Introduction

Islamic jurisprudence (fiqh) is an important branch of Islamic learning. The word fiqh literally means "intelligence or understanding". The fiqh in the legal terminology signifies a study of the details of Islamic law as derived from its sources. It is also sometimes defined as knowledge of one's rights and obligations in the light of the sources of the Shari'at. It deals with the issues relating to all aspects of human life. Ilm-i-fiqh helps us to understand the Shari'at's rules with regard to the problems relating to the different aspects of human life. The origin of Ilm-i-fiqh may be traced back to the very early period of Islamic history. With the passage of time it continued to develop till it reached its zenith after the formation of the four well-known schools of fiqh in the second century of Hijra era.

Broadly speaking, the development of fiqh may be divided into four stages. The first stage, which related to the period of the Prophet (S.A.W) is known as that of legislation. It was in this period when Shari'at's rules were being formulated on the basis of the Holy Qurān and Hadīs of the Prophet (S.A.W). These two (Qurān and Hadīs) were the basic sources of guidance for the

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1 Ai-Mahami Subhi Mahmasani, Falsafah al-Tashri fi'l-Islām, Beirut, 1952, pp. 13-14, Dr. Muhammad Yusuf Musa, Al-Fiqh Al-Islāmi, Egypt, 1958, p. 80.
Muslims in their day to day life. They formed the body of the Islamic law as well as the main sources for deduction of the legal points\(^2\).

The second stage extending from the times of the pious Caliphs upto the Umayyads, is known as the period of collection and interpretation of basic sources\(^3\). In this period as it is well-known, the verses of the Qur\(\text{\'}an\) written on different materials, were collected together and compiled in the form of Mushaf. On the other hand transmission of the traditions of the Prophet (S.A.W) was taken up by the Sa\(\text{\'}habah\) (R.A.) with great interest and enthusiasm. This was done mainly in oral way, though the practice of writing the Ah\(\text{\'}ad\(\text{\'}\)s has started. By the time of the Tabi\(\text{\'}n\) (successors of the companions of the Prophet) the work of the transmission of Ahad\(\text{\'}\)is in oral and written form got further development. The Holy Qur\(\text{\'}an\) and Had\(\text{\'}\)is, being the basic sources of the Shar\(\text{\'}i\)\(\text{\'}\)at, were interpreted by the jurists to deal with the new problems or to extend the application of original rulings to the subsidiary issues under the guidelines given in the Qur\(\text{\'}an\) and Had\(\text{\'}\)is. This further stepped up the

\(^3\) Muhammad Abu Zuhrah, Tarikh al-Mazahib al-Fiqhiyah, Cairo (n.d.) II/ 13-27.
process of analogical deduction (Qiyās) and use of Ijmā for solving the new problems⁴.

The third period (2nd and 3rd century of the Hijra) is more important from the point of view of the development of fiqh. It was in this period that different schools of fiqh (including the four well-known ones) emerged and got development⁵. The same period is also known for compilation of important works on main branches of Islamic learning (i.e. Tafsīr, Hadīs, and Fiqh). With regard to fiqh, first of all, legal problems relating to different aspects of human life were thoroughly discussed by the founder of each school in the assembly of their main disciples and then codified by the jurists of the respective schools. Though the jurists and scholars of different schools of fiqh had contributed to the fiqh literature according to their own schools, but in the codification of the legal problems and production of fiqh works, the Hanafī jurists especially Imam Abū Hanīfah and his close disciples had made significant contribution⁶. First of all, thousands of the problems were discussed by Imam Abū Hanīfah in the company of his disciples and then codified and compiled in the book form. Imam

Muhammad's work are mainly based on the proceedings of the academic assemblies of Imam ‘Āzam and his lectures on juridical problems.

The main works of the Hanafī school of fiqh were divided into three broad categories namely Zāhir al-Riwayāt or Usūl, Nawādir and Fatāwā or Waqīāt. Under the first category come six important books of Imam Muhammad Shaibani (one of the two chief disciples of Imam Abu Hanīfah) which contained views of Imam ‘Āzam, Abū Yūsuf and Imām Muḥammad and these are al-Mabsūt, al-Jām‘ī al-Kabīr, Al-Jām‘ī al-Saghīr, al-Siyar al-Kabīr, Al-Siyar al-Saghīr, and Kitāb al-Ziyādāt.

The Nawādir are works of Imam Muhammad (other than Zāhir al-Riwayāt) and that of Imam Zufar which also give the opinion of Abū Hanīfah and his chief disciples. These works mainly included Haruniyat, Jurjāniyat and Kaisāniyat of Imam Muhammad and Mujarrad of Imam Zufar. The third category means those books compiled in the later period and these contained the views of Hanafī jurists on those

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7 Muhammad Abu Zuhra, Abu Hanīfa Hayātuhū wa Asruhū Arācohū wa fiqhuhū, Darul-Fikr al-Arabi, Cairo, 1945, pp. 187, 193, 206.
9 Mufīd al-Muftī pp. 69-73.
problems about which no opinion of Imam Azam and his chief disciples was available, such works included *Kitāb al-Waqiat* of Natifi and *Kitāb al-Waqiat* of Umar b. 'Abdul Aziz. Actually it was this category of the *fiqh* work, which became very much popular among the Hanafi scholars and a large number of works came to be compiled under the title of the *Fatawa*, such as *Fatāwā Abūl laiṣ*, compiled by Nasr b. Muhammad b. Ahmad Samarqandi (d. 373 AH/ 983 AD), *Fatāwā Abū Bakr Imām Fazli* Muhammad b. Fazal b. ‘Abbās Balkhi (d. 381 AH/ 991 AD), *Fatāwā Abūl Fazal* by Ruknuddīn Kirmānī (d. 543 AH/ 1148 AD), *Fatāwā Sīrājīyah* by Sirajuddīn Aushi (d. 569 AH/ 1173 AD), *Fatawa-i-Qazi Khan* by Hasan b. Mansur Uzjandi (d. 592 AD/ 1195 AD), *Fatāwā Bazzāziyyah* by Hafizuddīn Muhammad b. Muhammad b. Shahab Kardari (d. 827 AH/ 1423 AD), *Fatawa Tamarīshī* by Muhammad b. 'Abdullāh (d.1004 AH/1595 AD)\(^{10}\).

It is a well-established fact that the works produced by the Hanafi scholars in classical and medieval periods were of different nature. These included general works, *Fatawa*, commentaries, treatises on separate issues. Apart from Imam Muhammad’s works of classical nature, the other important and referred works of the later period may be mentioned as *al-Mabsūṭ*, *Al-Qudūrī*, *al-Hidāyah*, *al-Waqāyah* and *al-Durr al-

Mukhtar. What is more important to mention here is that writing on separate issues had started from the period of formation of schools itself as we find Kitāb al-Kharāj and Kitāb al-Kasb by Imam Abū Yusuf (d. 183 AH/ 799 AD) and Kitāb al-Muẓārabah by Muhammad b. Shuja Salji (d. 266 AH/ 879 AD)\textsuperscript{11}. Kitāb al-Farāiz of Burhanuddīn Mārghīnānī and Kitāb al-Ḥaiz of Abūl Fażīl Kirmani are also the work of same nature compiled in later period.

The tradition of compositing versified treatises about the problems of fiqh was also an old one adopted by the Hanafī Ulamā of the medieval period. Some of these works may be mentioned as Manzūmat al-Nasaff of Najmuddīn al-Nasaff, Manzūmah Ibn-i-Wahban of Wahab b. Ahmad Demashqi (d. 768 AH/ 1366 AD), Manzūmah-i-Ṭurtūshī of Najmuddīn Ibrāhīm b. `Alī (d. 708 AH/ 1308 AD) and Manzūmat al-Ṭabrezi of Husamuddīn Ṭabrezi (d. 770 AH/ 1368 AD)\textsuperscript{12}.

The establishment of Muslim rule in India was of great significance from political, social and cultural points of view. One of the important aspects of the period of Muslim rule was cultural and academic development under the patronage of contemporary Sultans. The academic activities in those days

was not confined to any particular branch of learning. But the Islamic learning got more attention of the 'Ulamā in general. Some of rulers had also shown special interest in the promotion of Islamic learning. As regards Islamic jurisprudence it remained a popular subject throughout the period of the Muslim rule in India. The 'Ulamā and scholars, the sultans and nobles all had their role in the progress of this science and production of the fiqh literature. In the early Sultanate period those 'Ulamā were more well-known for their contribution in the field of fiqh who had migrated from different parts of central Asia and Transoxiana which have stronghold of the Hanafi school of fiqh such as Balkh, Badakhshan, Samarqand Bukhārā, Farghāna, Kashan, Uzjand, Marğinān. The Court-'Ulamā had also impressed upon the Sultans for patronizing jurists and the compilers of the fiqh works. Even the period of those rulers was not devoid of the contribution in the field of fiqh who were known for their great interest in rational sciences such as Sultan Muhammad Tughlaq and Emperor Akbar. Sultan Iltutmish, Ghiyāsuddīn Balban, Ghiyāsuddīn Tughlaq, Firoz shah Tughlaq Sikandar lodi, Babūr and Auranzeb are reported to have shown great interest in the field of fiqh and have

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patronized 'Ulamā in general and jurists in particular as it would appear from our discussion in the following chapters.

The compilation of fiqh works in India has started from the very early period of the Sultanate period. It may be even traced to the Arab rule in Sind. On the pattern of the earlier authors and compilers of the Hanafī School, the Indian 'Ulamā also contributed to the fiqh literature in different ways. These included simplifying popular texts of the Hanafī fiqh, abridgement of general comprehensive works, compilation of Fatawa and writing treatises on separate issues of legal interest. The Indian 'Ulamā were mostly Hanafī, so they naturally took special interest in compiling fiqh works from the point of view of the Hanafī School. For this reason only few books of other schools of fiqh could find place in our bibliographical study in the coming pages. However, it is important to note here that inspite of the popularity and rising influence of Persian language as an official and academic language in the Sultanate and Mughal period the contemporary 'Ulamā had deep attachment with 'Arabic language and they continued to produce works on different aspects of Islamic learning including fiqh as it would be quite evident from the present study. Moreover, the contribution of India to 'Arabic fiqh
literature has great importance from the point of view that it consisted a number of monumental works in the form of the *Fatawa* and it is notable that some of them were compiled under the patronage or supervision of the emperors or nobles themselves such as *Fatāwā Tātārkhani*, and *Fatāwā ‘Alamgīrī*¹⁴.

In the post-Aurangzeb period the interest of the ‘*Ulamā* in *fiqh* remained intact and they continued to produce *fiqh*-works. In this reference the contributions of Shah Waliullāh, his descendants and the ‘*Ulamā* of Farangī Mahal are considered of great significance.

The present work is an analytical study of the ‘*Arabic fiqh*’ literature produced in India. It is a humble attempt to provide necessary information about the ‘*Arabic fiqh*’ works written by the Indian ‘*Ulamā*’. It gives an insight into the development of *fiqh* literature through different periods of Muslim rule in India (Sultanate, Mughal and later Mughals). Moreover, critical analysis of the contents of the selected works helps to understand the nature of their discussion and judge their value from juridical point of view.

I have tried my best to collect all necessary information about the *fiqh*-works of varied nature. These works have been

classified according to the subject matter and then the contents of the important ones have been analysed.

The present work is divided into four chapters which are as follows:

Chapter-I : Development of fiqh literature in India - A historical survey

Chapter-II : Classification of the Indian ‘Arabic works on fiqh

Chapter-III : Critical analysis of the important works

Chapter-IV : A case study of al-Fatāwā al-Tātārkhāniyah

In addition to these chapters, the thesis also contains introduction, resume, glossary, bibliography and Index. Giving a brief account of the development of fiqh in the classical period, the first chapter is mainly focused on the development of fiqh literature in India. It has examined the causes for the popularity of fiqh as a subject of Islamic learning and explained the factors for creating interest in compiling fiqh works especially in ‘Arabic. In this connection the contribution of ‘Ulamā and rulers of Sultanate, Mughal and later Mughal period were highlighted. Though focus is given on the ‘Arabic works, the relevant Persian books were also taken into consideration. The chapter also explains the nature of fiqh works of Indian ‘Ulamā and
defines their different categories (general works, *Fatāwā* collections commentaries and treatises). The chapter actually gives a general assessment of the development of the *fiqh* literature produced during the different periods of Muslim rule in India.

The second chapter contains a bibliographical study of the 'Arabic *fiqh* works. All the works have been classified according to the subject matter and then divided into different parts. Each part arranged alphabetically, gives the title and the nature of the work (manuscript or printed), name of the authors / compilers, date of his death and that of its compilation, details of publication, date of scribing (in case of manuscript) number of folios or pages, libraries, institutions, and private collection where the work is available (in any form) have been mentioned and its reference in the original and modern sources is also traced and given in most of the cases.

The third chapter is a critical analysis of the selected works listed in the second chapter. The works were selected keeping in view of importance of their contents as well as nature of their discussion. This chapter is arranged chronologically. While examining the contents of the works, first of all biographical sketch of their authors is given and
informations are provided about their family background, education, academic contribution especially in the field of Islamic jurisprudence. The chapter mainly aims to highlight the main features of the works, analyse their contents and show their importance from the fiqh point of view. The subject matter of the works were also examined to see whether they took into consideration the contemporary problems or not. The sources of the works were also discussed pointing out their nature and importance with observation whether these included works of Indian authors or not.

The fourth chapter is a special study of the Fatāwā-i-Tātārkhanī-a monumental fiqh work compiled during Firuzshah's period. Giving a brief introduction to the compiler and Tātārkhan (to whom it is dedicated), this chapter provides details about its compilation, manuscripts and publication. The sources of the Fatawa were also discussed in brief. The present chapter aims at the study and analysis of the selected parts of the text. For this purpose the contents of the Fatāwā-i-Tātārkhanī were selected from its different chapters keeping in view the importance of the problems taken for discussion and their relevance to the contemporary situations. The chapter gives an insight into the nature of its discussion and shows how
the compilers have thoroughly discussed the relevant legal problems under each chapter and have given the point of view of the different schools about them.

For the present work I have tried my best to collect relevant material through different sources. I gave main importance to the consultation of different libraries for finding out the relevant *fiqh* works. For this purpose I have gone through the stocks of Khuda Bakhsh Oriental Public Library Patna, Maulana Azad library, A.M.U., Aligarh, (especially its *'Arabic, Urdu* and manuscript sections), Library of the Institute of Islamic studies, AMU, Research library Department of History, A.M.U. Library of the Department of the Theology, AMU and that of ladarah Taḥqīq-wa-Tasnīf Islāmi, Aligarh. Idarah *'Ulūm al-Qurān*, Aligarh, Al-Majma al-Ilmi, Aligarh. Of all the above mentioned libraries, Khuda Bakhsh O.P. Library and Maulana Azad library provided rich material for my present study.

The *Catalogues* of different libraries and collections also proved to be important source for my work. The *Catalogues* which I have studied included *Catalogue of *'Arabic and Persian* Manucripts of K.B.O.P. library Patna, *Makhzunah Fihrist-i-Kutub Asifihah library*, Hyderabad, Fihrist-i-Kutub Riyasat

The bibliographical account of ‘Ulamā, jurists and Sufis were quite helpful for the present study as these provided information about the works of different subjects (including fiqh) written by them. But it cannot be overlooked here that many of the books mentioned in the biographical works could not be traced in the libraries or their printed Catalogues. The biographical accounts which I have thoroughly studied may be mentioned as Akhbār al-Akhyār, Siyar al-Auliya, Subhat al-Marjān, Ma‘āsir al-Kirām, Tażkiraḥ ‘Ulamā-i-Hind, Hadā‘iq al-Hanafīyah, Al-Fawā‘id al-Bahiyyah fi Tarajim al-Hanafīyah, Nuzhat al-Khawātir, Abjad al-‘Ulūm, Rijal al-Sind wa’l Hind and
Fuqaha-i-Hind. Moreover, I have also consulted a number of Persian sources of medieval India and these have been cited at different places in the present work. For the transliteration rules, I followed the methodology adopted by F. Steingass, compiler of Persian - English Dictionary.