

# **Notes of Lectures on Fiqh by Maulana Sadiq Hasan Lecture # 3 (Friday 2 March 2001)**

## **HISTORY & FIQH**

- ✳ Some knowledge of history is essential to understand how our Holy Imams (AS) propagated the knowledge of Fiqh and also to understand the philosophy/logic of some masail of Fiqh.
- ✳ Tonight (7<sup>th</sup> Zilhajj) is the anniversary of shahadat of our 5<sup>th</sup> Imam Muhammad Baqir AS (which occurred in 114 hijri).
- ✳ Open dissemination of Fiqh knowledge was started by the 5<sup>th</sup> Imam, who is also known by the title BAQIRUL ULOOM.
- ✳ Our 5<sup>th</sup> & 6<sup>th</sup> Imams are known by a common title of SADIQAIN.
- ✳ The real benefits of martyrdom of Karbala started appearing in the time of the 5<sup>th</sup> Imam, when people started enquiring openly about real Islam and it's laws.
- ✳ The 5<sup>th</sup> & 6<sup>th</sup> Imams established the first Hawzae Ilmiya (Islamic University). They also gave knowledge about the established system of Taqleed and Khums.
- ✳ According to all Muslims (including Wahabis), the best family lineage in the world is family of our Holy Prophet (SAW) through Bibi Fatima (AS) and Imam Ali (AS).
- ✳ Our 5<sup>th</sup> Imam has unique distinction of having Masoom grandfathers from father's side as well as from mother's side. The father of 5<sup>th</sup> Imam was Imam Zainul Abideen (AS), the son of Imam Husain (AS). The mother of 5<sup>th</sup> Imam was Fatima, the daughter of Imam Hasan (AS).

## **LAW OF ILZAM (Qanoon-e-Ilzam)**

- ✳ In order to understand the topic of Ijtihad and Taqleed, it is first necessary to understand the law of Ilzam in fiqh.
- ✳ Law of Ilzam helps in solving problems due to differences in fatwas from different Mujtahids on the same issue.
- ✳ Law of Ilzam also solves problems arising due to conflicting laws in fiqh between Shia school of fiqh and Sunni school of fiqh on the same issue.
- ✳ These laws were first explained by our 5<sup>th</sup> Imam (AS).
- ✳ According to the Law of Ilzam, if a thing is incorrect (batil) in Shia fiqh, but if the same thing is considered correct according to Sunni fiqh, then a shia can take a benefit from it. This is best explained by examples:

✚ Example 1: Divorce Laws. There are major differences in divorce laws in shia and sunni fiqh. Shia fiqh is very strict in divorce laws (divorce formula must be recited in Arabic, 2 witnesses must be present and the woman must be free from menstruation at the time of divorce). In sunni fiqh, only the recitation of word Talaq three times is enough and other conditions are not necessary. If a sunni gives divorce to his wife according to rule of his fiqh, then (according to law of Ilzam), shia fiqh recognises the divorce as valid and a shia is allowed to marry such a divorced woman.

✚ Example 2: Inheritance Laws. According to Quran, when husband dies, his wife gets 25% of his property if he had no children, or 12.5% if he had children. The property can be of 2 types: Movable (clothes, house building, cash etc) or Immovable (land of house, farm land etc). In shia fiqh, a wife gets a share only in movable property. In sunni fiqh a wife will get share from movable and immovable properties. If a shia wife gets a share from her sunni husband's immovable property, it is halal for her even though it is incorrect in her own fiqh.

✚ Example 3: Jamaat Prayers. In shia fiqh, the Imame Jamaat must be a shia ithna asheri along with other conditions such as being adil. But if a sunni Imame jamaat is leading salat according to his sunni fiqh, then a shia can pray jamaat behind such a sunni imam (he should make a niyyat of jamaat and recite suras himself too).

✚ The same law of Ilzam applies to differences in fatwas on fiqh by two or more shia Mujtahids. Examples are the differences in fatwas in moon sighting laws, Taharat of Ahle Kitab etc.