars of speech, and in which the branches of jurisprudence are less, and they are actually closer to the truth of putting down the principles, rules and fundamentals which are considered as the basis, then comes the branches, the usul dominates the branches and are the pillar of jurisprudence and deduction (Istinbat), and this method distanced people from intolerance to a branch of jurisprudence or a ruling in a school of thought.

Among the books written in this method:

- *Ar-Risala* by Imam Shafi'i is the first book on this method, and then appeared many books in the same manner, the most important are:

- *Al-Burhan*, by the Imam of the Two Holy Mosques, Abu Al Ma'ali, Abdul Malik bin Abdullah Al-Juwaini Al-Nisabouri Ash-Shafi'i, who died in 478 AH.

- *Al-Mustasfa*, by Al-Ghazali, Abu Hamid Hujjat Al-Islam, Muhammad bin Muhammad Al-Ghazali Ash-Shafi'i, who died in 505 AH.

- *Al-Ihkam Fi Usul Al-Ahkam* by Al-Amidi, Saif Ad-Din Abi Al-Hassan, Ali bin Abi Ali Muhammad Ash-Shafi'i, who died in 631 AH.

2- The method of jurists (Al-Fuqaha') or Hanafis:

There are scholars, when they put the basis of study of their usul and rules that which is indicated by the branches of their school of thought, they did not discuss the rules and controls in an abstract way to pass judgement on it after discussing their evidences, but they reached the rules and controls by studying the branches of their school of thought, and made the rules according to what the branches of the school of thought and in accordance to it... This style of authorship was called the method of Al- Hanafiyah or the method of jurists.

This method is affected by the branches, and work to serve them, and proving the authenticity of their Ijtihad. This method is characterized by taking the fundamental (usul) rules from the branches and rulings of the Hanafi imams, and they assume that they observed these rules during Ijtihad and Istinbat. The reason for this method is that the Hanafi scholars did not find books of usul written by their scholars, as the scholars of the Shafi'is did in *Ar-Risala*, they looked for the fundamental (usul) rules in the branches of jurisprudence based on the assumption that they must be based on the correct basis.

Among the books written in this way:

- *Kitab Al-Usul*, by Imam Al-Karkhi, Abi Al-Hassan, Obeid Allah bin Al-Hussein, who died in 340 AH.

- *Kitab Al-Usul lil-Jassas*, Abi Bakr, Ahmad bin Ali Ar-Razi, known as Al-Jassas, who died in 370 AH.

- *Kitab Al-Usul*, by Surkhisi, the Sun of Imams Muhammad ibn Ahmad, who died around 500, i.e. 490 AH, who is the author of *Al-Msaboot* in fiqh.

### 3- Method of combining Al-Mutakalimeen and jurists:

In the seventh century AH, a third method was introduced that combines the two mentioned in advanced approaches: the approach of the speakers (Al-Mutakalimeen) and the method of the jurists, so as to mention the usul rule and build on it the evidence, and it is compared to what Al-Mutakalimeen and the jurists said with the discussion and weightings, then some branches that emanate from them are mentioned.

Among the most famous books written on this approach:

- *Jam' Al-Jawami'* by Taj Ad-Din: Abdul Wahab bin Ali As-Sabki, who died in the year 771 AH

- "*At-Tahri'*" by Kamal Ad-Din: Muhammad bin Abdul Wahid, famous as Ibn Al-Humam Al-Faqih Al-Hanafi, who died in the year 861 AH.

### 4- The method of extracting the branches from the usul:

In addition to the advanced trends, there is a fourth trend called the trend of "extracting the branches from the usul", in it they mention the usul rules and the opinions of the scholars on them, without going into the evidences of each school of thought, and then some branches of usul will be extracted from them, either on a particular school of thought, or with the comparison between two different schools of thought, such as Hanafi and Shafi'i - for example - or the Shafi'is, Malikis, Hanbalis, and so on.

Among the books written in this method:

*Takhreej Al-Furoo' 'Ala Al-Usul*, by Imam Shihabuddeen Mahmud bin Ahmad Az-Zinjani who died in the year 656 AH.

The usul rule is mentioned, followed by the fiqh applications of the Hanafis and Shafi'is school of thought.

- *At-Tamheed Fi Takhreej Al-Furoo' 'Ala Al-Usul*, by Imam Jamal Ad-Din Abdul Rahim bin Hassan Al-Qurashi Al-Esnawi Ash-Shafi'i, who died in the year 772 AH.

It is considered one of the most important books written on this approach, as it mentions the usul rules, but it limited the extraction to the Shafi'is only.

### 5- The method of building usul principles on the purposes of the Shariah (Maqasid Ash-Shariah), which has the support of Shariah:

This method was adopted by Imam ash-Shatibi: Abu Ishaq Ibrahim bin Musa Al-Lakhmi Al-Garnati Al-Maliki, who died in the year 790 AH, in his famous book *Al-Muwaafaqaat*. In this book, ash-Shatibi took a new, unprecedented path, mentioning the usul rules/guidelines under certain sections, including the purposes and objectives of Islamic Shariah, which include the preservation of necessities, needs and improvements.

Thus, Imam ash-Shatibi followed a different approach in his book *Al-Muwaafaqaat*, where he relied heavily on total extrapolation (*istiqra'*). In the Khutba of the book *Al-Muwaafaqaat*, it was stated about the book: "I still put some restrictions, and I include details and sentences and put down evidences from sources of rules specifically not generally, based on the total extrapolation, not limited to partial individuals." The total extrapolation means here is to follow the Shar'i rulings in the same issue to come out of this process with a total judgment on the issue that is extrapolated.

This is a simplified summary of the meaning of the terms in your question about the methods of classifying the books of jurisprudence

The book of the party on the fundamentals of jurisprudence: *The Islamic Personality* Volume III, focused on the legislative usul study as follows:

A- It paid attention to the relevant issues related to the legislative aspects away from purely theoretical aspects. It did not address issues that are not fundamental in the study of the fundamentals of jurisprudence, and evidences, as in the study of "Is thanking the one who give blessings a *wajib*/obligation by the Shar'i or by the mind", and so on. And when meeting issues not related to usul in terms of evidences, as the subject of "pretty (*husn*) and ugly (*qubh*)", or in the section of "Al-Hakim", it discussed them because of the legislative benefit in explaining such matters because they illuminate the reality of things and facilitate their judgment, because the subject of this judgment is *husn* and *qubh*; what is meant by passing judgment is that man sets his position regarding an action, which is based on his view of the thing, is it pretty or ugly? That is why issues like this have been discussed.

B- It did not delve into the logical study of the issues it discussed, and did not branch off from them with non-beneficial branches, but it is limited to legislative study and legislative disciplined evidences.

C- It has adopted clear legislative, linguistic, and mental evidences away from the debate, in a way that facilitates understanding, and leads to the awareness of the issue being investigated with full legislative awareness.

D- It mentioned adequately the branches of jurisprudence in the representation of the issues discussed, unlike some other books, which rarely mention the branches of jurisprudence, in order to clarify the issues investigated and explain their legislative reality. However, it did not expand in the method of extraction of branches from the usul, as in the method of the jurists, because the first purpose of the study of usul is to determine the rules and the controls of usul, and not to mention the branches of jurisprudence. So the book of the principles of jurisprudence of the party is just in this matter.

For all of the above, the book, *The Islamic Personality* Volume III is considered of the finest books of the fundamentals of jurisprudence, for the one able to study and understand it, s/he would have gained access to Ijtihad from the widest of its doors, Allah willing.

#### The second question:

As for fiqh (jurisprudence), linguistically it refers to understanding (*fahm*); as in the saying of Allah (swt): ﴿مَا نَفَقَهُ كَثِيرًا مِمَّا تَقُولُ﴾ **"we don't understand much of what you say"** [Hud: 91] and in the terminology of jurists it refers to the knowledge of the practical shara' rules (which are) extracted from the detailed evidences. What is meant by "the knowledge of the rules" by the scholar (*'alim*) who knows them is not only mere knowledge, but having proficiency (*malkah*) of the shar'i rules, i.e. this knowledge should deepen to the extent that the scholar acquires proficiency in these rules. Acquiring such proficiency is enough to consider the one who has it a scholar (*faqeeh*), even if he does not know all the ahkam.

However, it is a necessary for him to know a collection of the shar'i rules of the branches (*furou'iah*) through deliberation/research (*nadhar*) and deduction/evidencing (*istidlal*). Accordingly, the knowledge of one or two rules is not called fiqh, nor can the knowledge that a kind of evidence is a proof be called fiqh.) **End of quote.**

In the dictionary Al-Muheet: مَلَكَهُ يَمْلِكُهُ مَلَكًا مُتَلَكِّئًا، وَمَلَكَهُ، مُحَرَّكَةً، وَمَمْلُوكَةً، بضم اللام أو يُتَلَكِّئُ: اخْتَوَاهُ قَادِرًا عَلَى (الاسْتَيْدَادُ بِهِ) (*Malka, Yamlikahu, Milkan, with shad – with the stressed accent mark, and Malkah (muharka- with the accent mark) and Mamlakah, with dham of the letter lamor with shad: it means to contain it and able to control it.*)

The dictionary Al-Waseet states: *Al-Malkah*, is a well-established attribute in the soul, or a special mental preparation to carry out certain tasks skillfully, like numerical and linguistic proficiency.

In the *Book of Definitions (At-Ta'rifat)*, it is stated that: "*Malkah*" is a well-established attribute in the soul, and it is achieved when the soul becomes in a certain state because of an action, and it is called: psychological state, and is called a state, as long as it quickly passes, if it is repeated and is practiced by the soul until it is established in it, and slowly passes, it is called "*Malkah*" and by analogy to that act: a habit and attribute.

Therefore, the word "*Malkah*" has a linguistic origin. It is derived from the word "*Malak*" meaning "it contains it and is capable of controlling it", and it also has a terminological meaning as defined in the definition of the word "*Malkah*" above. This term is not specifically used by the jurists, it is used in all sciences... This terminological meaning is what is stated in the book of the *Islamic Personality*... and the explanation follows:

The text in the book, *The Islamic Personality* has defined jurisprudence as "the knowledge of the practical Shara' rules (which are) extracted from the detailed evidences." Then it explained what is meant by this knowledge for the one who acquires it is that it is not sufficient for a person to know some of the shar'i rulings so that he is a jurist, because he will be an imitator not a jurist (*faqeeh*), because the imitator also knows some Shar'i rulings/Ahkaam. One also does not need to be aware of all the Shar' rules to be considered as a jurist; not all people are able to achieve this, but one should be familiar with a number of Shariah rulings, and should be aware of their evidences and how to deduce (refer to evidences), and at the same time one will have the ability as a result of one's study and depth of jurisprudence, to access the knowledge of the rules that are not yet known to him, this is the "*Malkah*", i.e. he should have a degree of knowledge that makes him the owner of the jurisprudence and its issues and keys and this becomes a well established attribute in his soul.

It is not meant by the word '*Malkah*' in fiqh the innate aspect and innate readiness that varies from one person to another. Rather, it is proficiency acquired by learning, studying, depth and practicing. Although innate preparations can contribute to the rapid birth and development of the jurisprudential proficiency (*Malkah*), but this innate readiness is not what is described in the text above.

### **Answer to the second question:**

1- The comprehensive Shariah principles in which the ruling is attributed to the whole matter that applies to many parts, the rule of duty, for example in the rule of "That which leads to a duty is itself a duty" it is related to the whole matter, "That which leads to a duty is itself a duty," and the rule is prohibition in for example, "The means to haram is haram" is related to the whole matter of "means to haram," and this total matter applies to multiple parts in different sections of fiqh.

2- The comprehensive principles are Shariah rules in terms of *Istinbat* (extraction), they are derived from the Shariah text as we derive any Shariah rule, whether it is from one or several evidences, but their evidences contain a meaning that acts as an *'Ilah* (indication). This is what makes it applicable to all its components. For example, the rule of "the means to haram is haram" and the rule: "What leads to a duty is itself a duty". Each of them are comprehensive principle. If one looks at their evidences, it becomes clear that the ruling is evidence of it and indicates something else related to it or produced by it, it is then acts as an *'Ilah*. For example Allah's saying: ﴿وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ﴾ **“And do not insult those they invoke other than Allah, lest they insult Allah in enmity without knowledge”** [Al-An'am: 108]

The letter Fa' in the word ﴿فَيَسُبُّوا﴾ **“lest they insult Allah”** means if you insult their idols it will make them insult Allah, and this is haram, and it means that **your insult to their idols in this case is haram, therefore it is an *'Ilah*.** The prohibition of insulting the disbelievers is an evidence of the ruling, and in addition of indicating a rule, it refers to

something else related to it, When Allah says: ﴿فَيَسُبُّوا اللَّهَ﴾ “lest they insult Allah”.

From this verse the principle: “the means to a haram is a haram” was derived.

And an example is the saying of Allah (swt): ﴿فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ﴾ “... wash your faces and your forearms to the elbows.” [al-Ma’ida: 6] And ﴿ثُمَّ أَتِمُّوا الصِّيَامَ إِلَى اللَّيْلِ﴾ “Then complete the fast until the sunset” [Al-Baqara: 187] The word ‘*ila*’ (إلى) (to) in His saying ﴿إِلَى الْمَرَافِقِ﴾ “to the elbows”. And in the verse: ﴿إِلَى اللَّيْلِ﴾ “until the sunset”.

Indicates that unless a part of the elbow is washed, then the action of washing the hand to the elbow is not complete, so the objective must be achieved, and the purpose must not be inclusive in the action, unless a small part of the night, even by a minute, then the completion of the fasting is not realized, therefore washing a part no matter how small of the elbow and fasting a part however small of the night is a *wajib*/obligation, and the two verses are the evidences, because the obligation is not completed - the washing of the hands and the fasting of the morning- except by carrying it out.

So this purpose means that what completes the washing of the hands, and fasting the day, which is obligatory, is obligatory, so it acts as if it is an ‘*ila*’. The verse indicated the ruling, and showed something else complementary to it when the verse says: ﴿إِلَى اللَّيْلِ﴾ “until the sunset”.

So from these two verses the principle: “What leads to duty is itself a duty” is derived.

**3- As you can see the extraction of the comprehensive principles is accompanied by what resembles the ‘*Ilah*, therefore it acts as an evidence;** therefore these two principles and the like as we mentioned before are Shariah rules, but these rules are not detailed rules, but are principles that are used as evidences for Shariah rules. **This is because the method of their extraction has that which resembles an ‘*Ilah* or acts like an ‘*Ilah*, therefore using the principles as an evidence is like the evidence because they include that which resembles the ‘*Ilah* or acts as an ‘*Ilah*.** Using of the principles as an evidence is different from using the evidences for the rule with a Shariah ruling, it will take a different format, and it will take the format of application, so the matching of the rule on the reality will be noticed.

**4- In view of this fact in the method of extrapolation, the comprehensive principles are closer to be a study of the fundamentals of jurisprudence, than the details fiqh studies, so this is why they were discussed in the issues of the fundamentals of jurisprudence and studied in the book *The Islamic Personality*, Volume III, in a special section under the title "The Comprehensive Principles" as there were, in the same book, some comprehensive principles given in explanation and clarification.**

Your brother,

Ata Bin Khalil Abu Al-Rashtah

16 Dhul Qi’dah 1438 AH

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The link to the answer from the Ameer’s Facebook page:

<https://web.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/674186652778409/?type=3&theater>

The link to the answer from the Ameer’s page on Google Plus:

<https://plus.google.com/u/0/b/100431756357007517653/100431756357007517653/posts/FJnf7RVbcpZ>

The link to the answer from the Ameer’s page on Twitter:

<https://twitter.com/ataabualrashtah/status/898512721460826113>