

# **The Concepts of *Fiqh* and Law, and Their Relationship**

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## ***Abstract:***

This paper consists of two chapters. In the first chapter, I will define concepts such as *Fiqh*, *Shari'a*, *Huquq*, and *Qanun*. The lexical and technical meanings of these four terms as well as the relationship between their lexical and technical meanings will be presented. The second chapter will discuss the relationship between *Fiqh* and *Huquq*, and will elaborate on the nature of this relationship. In this chapter, *Fiqh* is dealt with based on one of its technical meanings, that is, “Islamic Jurisprudence”, and *Huquq* is supposed to represent “the Science of Law”. It seems that, concerning decrees and laws, there are three stages in both of these disciplines: 1- developing theories and scientific analysis; 2- deducing decrees and passing laws; 3-enforcement of the decrees and laws. The similarities, differences, and the interactions between these two disciplines can be studied with regard to all of these three stages.

At the end of the second chapter, there will be a brief critical analysis of the views of some of the contemporary jurists. Based on

these views, there is no relationship between the disciplines of Fiqh and law owing to their different origins, natures, and completely different characteristics. In response, I will argue that despite the differences between Fiqh and law, there are also basic similarities and various relationships between them.

## ***First Chapter: Definitions<sup>1</sup>***

### ***The First Issue: Definition of Fiqh***

In Islamic tradition, *fiqh* has various lexical and technical definitions, and here, by mentioning them, we will try to determine the one we have in mind.

#### ***The lexical meanings of fiqh:***

In Arabic, *fiqh* means to know or to understand. In *Mu'jam -al- maqāīs al Lughā*, a celebrated Arabic dictionary we read: "fiqh indicates understanding something and acquiring knowledge about it"<sup>2</sup> Zamakhshari says, "when someone says I testify that you have *fiqh*, he means that you are wise and clever"<sup>3</sup> In *Majma'-al-bahrain*, we read, "under the verse of the holy Quran<sup>4</sup> ﴿وَلَكِنْ لَا تَفْقَهُونَ تَسْبِيحَهُمْ﴾ the word «تَفْقَهُونَ» which is a derivation of *fiqh*, means "and they don't understand"<sup>5</sup>. Considering the quotations above and by looking at other sources like *Lesān-al-Arab*,<sup>6</sup>

1. Vaedh zade Khorasani, "The annals of jurisprudence", *journal of the faculty of theology*, Mashad University, issue; #30, pages 43.

2. Ibn Fāris *Mu'jam -al- maqāīs al Lughā* V. 4 P. 442.

3. Zamkhshari, *As -al-Balāgha* P. 346.

4. *The Quran*, 17/44.

5. Fakhr-O-Din Torayhi, *Majma-al-Barrein* V. 4 Page 355.

6. Ibn Manzour, *Less n-al-Arab* V. 10 P. 305.

we come to the conclusion that the word *fiqh* has a meaning which is a little beyond just understanding. In fact, it means a kind of understanding which comes along with punctuality and fastidiousness<sup>1</sup>, the concept which is applied in the following verse<sup>2</sup>: ﴿قَدْ فَصَّلْنَا آيَاتٍ لِّقَوْمٍ يَفْقَهُونَ﴾ (and we demonstrate our hints to those who ponder), where the word «يَفْقَهُونَ» which is a derivation of *fiqh* can be translated to "ponder"<sup>3</sup>.

### ***The Technical Meaning of Fiqh:***

*Fiqh* as a technical term is used to mean the following:

1- To have a precise and profound understanding of religion and religious sciences. As mentioned above, lexically, the word *fiqh* means to know something in a general way and it can be applied for any kind of knowledge, but in the literature of the Quran and religious sayings, it has been given a particular usage over time<sup>4</sup>. For instance, *fiqh* has been used in a special meaning in the Quran, chapter 9 verse 127 ﴿صَرَفَ اللَّهُ قُلُوبَهُمْ بِأَنَّهُمْ قَوْمٌ لَا يَفْقَهُونَ﴾ "Allah has changed their minds because they are the people who do not ponder". It has also been used as having an understanding of religion in some religious sayings. For example, Imam Bāqer (P.B.U.H.) said<sup>5</sup>, «الكمال كل الكمال التفقه في الدين...» (the highest level of perfection for a person is to have thorough understanding of religion). Of course, it can be inferred from these instances and some

1. Fakhr-O-Din Torayhi, *Majma-al-Barrein*.

2. The *Holy Quarn*, 6/98.

3. Ibn Ali Fazle Tabarsi, *Majma-al- Bayān* V. 3 Page 78.

4. The *Holy Quarn*, 9/127.

5. Muhammad Ibn Yaghoob Koleini, *Osoul K fi* V. 1 P. 80.

others that the word has still its lexical meaning, and not the technical one, because it has been followed by the prepositional phrase «الدين» (in religion), which indicates that the word itself means "understanding". However, there are also other cases where there are no such prepositional phrases followed by the word *fiqh* and it certainly indicates the special meaning. For example, Imam *Sādeq* (P.B.U.H.) said<sup>1</sup>, «لوددت أن أصحابي ضربت رؤوسهم بالسياط حتى يتفقهوا» (I wish I could whip my companions into acquiring an understanding of religion) or the prophet (P.B.U.H.) said<sup>2</sup>, «الفقهاء امانة الرسل...», (*Foqahā*, the people who have knowledge of religion, are the trustees of the prophets).

2- To have knowledge and understanding of religious decrees. As time passed, the term was gradually allocated to a specific section of the religion which was more tangible and practical, that is, the rules and ordinances which were determined to regulate the social life of people. This specific meaning was probably popularized and became more common because people used it more and was more frequently meant by the word than its other meanings<sup>3</sup>. It is not absolutely clear when this usage became common among Muslims, though. It is believed that the earliest reference to the word dates back to the time of the second caliph who used the word *fiqh* in his speech and intended the knowledge of religious decrees. He said, "If anyone has a question concerning *fiqh*, they should refer to Ma'az". Because at that time Ma'az was well-informed about the Islamic decrees and knew what actions were lawful or unlawful,

1. Muhammad Ibn Yaghoob Koleini, *Osoul Kāfi* V. 1 P. 79.

2. Muhammad Reza Hakimi and Others, *Al-Hay t* V. 2 P. 335.

3. Morteza Motahari, Introduction to Religious sciences P. 55.

the second caliph referred people to him in case they wondered about right behaviors<sup>1</sup>. So, by *fiqh*, he probably meant the special meaning we mentioned here and people who were listening to him understood him as such because this meaning was quite common at that time. So it can be inferred that it was not the first time the word was used in the new meaning or people would not understand it easily. Also it can be concluded that there were lots of people known as *faqih* or jurists at that time and they were the scholars who mastered the religious rules and decrees. Additionally, there are some traditions where the knowledge of religious rules has been referred to as *fiqh*. For instance, Imam Ali (P.B.U.H.) said, "If anyone who is unaware of *fiqh* starts a business, he will surly end up to usury"<sup>2</sup>. So using the word *fiqh* and intending the specific meaning in the sayings of Imams was very common and it has been continued up to now.

3- Sometimes *fiqh* is used in the meaning of jurisprudence; the Islamic science which is in charge of legislating. It is not clear though, whether the practice of *ijtihad* (jurist's scientific attempt to elicit rules from Islamic sources) during the time of prophet, when Muslims had access to *nass* (prophet's sayings and acts), was common or not. Surely after the prophet's decease, Muslims were confronted with new issues for which they had no instruction from the prophet, and because most of them did not believe in the prophet's households (*ahl-al-bayt*) as the true successors of the prophet and knowledgeable sources to solve problems with, they began to practice *ijtihad* and tried to extract the decrees from the existing sources. The Shia people who had accepted the guardianship

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1. Vaedh zade Khor sani, *ibid.* page 47.

2. Abdo-al- Vahed Amodi, *Ghorar-al-Hekam*, V. 2 P. 653.

of Imams and had access to them were also encouraged to practice *Ijtihād* for various reasons including preparation for the *occultation* era, the prolonged but temporary absence of the twelfth Imam from the community<sup>1</sup>.

Among the Shiites, *ijtihād* was to discover the religious decrees by considering the authoritative sources, such as the Quran, tradition and reason. Accordingly, what the jurists did was not legislating new rules but discovering rules from the sources. The Sunnis, on the other hand, used *ijtihād* to innovate religious rules, and this is why some Shiite scholars expressed their opposition against practicing *ijtihād*<sup>2</sup>.

As time passed, both Shiite and Sunni scholars felt the necessity of establishing a structure with specific principles within which the practice of *ijtihād* is done. As a result, they began building this new science by identifying the general subject, the principles, and reliable sources of *jurisprudence*, and elaborated on the proper methods and approaches to discover and elicit the decrees. At this point, *fiqh* was defined for the first time as a science which is “To have knowledge about religious decrees through searching detailed authorities”. According to this definition the meaning of *fiqh* is totally different from the second meaning because, here, *fiqh* is a science like all other sciences, which has been designed to follow a specific purpose and to help jurists gain the knowledge through scientific reasoning, while the second meaning is to just know the religious rules even by listening or reading.

At present time, the term *fiqh* has two basic usages: 1- The collection

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1. For more information on this, see Seyed Abd-o-rasoul Shariatmadari, “Al-Ijtihād va-l- Ikhar” *The collections of Articles of International Congress of Shaeikh Mofid*, vol. 23.
  2. Muhammad Bagher Sadr, *Drous fi Ilm-al-Osoul Alhaqat-al-Oul* , page 46.

of all religious and practical rules. 2- The science of Islamic jurisprudence. In this study, both meanings are intended, but when we compare the two concepts of law and *fiqh*, we basically mean the two sciences. However, we may also compare the rules and decrees made by practicing the sciences of law and jurisprudence as well. Another point to mention here is that by jurisprudence we mean the general science which is accepted by all Islamic sects. We may mention some of the differences and variations while discussing some points.

### ***The Second Issue: The Definition of Shari'a (Devine Law)***

*Shari'a* and its other derivations like *tashri'* or *share'* are very common terms and expressions used in judicial and legal texts. The frequent usage of the term has created a question among Arab legal experts and jurists as to whether or not jurisprudence is an equivalent to divine law or not. In *Mo'jam Maqais-al-Logha* which is a very old Arabic dictionary we read, "Shari'a is a place where water is drunk and it is used to refer to religion as well"<sup>1</sup>. In another dictionary called *Majma'-al- Bahrein* we read this: "*sher'a*, *shar'* and *shari'a* have one origin and *Shari'a* means a place where has been designed for people to drink water from and that's why this word is used to refer to religion as well because religion like the drinking water is clear and soft"<sup>2</sup>.

Other philologists say that *Shari'a* lexically suggests a right and straight path, and this meaning is inferred from the Almighty God's

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1. Ibn Fāris, *Mu'jam -al- maqais al Lugha*, V. 3 P. 262.

2. Fakhr-O-Din Torayhi, *Majma-al-Barrein*, V. 4 Page 352.

saying<sup>1</sup> ﴿ثُمَّ جَعَلْنَاكَ عَلَىٰ شَرِيعَةٍ مِّنَ الْأَمْرِ فَاتَّبِعْهَا...﴾ (and then we put you in the right path so that you follow...), and religion is called *Shari'a* because it provides the right and stable path which is also similar to the drinking area because a religion is a means by which reason is revitalized in the same way that water reinvigorates the body<sup>2</sup>. Different explanations have been suggested for the technical meaning of *Shari'a*. For instance, *Shari'a* is all the rules God legislates for people, no matter whether they are concerning basic beliefs, ethics, or people's everyday activities such as legal transactions or religious rights<sup>3</sup>.

Thus, *Shari'a* has a vast range of meaning which includes all aspects of religion. *Allame Tab tabaie* says, "Shari'a is a paved and smoothed path for the nations to go through, and that's why a *Shari'a* might be abrogated but not a religion... so *Shari'a* is less extensive than religion... Almighty God does not oblige anyone to anything except to submit to His unique religion which is Islam with the meaning of submission (Islam means submission and with this meaning all religions refer to one unique belief). However, while there is one single religion, since people have various capacities and competences, they have been granted different paths to reach this unique aim and these paths are in fact different *Shari'as* that Devine messengers like Noah, Abraham, Moses, Jesus and Muhammad were in charge of propagating..."<sup>4</sup>.

In the literature of modern law, *Shari'a* is meant to refer to just the practical section of the religious rules and not the whole. For the same

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1. *The Holy Quran*, 45/18.

2. Samir Aliya, *Ilm-al-Ghānūn va-l-Fiqh al-Islami*, page 46.

3. Shbla Muhammad Mostaf , *Al-Madkhal fe-l-Fiqh al-Islami*, P. 27.

4. Seyed Muhammad Hosein Tabatabaie, *Al-Mizan*, V. 5 P. 350.

reason, *Allame Helli* named his judicial book "*Sharaye-al-Islam*" which means the *Shari'as* of Islam. Also the words like *tashri'*, *mashro'* and *shāre'* which are all derived from *Shari'a* are frequently used in jurisprudence. It might be concluded that because the practical section of religious rules is more functional and handier, the term has been limited to that meaning. Muslim scholars do not agree upon whether or not it is proper to call human-made rules *Shari'a*. Many of them use the term *tashri'-al-vazi'* (which means secular legislation) in order to refer to human-made rules and for the heavenly-made ones they use the term *tashri'-o-samāvi* (which means Devine Legislation)<sup>1</sup> There are few scholars, however, who believe the term has to be used only for Devine rules and cannot refer to the others<sup>2</sup>.

### ***The Third Issue: Definition of the Term "huqūq" or Law***

*Huqūq* (law) has a wide variety of meanings and the most important ones are as follow:

1- It is a plural form of *haq* which means *truth* or *benefit* or *salary* or *property*...<sup>3</sup>. *haq* with this lexical meaning has lots of usages in both law and jurisprudence. For instance, the priority and the authority one possesses over the others can be referred to as *haq* which is equivalent to English word "*Right*" or French term "*Droits sujetfe*"<sup>4</sup>. Jurists have elaborated on this term with such a meaning and explained

1. Samir Aliya, *Ilm-al-Ghānūn va-l-Fiqh al-Islami*, page 46.

2. Samir Aliya, *Ilm-al-Ghān n va-l-Fiqh al-Islami*, page 47.

3. *Farhang-e Moien*, V. 1 P. 1364.

4. Reza Oloum, *General Principles of Law*, P. 3.

in detail everything regarding this concept and suggested different instances for it all of which we cannot point out here as we plan to abstract the materials and mention the major issues only<sup>1</sup>. Jurists have mentioned the terms like "*haq-al-lah*" (God's right), "*haq-o-nās*" (people's rights), "*haq-al- m*" (general right), "*haq-al-khās*" (specific right), "*haq-al-eini*" (substantial right), "*haq-al-dhemi*" (suspending right), "*haq-al-intefa*" (the right to benefit), and "*haq-al-ikhtisās*" (priority right). These terms are extensively used in both jurisprudence and law and they apply the meaning we just discussed.

2- Another meaning intended by the term *huqūq* is the collection of all obligatory rules governing the relationships among individuals in a society<sup>2</sup>. Jurists and law experts have defined this concept in various ways depending on its special position, its perceiving approaches, its principles and resources. There are, however, some common features all definitions include. Accordingly, a social or legal principle or rule should contain obligation, sanction, and generality, and should concern social relationship. As a result, the principles which are devoid of obligation such as moral principles or the actions that are religiously permitted, unfavorable, and recommended or the customs which are practiced in a society and have no parts in regulating and governing social relationships, cannot be counted as *huqūq* since they lack one of the essential features of its principles.

3- Another meaning applied by the term *huqūq* is the science of law. To define law it is said that man is a being that cannot survive

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1. Introduction to *Islamic law*, V. 1 P. 46.

2. Reza Oloum, *General Principles of Law*, P. 7.

living away from his fellowmen because he needs to make relationships with other individuals in order to meet his needs, and his needs are natural and quite real. Now, to identify these needs and the relationships made to respond to the needs, a science comes to existence which we call "law". Therefore, law is a human and social science because it deals with human and social relationships among all people. It is a kind of science where theory is finally put into practice. The boundary between theory and practice in this science is what makes the science of law differ from the skill of law<sup>1</sup>. Regarding this issue, in the book "*the general principles of law*" we read:

"...Law, just like sociology and economics, is one of the social sciences and is referred to as a science. So it should have the features all sciences contain<sup>2</sup>. It should include history, philosophy, aim, approach and specific sources and principles. It should be noted that studying and exploring law as a branch of knowledge cannot be done independently and without considering the existing law schools and legal systems. Because, as mentioned before, law is a kind of human science which concerns social relationships, and in every part and aspect of it, different views are expressed which lead to the constitution of different systems and schools with respect to law. Hence, it is so difficult to study law thoroughly if the context and the background from which law came to existence and if its strong link with law schools and systems are neglected. Thus, in this study, our primary goal is to review and explore the science of law. We are obliged to consider the second meaning of *huqūq* and

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1. Muhammad Jafar Langroudi, *General Introduction of Law*, P. 13.

2. Reza Oloum, *General Principles of Law*, P. 7.

discuss the more general aspects of it. This is also true for jurisprudence, as it is not possible to inspect jurisprudence without considering its different schools and systems. As a result, in discussing the relationship between law and jurisprudence, we have to review each of them in their specific forms and schools.

### ***The Forth Issue: Definition of Rules (Law)***

The term "*qānūn*" (rule) is one of the expressions used frequently in law and is worth being discussed to the extent that our research is in need of. "Law" has these meanings in different dictionaries:

- 1- Custom, principle, approach, rite;
- 2- A general concept that corresponds to all its particulars;
- 3- Regulations made and enforced by the authorities<sup>1</sup>.

In *Lisān-al-Arab* we read, "Rules of everything are the proper ways to assess them... and it is not an Arabic word"<sup>2</sup>.

In his book *Falsafat-al-tashri'* (the philosophy of legislation), Doctor *Sobhi Mohmasani* says, "The beginning of using the term *qānūn* dates back to the time of Ottoman empire when the book *Al-Majale* was being written. In this book, the term *qānūn* was used to refer to the non-religious rules. For instance, they said, "usury is forbidden in religion while it is allowed and practiced by law," and the practice of receiving interest on lent money got the title of the rule of Ottoman interest"<sup>3</sup>.

Today, this term is extensively used in law so that if it is used alone, the legal meaning is the first to cross one's mind. If its other

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1. *Farhang-e Moein*, V. 2 P. 26.

2. Ibn Manzour, *Lesan-al-Arab*, V. 11 P. 328.

3. Sobhi Mohmasani, *Falsafa al-tashri fil-Islam*, P. 17.

meanings are intended, it should be used with a complement like *qānūn jazebe* which means the laws of gravity.

The legal meaning applied by the term *qān n* concerns all the obligatory rules with a formal sanction which guarantees their enforcement. In other words, *qānūn* in its general meaning implies the binding rules passed by qualified authorities and includes all the ratified bills, regulations, moral canons and all the principles a personality has made for the society. *Q nān* in its specific meaning refers only to the laws ratified by the parliament<sup>1</sup>.

According to this meaning, *qānūn* is similar to the second meaning we explained for the term law. It has some differences, though; first, when we talk about *huq q tejarat* (commercial law) or *huqūq madani* (social law), the word entails a general meaning including analysis and reasoning but when we say *q nān tejarat* (commercial rules) or *qānūn madani* (social rules), we mean only the rules without any analysis and this is because in some languages like Persian, the term *qān n* does not refer to a special science, while in other languages like Arabic, the same term is used to imply the science of law. Second, although the word *huqūq* is sometimes used to point at the binding rules, this usage is limited to the time when we plan to refer to a wide range of rules while there is no such limitation in using the term *q nān*. For instance, we can say driving rules or the rule of blood-money but we never use the term *huqūq* (law) to refer to the driving regulations or blood-money rules because they are not very extensive and wide-ranging issues.

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1. Reza Oloum, *General Principles of Law*, P. 1.

## ***Second Chapter: the Concept of the Relationship between Jurisprudence and Law***

Although law and jurisprudence are two different sciences, they share many aspects. In the introduction of a law book we read, "Although there are differences between the issues discussed in Islamic jurisprudence and the ones mentioned in secular law, both sciences are similar in nature and essence"<sup>1</sup>.

Sometimes a religious decree contains the specialized features that belong to a law principle and has all the elements that are necessary for a rule to be identified as a legal one. This close link on the one hand, and all the discrepancies that exist between the two sciences on the other, highlights the significance of the relationships between the two. Before tackling the relationship between the two sciences, it is necessary to point out that jurisprudence has the capacity to expand its scope and become an independent legal system just like other systems and function like other legal systems under specific conditions. If this is true, jurisprudence requires a different approach than law. However, because in this study we are considering the present situation and not speculating the future, the approach we are taking is in accordance with the present situation of the two sciences. Thus, Jurisprudence and law each have two special features that are different and similar at the same time. These two features are the theoretical and the practical aspects of the two sciences. In a more precise analysis, it can be said that the theoretical aspect of jurisprudence and law involves two stages:

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1. Reza Oloum, *General Principles of Law*, P. 13.

A- The first stage is to theorize and speculate on the proper methods and approaches in order to conceive and elicit a rule.

B- The second stage is to elicit the rule or religious decree from the sources and make it a law.

We can conclude that, in general, there are three stages involved in considering both jurisprudence and law:

- 1- Theorizing and analyzing scientifically;
- 2- Eliciting and passing laws;
- 3- Practicing and enforcing them.

To clarify the ambiguity existing in the relationship between jurisprudence and law, we are obliged to consider these three stages in our comparison of the two sciences. First, we give a short description of these three stages:

**Theorizing and analyzing scientifically:** in this stage, the jurist or legal expert tries to analyze the situation using sources and an approach he sees appropriate. He examines different aspects of it and supplies various proofs for each aspect. The discussions in this stage are pure scientific and include maximum precision and attention. In this stage, possible consequences that may be followed by enforcing these rules are not considered. Judicial books are filled with such discussions while legal experts have tried hard to collect works including similar materials. The consensus experts' views along with the rules available in the structure of law form a strong legal system. It is said that every legal system consists of two parts: the rules and experts' opinions. Islamic law too, involves these two components<sup>1</sup>.

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1. Muhammad Jafar Langroudi, *General Introduction of Law*, P. 3.

**Eliciting the decree and making the law:** the attempts made by the experts in the previous stage to apply the sources and proper methods would result in extracting a decree with regard to a specific task. The discussions and investigations made in the first stage would implicitly or explicitly lead to legislation and building a legal procedure. The establishment of a general legal principle in different countries depends on the current political and legal system practiced in each country. When a certain law is made by an official, qualified individual, or organization, it is most likely to be enforced in the society while extracting a religious decree regarding an issue by a jurist in our time would not proceed to enforcement. Neither the jurist himself would have the authority and power to enforce his extracted decrees since the political power is in hands of secular rulers, nor would his scientific works and books be considered a source for law-making. As a result, to make decrees that are perceived in jurisprudence more practical in the society, we are in need of another stage which is called *taqin* (being accepted as a law) and we will elaborate on this matter later in this study.

**The enforcement of religious decrees and official laws:** the official laws, after being made by qualified authorities and having received the support of the government and the sanction and guarantee they receive from the rulers, are more likely to be put into practice in the society. But regarding religious decrees extracted by jurists, two points should be taken into consideration:

A: to enforce the decrees before they are converted to official laws. In this case, the question is whether is it possible to enforce the judicial

decrees in the same traditional manner in a totally different modern society when there are governments and other official institutions such as judicial and legislative powers invested with certain duties. Wouldn't this practice contradict some of the principles of law? Wouldn't this lead to creation of several law-making centers and cause anarchy?

**B:** to enforce the decrees after they are accepted as official laws. Accordingly, religious decrees become parts of commonly practiced law in the society and therefore there is no use in comparing religious decrees and official laws as it is meaningless to compare something with its components. However, there might be some issues worth discussing here, such as applying sanction against violating laws or decrees, the purpose of enforcing both sorts of rules and finally, elaborating on the general<sup>1</sup> concept which is what we mean by the relationship between jurisprudence and law. This can include the following notions:

1- In some cases, by relationship we just mean a mere comparison between the two sciences.

2- In some cases, we mean contrast and pointing out the differences between the two sciences.

3- In some cases, we mean the interactions between the two sciences and the influence they have caused on each other.

4- And finally, sometimes we mean one of the possible four relationships discussed in logic<sup>2</sup>.

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1. By general we mean something that includes both Islamic legal system and others but here we just compare the Islamic legal system and the German Common Law.

2. In this case we do not apply the exact rules discussed in logic, because the four logic relations are true only in the universals.

## ***Investigating and reviewing the view of some scholars believing there is no relationship between jurisprudence and law***

There are some Muslim legal experts who believe there is no relationship between law and jurisprudence, and say this comparison is meaningless. Their major reasons behind this claim are:

1- Law is made by human beings and Shari'a (religious laws) has been revealed by God. Consequently, they are totally different and should not be compared<sup>1</sup>.

2- Shari'a is complete and perfect and has no defect because it is a divine law<sup>2</sup>. Also, there are some sayings which indicate that there is a book called *Jame Ali* (Ali's encyclopedia) where all issues and their decrees are mentioned. As a result, there is no need to create any law which would be imperfect and defective. Because the major incentive for discussing law is to discover a scientific way to lead us towards valid rules and yet in Shari'a we already have access to such rules, there is no need for law.

3- Religious rules are comprehensive and are not flexible and cannot be changed while official laws are subject to change<sup>3</sup>.

4- Religious rules are in coordination with moral rules but official laws care about providing social order and discipline; in the process, they are sometimes against moral rules<sup>4</sup>.

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1. Abd-al-ghader Aoda, *A-Tashri-al-Jenaie al-Islami*, P. 18.

2. Abd-al-ghader Aoda, *A-Tashri-al-Jenaie al-Islami*, P. 30.

3. Abd-al-ghader Aoda, *A-Tashri-al-Jenaie al-Islami*, P. 30.

4. Mustafā Rafei', *Tarikh-o-Tasri va-l-Ghavaed-al-Ghān niy a-Tashri'ya*, P. 41.

Because this view is in opposition to our main aim in this study, we have to respond to the above mentioned objections so that the major elements and approaches we take in the study become more apparent. Here we give only our responses briefly and leave the details to other studies.

1- It is obvious that the creator and the creatures are not on the same level. However, the religious decrees, especially those that concern transactions, have been made by human beings themselves in order to regulate their social life. Only later have they been addressed by revelation which has modified human rules by adding limits and conditions to them. So God is not the independent legislator of such rules. The jurists themselves have agreed that rules regarding transactions are human and rational issues, and are not God-made rules. These rules were originally made by sensible people in order to control and govern their lives and after the prophet was sent to people with his religion, he did not object to many of those rules, but rather approved them without making any major changes<sup>1</sup>.

2- Islamic social rules, especially in transactions, do not include any mysterious criteria which cannot be learned by people. Nor should they be followed without questioning so that they cannot be compared with other legal systems. In fact, transactions have been legislated and approved by God to respond rationally to the needs of people and it is not true that they contain secret expediencies and advantages no one has access to and should be obeyed submissively, as is the case in religious rules<sup>2</sup>.

3- By a brief scrutiny, one can realize that reason is one of the basic sources employed extensively in both law and jurisprudence. Additionally, there are some principles common to both systems, such as basic

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1. Muhammad Eshaq al-Fayaz, *Mohazerat fi Ilm-al-Osoul*, V. 1 P. 18.

2. Hosein Ali Montazeri, *Derasāt fill-Mak sib al\_Muharramah*, V. 1 P. 500.

permissibility, which can be found even in secular legal systems. These common points in both jurisprudence and law make it possible to draw comparisons.

4- The existence of sources such as Ali's encyclopedia would not prevent us from comparing jurisprudence with law. Because this encyclopedia has never been within reach of law experts and jurists-which is why they have been forced to extract rules and decrees from the sources and have been practicing *ijtihād*. Also, the Imams themselves encouraged their companions to do so as well.

5- Such claims as "the religious rules are fixed and cannot be changed" can be easily rejected by the arguments made in recent decades by the experts in religious fields. Although many of the divine rules are fixed and unchangeable, a lasting and powerful religion needs to be flexible to the extent that it can respond to the novel and different needs people face in modern times<sup>1</sup>.

6- Religion and ethics have always had a fundamental role in making legal principles in every legal system. This is why these two elements have always been considered while studying the bases effective in the formation of law systems, and the role of these two rudiments have been discussed by philosophers. So it is not accurate to say that religion and ethics are totally different and separated from law. I concede, however, that the full discussion of the exact relation between law, jurisprudence (*fiqh*), and ethics takes much work to do.

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1. Article series on the "function of time and space in *Ijtihād*" Edition 8.