

Al-Qawaa'id wal-Usool al-Jaami'ah wal-Furooq wat-Taqaaseem al-Badee'ah an-Naafi'ah.

The Basic Rulings and Principles of *Fiqh* – The Beneficial, Eloquent Classifications and Differentiations

Foundation -10

**By Sh. 'Abdur Rahmaan ibn Naasir As-Sa'di (rahimahullaah)
(d. 1376 A.H./1956 C.E.)**

Discussion based upon:

- 1-Sh. Ibn Sa'di's original explanation**
- 2-Our Sh. Muhammad ibn Saalih Al-'Uthaimen's Commentary, and**
- 3-Full explanation by our Sh. (Dr.) Sami ibn Muhammad As-Sghair (summer 1427 A.H./2006 C.E.)**

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Basic Rulings and Foundations of Fiqh-10

All Praise is due to Allaah, and may the *salaah* and *salaam* be on Prophet Muhammad, his household, the noble companions and those who follow them until the Day of Resurrection. This is a continuation of the explanation of *The Basic Rulings and Principles of Fiqh – The Beneficial, Eloquent Classifications and Differentiations* by Imam ‘Abd ar-Rahman ibn Naasir as-Sa’di (*rahimahullaah*).

Foundation ten is entitled:

The proof (*bayyinnah*) in all matters involving rights, claims, and the like is upon the claimant, and the oath is upon the denier.

This is a principle that the Prophet (ﷺ : *sallallaahu ‘alayhi wa sallam*) established in his statement:

*“The proof is upon the claimant, and the oath is upon the one who denies.”*¹

The basis of this *hadeeth* is also in *al-Saheehayn* (i.e. Bukhaari and Muslim). In addition, there is consensus amongst the people of knowledge regarding its applicability to everyone, including the *muftee* (i.e. the one who is qualified to make *iftaah*) and the *qaadhi* (judge). It is also said to be the *tafseer* (explanation) of the verse (in the translation of the meaning):

﴿We made his kingdom strong and gave him *al-Hikmah* (Prophethood, etc.) and sound judgment in speech and decision.﴾ Surah Sad (38:20)

The “**sound judgment**” in this verse is the proof (*bayyinnah*) upon the claimant and the oath upon the denier. Through this, matters and disputes will be resolved; all of this falls under sound judgment since the term is comprehensive in its entailment.

Therefore, anyone who claims something, such as a loan or that he has a right over another, requires evidence.

al-Bayyinnah

al-Bayyinnah is everything that makes the truth apparent and manifested. It can take the form of:

- 1) All of that which is of an external nature including witnesses
- 2) Circumstantial indications
- 3) Original innocence

¹ Reported in *al-Bayhaqi*, and its *isnaad* (chain of narration) is saheeh.

All of these constitute *al-bayyinnah* and its forms.

The necessary proof can vary for different situations. For instance, examples where the required witnesses differ are:

- 1) In matters of adultery, homosexuality, and confessions, the proof must be the testimony of four men.
- 2) In some cases, the testimony of only three men is sufficient. Like in the claim of poverty by a person known to be rich as in the hadeeth narrated by Qabisa (رضي الله عنه), "*...and a person who has been smitten by poverty. the genuineness of which is confirmed by three intelligent members of this peoples for him begging is permissible till he gets what will support him, or will provide him subsistence.*"²
- 3) In matters related to financial transactions, the *bayyinnah* is either: two trustworthy men, one man and two women, a single man and the oath of the claimant, or the oath of the claimant and the refusal of the accused to do the same.
- 4) Concerning situations that only a certain woman would know about including breastfeeding and matters of virginity, her testimony is sufficient.

If no *bayyinnah* is provided, then the other party is asked to make an oath denying the accusation. Similarly, if someone has a right over another, which was later claimed to have been fulfilled, then the origin is that the right still holds. However, if proof is brought of its fulfillment, then that will stand. Otherwise, the claimant of the right will make an oath after which the ruling will be in his favor. Correspondingly, if someone claims a right to an endowment or inheritance, then he must provide proof that affirms the cause. If he fails to do so, then his claim is not accepted.

Example: A person alleges a right over another individual. As such, they both go to the judge, who requests proof of that. If the claimant has a proof, then the ruling is in his favor. However, if he fails to provide it, then the accused is asked to make an oath; if he refuses, then the accused will be referred to as someone who committed *nukool* (refusal). In such a situation, the claimant will be asked to give an oath.

***Qara'in* (Indications)**

The *qara'in* are considered as proof when making a judgment. An evidence for this is when Allaah (ﷻ: *subhaanallaahu wa ta'aalaa*) said (in the translation of the meaning):

﴿He [Yusuf (Joseph)] said: "It was she that sought to seduce me," - and a witness of her household bore witness (saying): "If it be that his shirt is torn from the front, then her tale is true and he is a liar! But if it be that his shirt is torn from

²Reported in *Saheeh Muslim*, (English translation no. 2275, book 5).

the back, then she has told a lie and he is speaking the truth!"» Surah Yusuf (17:26-27)

The tearing of the shirt is an indication and was considered in establishing the proof.

Similarly, when two women came to Sulaymaan ('*alayhis salaam*) seeking judgment over a claim to a baby, he threatened to cut it in two at which point the younger woman, who had become overwhelmed by emotion and bondage to it, asked him not to do that saying the baby belonged to the other one; this was done in order to protect it. As such, her behavior served as an indication for the judgment.³

Claims

Claims are of two types.

- 1) Impossible – These are not considered in principle since they are rejected mentally and by perception.

Example: A twenty year old claims someone who is thirteen is his father.

- 2) Possible – The *qara'in* can sometimes be used as a proof for the validity or falsehood of such claims. Moreover, the indications can be inconclusive.

Conclusion

The tenth foundation in Imam 'Abd ar-Rahman ibn Naasir as-Sa'di's book, *al-Qawaa'id wal-Usool al-Jaami'ah wal-Furooq wat-Taqaaseem al-Badee'ah an-Naafi'ah* (The Basic Rulings and Principles of *Fiqh* – The Beneficial, Eloquent Classifications and Differentiations), is entitled:

The proof (*bayyinnah*) in all matters involving rights, claims, and the like is upon the claimant, and the oath is upon the denier.

All Praise is due to Allaah, and may the *salaah* and *salaam* be on Prophet Muhammad, his household, the noble companions and those who follow them until the Day of Resurrection.

³ This story is described in greater detail in the explanation of an-Nawawi's 40 *hadeeth*.