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Topic Sources and development of
Islamic Law

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Introduction:

In the eighth century, a difference in legal approach arose amongst Islamic thinkers in two prevailing schools of thought. The traditionalists (all al-hadith) relied solely on the Qur'an and the Sunna (traditions) of the Prophet as the only valid sources for jurisprudence, emanating from Medina. The non-traditional approach (all al-ray) relied on the free use of reasoning and opinion in the absence of reliable hadith, heralded in Iraq .

The difference in technique is because in Medina, there was an abundance of reliable hadith that scholars could depend from, since the prophet lived the 10 yrs. of his life there. On the other hand, the non-traditionalist jurists had to depend on analogy as the sources were not as reliable in Iraq. The jurists had therefore to decide which of the Prophets actions and decisions were religiously binding and which were a mere function of his personal discretion.

In general, the traditionalists eventually lent legislative significance to much of the Prophets decisions, whereas the other school of thoughts tended to distinguish between the various roles that the Prophet played in his life.

The sources of Islamic law was thus,...Quran, Sunna , imam and qiya

Throughout history these sources were used in descending order by muslim jurists in determining the legality of an issue. If the legality was not based on an explicit command in the quran, then the jurists would turn to the explicit commands in the hadith.

“Qur'an is the religious text of Islam. It is believed to be the word of God transmitted through the Prophet

Muhammad”. [1] The Sunnah is considered to be the religious actions, quotations and approvals of the Islamic Prophet Muhammad, which was narrated through his Companions and Shia Imams. The Qur’an and the Sunnah state clearly the course of action that a Muslim should follow.

Qur’an

The Arabic word Qur’an is derived from the root ‘qara’a’, which means “to read” or “to recite”. Qur’an is the holy book of Islam. Muslims believe that the Qur’an is the final revelation of Allah, that is, the literal word of God, revealed to the Prophet Muhammad. The Qur’an was written and preserved during the life of Muhammad, and compiled soon after his death. The Qur’an consists of 114 surahs (chapters) with over 6,000 ayat,(verses). However the exact number of ayat is disputed due to different methods of counting.

The Qur’an is the first and most important source of Islamic law. The scripture specifies the moral, philosophical, social, political and economic basis on which a society should be constructed.

Muslim jurists agree that the Qur’an in its entirety is not a legal code; rather its purpose is to lay down a way of life which regulates man’s relationship with others and God. The verses of the Qur’an are categorized into three fields: “science of speculative theology”, “ethical principles” and “rules of human conduct”. The third category is directly concerned with Islamic legal matters which contains about five hundred verses or one thirteenth of it. The task of interpreting the Qur’an has led to various opinions and judgments. The interpretations of the verses by Muhammad’s companions for Sunnis and Imams for Shias are considered the most authentic, since they knew why, where and on what occasion each verse was revealed.

The shari’a, foundations of Islamic law, are derived from verses from the Quran. “The bulk of Quranic matter consists mainly of broad, general moral directives as to what the aims and aspirations of Muslims should be, the ‘ought’ of the Islamic religious ethic.”

The most important external aid used in interpreting the meanings of the Qur'an is the Hadith – the collection of Islamic traditions from which the details of early Islamic history are derived.

The Shariah, foundations of Islamic law, are derived from verses from the Quran. The Quran consists mainly of broad general moral directives that provide for the aims and objectives of a muslim. Essentially because the directives are so broad, interpretation takes on a significant role, there have been so many different interpretations of the quran, claims widely read and revered Islamic thinker Abdul A'ala Maududi that " there is hardly to be found any command with an agreed interpretation".

Nevertheless, the authenticity of quran has never been questioned by any muslim scholar or institution.

Textual Criticism and the Qur'an

Higher biblical criticism revolutionized Judaism and Christianity by calling into question long-held assumptions about the origins of the Bible; some ambitious textual critics are attempting to do the same for the Qur'an. They claim that parts of the Qur'an are based on stories of the Tanakh (Hebrew Bible), the New Testament of the Christian Bible, and other non-canonical Christian works; differences of the biblical to the Qur'anic versions suggest to some scholars that these stories were not taken directly from written texts but seem rather to have been part of the oral traditions of the Arab peninsula at Muhammad's time. To Muslims, however, this explanation is topsy-turvy: the "non-canonical" Jewish and Christian stories are simply further textual corruptions of an otherwise nearly lost divine original reflected in the Qur'an.

These critics also seek to find evidence of text evolution and transcription disputes in early Islam; the results have been meager, but some have expressed hopes that recent discoveries of "Qur'an Graveyards" in Yemen will throw more light on the subject.

Belief in the Qur'an's direct, uncorrupted divine origin is fundamental to Islam; this of course entails believing that the Qur'an has neither errors nor inconsistencies. ("This is the book in which there is no doubt, a guide to the believers": Surat al-Baqarah, verse 2.) However, it is well-known that certain chronologically later verses supersede earlier ones – the banning of wine, for instance, was accomplished gradually rather than immediately – and certain scholars have argued that some verses which discourage certain practices (for instance, polygamy) without banning them altogether should be understood as part of a similar process, though others argue that this contradicts "This day have I perfected your religion for you, completed My favor upon you, and chosen for you Islam as your religion" (5.3).

As to the basic message of the Qur'an, there are three fundamental points, repeated and restated throughout the work. They are as follows: this present physical life is a test; the afterlife is certain; our actions in this present life have consequences in the next.

Sunnah

The Sunnah is the second source of Islamic law. Sunnah is an Arabic word which means "Method". It was applied by the Prophet Muhammad as a legal term to represent what he said, did and agreed to. Its authority is derived from the text of the Quran. The Quran says,

"For you the life of the Prophet is a model of behaviour" (Al-Quran 33:21)

Many of books of traditions were compiled by the companions of the Prophet. These were later on incorporated in the great collections of Hadith (i.e. traditions) of Bukhari, Muslim etc. The collectors of the traditions adopted a very scientific system in collection the Traditions. They did not record any tradition except with the chain of narrators. Every tradition gives the names of the last narrator of the tradition from whom he learnt the tradition and so on back to the

Prophet or Companion of the Prophet. The Sunnah which is established through reliable narrators is fully dependable as legal element.

The sunna of the Prophet generally means “tradition” and includes the following three categories: sayings of the Prophet; his deeds; and his silent or tacit approval of certain acts which he had knowledge of. The record of the Prophet’s words and deeds were recorded in narrative ahadith, reports that were transmitted before finally being compiled in authoritative collections decades after the death of the Prophet.

Muhammad brought the Quranic teachings to life through his interpretation and implementation.

The Quran and Sunnah are complementary. The meaning of the Quran is general in nature, the Sunnah makes it specific and particular. The Sunnah explains the instructions of the Quran. The Quranic injunction is sometimes implicit, the Sunnah makes it explicit by providing essential ingredients and details.

Ijma and Qiyas derive their value or authority from the Quran and the Sunnah. Therefore, they are called dependent sources.

Ijma

The third source of law, Ijma or the consensus of scholars signifies the importance of delegated legislation to the Muslim community. The Muslim society requires such a rule making power to meet the practical problems for the implementation of Islamic Shariah (Islamic Law). Ijma has been technically defined as the consensus of the jurists of a certain period over a religious matter. Ijma is considered a sufficient evidence for action because the Prophet of Islam said, “Muslim will never agree on a wrong matter.” As such the agreement of the scholars of Islam on any religious matter is a source of law in Islam (Ref: Principles of Islamic Jurisprudence by M. Hashim Kamali).

Ijma or unanimous agreement

Ijma constitutes the unanimous agreement of a group of jurists of a particular age on a specific issue and constitutes the fourth and final source of law in Shafi'i's methodology. If questions arose about a Quranic interpretation or an issue where there was no guidance from either the Quran or sunna, jurists applied their own reasoning (ijtihad) to come to an interpretation. Through time, "one interpretation would be accepted by more and more doctors of law. Looking back in time at the evolved consensus of the scholars, it could be concluded that an ijma of scholars had been reached on this issue." 8 Unfortunately, unanimous agreement rarely happened among intellectual elite and since there were always diverse opinions, one could always find several scholars of the day who concurred on an issue. Also, the definition of ijma and which ijma would be considered valid was a point of contention, because ijma is not simply the consensus of all past jurists. Besides, using the concept of ijma poses the problem of having to look to the past to solve the problems of the future, and scholars of yesteryear didn't wrestle the same issues that are challenging Muslims today.

Qiyas or analogy

qiyas, is the fourth important source of Islamic law, is reasoning by analogy. In order to apply qiyas to similar cases, the reason or cause of the Islamic rule must be clear. For example, because the Quran clearly explains the reason that consumption of alcohol is prohibited (because it makes the user lose control of his actions), an analogy can be drawn to drugs which induce the same affect. But because the Quran does not specifically state the reason why pork is prohibited, Muslims cannot justify banning another meat product with a similar cholesterol level, etc. The use of analogies greatly varied among scholars; for example, Spain's Ibn Hazm (10th century) who was formidable proponent of the Zahiri school, rejected the use

of qiyas, whereas Imam Abu Hanifa of the Hanafi school (8th century) applied them extensively.

Qiyas or analogy is resorted to in respect of problems about which there is no specific provision in the Quran or the Sunnah of the Prophet. In such issues, the scholars have derived law through analogical deduction on the basis of the provisions of the Quran and the Sunnah on some similar situation. The scholars have developed detailed principles of analogical deductions or Qiyas in the books of Islamic jurisprudence.

Qiyas is a kind of Ijtihad. The Prophet has permitted Ijtihad which literally means 'to exert'. Technically it means to exert with a view to form an independent judgement on a legal issue. Ijtihad is the Islamic method of facing the new situations and problems in the light of the general principles of the book of Allah SWT), the Quran and the traditions of the Prophet or the Sunnah.

Apart from Qiyas, there are other methods of Ijtihad such as Istihsan (that is the juristic preference from different interpretations) and Masalaha (that is moral consideration).

In addition to the above sources, the practices of the Khulafa-e-Rashidun (the first four rulers of Islam), the decisions of the judges and the customs of the people are also considered sources of Islamic law in matters which are not spelled out in the Quran and the Sunnah.

Development of Islamic Law

The Four Schools of Law in Islam

The Holy Qur'an, Tradition and *Ijtihad* are the three main sources of Islamic law which govern and regulate all aspects of a Muslim's public and private life. These laws relate to religious worship, prohibitions, and all contracts and obligations that arise in social life such as inheritance, marriage, divorce, punishments, conduct of war and the administration of the state.

The science of these religious laws is called *Fiqh* and the expert in this field such as a jurist is called a *faqih* (plural: fuqaha).

We read that *Ijtihad*, or the exercise of judgement, is a valid source of Islamic laws in areas where the Holy Qur'an and the Traditions are not explicit. But the exercise of this independent judgement can only be left in the hands of proper scholars of the Holy Qur'an and the Tradition.

The vast majority of Muslims give this right of independent reasoning to only four ancient Muslim theologians and jurists who lived in the first three centuries of Islam. These four fuqaha are:

Imam	Abu	Hanifa	of	Kufa	
Imam	Malik	bin	Anas	of	Medinah
Imam	Muhammad	al-Shafi	of	Medinah	
Imam Ahmad bin Hanbal of Baghdad					

Although a number of other jurists also became popular during their times, only the above four are now recognised by the vast majority of Sunni Muslims. These four great jurists and theologians tried to systemise the Islamic law into a comprehensive rational system which covered all possible legal situations. The four prominent schools of Islamic law are named after their founders and are called the

Hanafiyya, the Malikiyya, the Shafiyya, and the Hanbaliyya schools of religious law.

Most Muslims regard these four schools as equally valid interpretations of the religious law of Islam. These schools are in good agreement on all essential aspects of the religion of Islam. They all acknowledge the authority of the Holy Qur'an and the Traditions as the ultimate source of the Islamic law. Only in areas and situations where these two sources are silent, do the four schools use their independent reasoning in which they may differ with each other.

1. The Hanafiyya School

The earliest school formed was by Imam Abu Hanifa (699-767 A.D.) of Kufa. It generally reflects the views of the jurists of Iraq. Abu Hanifa did not compose or write any books on law himself, but his numerous discussions and opinions as recorded by his disciples, form the basis of this school.

As a theologian and a religious lawyer, Abu Hanifa exercised considerable influence in his time. His legal thought is very consistent, uses high degree of reasoning, avoids extremes, and lays great emphasis on the ideas of the Muslim community. The Ahmadi Muslims generally follow the Hanafiyya school of law.

Other areas in which this school has a following include Turkey, the countries of the Fertile Crescent, Lower Egypt and India.

2. The Malikiyya School

The next school of law in order of time was the one founded by Imam Malik bin Anas (d. 795 A.D.) of Medinah and reflects the views and practises associated with that city. Imam Malik served as a judge in Medinah and compiled all his decisions in a book form called al-Muwatta (the Levelled Path).

Like the jurists of Iraq, Imam Malik preferred to depend more on the Traditions associated with the Companions of the Holy Prophet.

The adherents of this school are predominantly in North African countries.

3. The Shafiyya School

The third school was founded by Imam al-Shafi (d. 820 A.D.) who was a disciple of Imam Malik. Imam Shafi placed great importance on the Traditions of the Holy Prophet Muhammad, may peace and blessings of Allah be upon him, and explicitly formulated the rules for establishing the Islamic law. He was a great thinker, had an unusual grasp of principles and a clear understanding of the judicial problems.

This school is strong in Lower Egypt, Syria, India and Indonesia.

4. The Hanbaliyya School

This school was founded by Imam Ahmad bin Hanbal (d. 855 A.D.) of Baghdad. Imam Hanbal did not establish a separate school himself; this was rather done by his disciples and followers.

The Hanbaliyya was the most conservative of the four schools. Its rigidity and intolerance eventually caused its decline over the years. In the eighteenth century, however, this school was revived with the rise of Wahhabism and the growing influence of the House of Sa'ud. Today, Hanbaliyya school is followed only in Saudi Arabia.

The Hanbalis insist on the literal injunctions of the Holy Qur'an and the Hadith and are very strict in the observance of religious duties.

Although the Muslims generally apply the Islamic law according to the principles and details laid down by the four ancient jurists, legal situations keep arising from time to time for which there are no clear answers in these early schools of law. To cope with this changing aspect of Islamic society, particularly in the light of new facts, specialists in the field of Islamic law are asked to give their decisions

using the traditional tools of legal science. Such a decision is called a fatwa and the religious scholar who gives this decision is called a *mufti*.

Conclusion:

However the traditions of the prophet have been questioned for their authenticity. It was also debated as to what extent were the traditions religiously imperative(look for word). The use of analogies was greatly debated. Also there was little unanimous agreement among the Islamic scholars about the inexplicit issues.