

Chapter-1st

Sources of Islamic Law and sources of Law in Pre Mughal Period and Mughal Period

Muslim law or Islamic law was one of the major important legal systems of the medieval world. It had structured a new idea or new political, social and cultural ideas. In India, the Islamic laws also played very significant role in structuring the Indian administrative system, social, political and cultural. It also gave many new ideas about the judiciary system which has been ignored by the writers as some of the historians tried to postulate the Delhi-Sultanate as 'Dark age'¹ which is not true. Without seeing much into the legal system or judiciary system or the Sultan's and Mughal Emperor's justice to their subjects deeply, some historians tried to evaluate them as blood-thirsty monsters, forcible propagator of Islam, temple-destroyer and so on.² The recent study shows the opposite view in which Richard Eaton,³ Harbans Mukhia,⁴ Muzaffar Alam,⁵ Satish Chandra,⁶ S.M.Jaffar,⁷ S.P.Sangar,⁸ U.N.Day,⁹ A.D.Khan,¹⁰ Wahed Husain,¹¹ M.Habib and K.A.Nizami,¹² Ibn Hasan,¹³ R.P. Tripathi¹⁴ and so on played significant role.

¹ Chandra, Satish, *Medieval India, from Sultanate to the Mughals, Part-1 (1206-1526)*, Har-Anand Publications Pvt. Ltd., New Delhi, 1997, Second Edition, 2000, p.277.

² Jaffar, S.M. *Some Cultural Aspects of Muslim Rule in India, Idarah-I-Adabiyat – I Delhi*, 1992, p.1.

³ Eaton, M. Richard, *Essays on Islam and Indian History*, Oxford University Press, New Delhi, 2000, pp.94–132.

⁴ Mukhia, Harbans, *The Mughals of India*, Blackwell Publishing, First Published 2004, first Indian Reprint 2005, Delhi pp.14-71.

⁵ Alam, Muzaffar, *The Languages of Political Islam in India, c 1200 – 1800*, Permanent black, Delhi, 2004, pp.1–80.

⁶ Chandra, Satish, *op.cit.*

⁷ Jaffar, S. M. *op.cit.*

⁸ Sangar, S. P. *Crime and Punishment in Mughal Period*, Reliance Publishing house, Delhi, 1998, pp.7–8.

⁹ Day, U. N. *The Government of the Sultanate*, Munshiram Manoharlal Publishers Pvt. Ltd, Delhi, First Published, 1997 and Second edition, 1993, pp.107–118.

There are four sources of Muslim law, they are: The Holy Quran, the Sunna, Ijma and Qiyas.¹⁵

The Quran

The Quran – the word of God – Purports to regulate the whole of a man's life; it is considered to be the actual word of God revealed to the Prophet through the Angel Gabriel. It is clear that during Muhammad's lifetime, it was used by him as the basis of legal settlement. The word 'Muslim' refers to submission to the religion of Islam and its concomitant obligations.¹⁶ The Quran contains specific exhortations to pray, fast, give alms, and go on the Hajj, divorce, women, prayer and other similar moral obligation. These are the pillars (arkan) of the faith and they exist alongside a number of legal rules. Most of the legal rules concern family law (marriage, divorce and succession),¹⁷ for instances ,

“It is not righteous that ye turn your faces to the East and the West; but righteous is the one who believeth in Allah and the last day and the angels and the scripture and the prophets, and giveth his wealth, for love of Him, to Kinsfolk and to orphans and the needy and the wayfarer and to those who ask, and to set slaves free, and observeth proper worship and payeth the poor-due, keepeth the treaty when they maketh one, and helpeth the

¹⁰ Khan, A.D. A History of the Sadarat in Medieval India, vol. I, Cpre – Mughal Period, Idarah-i-Adabiyat -i- Delhi, 1998, pp vii – xi.

¹¹ Habib, Mohammad and Khaliq Ahmad Nizami (ed.), A Comprehensive History of India, Vol five, Part 1, The Delhi – Sultanate, People's Publishing Houses (P) Ltd, Delhi, first published, 1970, first reprint: May 1982, Second edition: October 1992, Reprint – 1996,2006. pp – 1 – 36

¹² Hasan, Ibn, The Central Structure of the Mughal Empire, Munshiram Manoharlal New Delhi, First Published 1936, Reprinted, 1970, pp – 3 – 72.

¹³ Husain, Wahed, Administration of Justice during the Muslim Rule in India Idarah-i- Adabiyat -i- Delhi, First edition , 1934 reprint, 1970, pp – 1 – 9

¹⁴ Tripathi, R.P. Some Aspects of Muslim administration, Central Book Depot, Allahabad, 1972, pp 1- 7.

¹⁵ Dictionary of Islam, pp.400; 548. Shorter Encyclopedia of Islam, p,614 Muslim Institutions, p.61; Islam by A.S. Triton, pp 62-63 Medieval Islam by Von Runebaum, pp148-53 U.N. Day, The Government of the Sultanate, Munshiram Manoharlal Publishers Pvt Ltd, Delhi, First Published 1972, Second Edition 1993, p,1070.

¹⁶ Edge, Ian (ed.), Islamic Law and Legal Theory, Dartmouth Publishing Company limited, Aldershot, 1996, pp.xvi-xvii.

patient in tribulation and adversity and at the time of distress. Such person is sincere and God-fearing”.¹⁷

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“O Ye who believe! Retaliation is prescribed for you in the matter of the murdered; the freeman for the freeman, and the slave for the slave, and the female for the female. And for him who is forgiven somewhat by his (injured) brother, prosecution according to usage and payment unto him in kindness. This is an alleviation and mercy from your lord. He who transgresseth after this, will have a painful doom”.¹⁸

“And there is a life for you in retaliation, O men of understanding that ye may ward off (evil)”.¹⁹

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“It is prescribed for you, when one of you approacheth death, if he leaves wealth that he bequeaths unto parents and near relatives in kindness. That is a duty for all those who ward off (evil)”.²⁰

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“And who so changeth (the will) after he hath heard it – the sin thereof is only upon him who changeth it. Lo! Allah is Hearer, Knower”.²¹

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¹⁷ Pickthall, Mohammed Marmaduke, The meaning of the Glorious Quran, Madhur Sandesh Sangam, New Delhi, First Print, 1994, Second Print, 1995, p,48

¹⁸ Ibid, same page.

¹⁹ Ibid, same page.

²⁰ Ibid,

²¹ Ibid,

“But he who feareth from a testator some unjust or sinful clause, and maketh peace between the parties, (It shall be) no sin for him. Lo! Allah is forgiving, Merciful”.²² However, the Quran is also termed as al-kitab and contains, collected revelations of Mohammad in a definitive written form as we have seen some quotations from the Quran.²³

In the beginning day of Islam, memory was used as a channel for the transmission of the Quran. During the life-time of the prophet only a part of the revelation was recorded. It was the Caliph Abu Bakr who decided to have a written text prepared and entrusted to Zaid bin Sabit, the favourite secretary of the prophet, with the task. Caliph Usman appointed a commission to co-operate with Zaid. Their combined efforts resulted in putting together a definite Quran in four copies. The final recession of the Quran was produced by Usman twenty five years after the death of the prophet in 632 A.D.²⁴

There are 114 chapters or Suras in the Quran and each Sura is divided into a varying number of verses or ayat. Out of these there are about 100 suras which can serve as a sort of preamble to a code of conduct and which simply seek to reform the existing customary law. The scholars of the Medina and ‘Iraqi’ schools aimed at the elaboration of the Shariah, a system of the law for the Muslims, based on the Quranic Principles.²⁵

Some scholars pointed out about the Quran that the Quran is more a religious and historical text than a legal text. They say that legal material is small and even that it has by no means been comprehensively or consistently dealt with.²⁶ Joseph Schacht has similar view that the Quran teaching is not a teaching of law but it is more ethical than legal. Mohammad does not lay down legal formula but indicates what is right conduct

²² Ibid,

²³ Engineer, Asghar Ali, Islam, misgivings and History, Vitasta Publishing Pvt. Ltd, New Delhi, 2008, p.16.

²⁴ Dictionary of Islam, p.400.

²⁵ Sangar, S.P, op.cit, pp.1-2.

²⁶ Edge, Ian, Islamic law and legal History, op.cit, p.xvii.

and what wrong.²⁷ But, to me, it is a modern question and it is a matter of debate, but during our study period it was very much a part of legal system. Quran was one of the important sources of Muslim law.

Actually Quran or Islam has been misunderstood (by the westerns or by the Indians as well) but Quran is not like that as they are putting in a negative manner. Quran has been very positive all the times even in medieval times. It is upto the ruler groups and individual's outlook about Quran's teaching how they interpret or how they use it their lives.

The early Quranic verses in Mecca greatly emphasized social and economic justice and powerfully attacked accumulation of wealth and all exploitative practices. Right from Meccan to Madinese period justice (adil and gist) remained central to Islamic teachings. Quran also exhorted people of Mecca to be sensitive to sufferings of weaker sections of society.²⁸

Quran does not propagate the violence as we find Quranic verse 2: 190 that "And fight in the way of Allah against those who fight against you but be not aggressive. Surely Allah loves not the aggressors".²⁹

Maulana Muhammad Ali of Lahore also says that Quran does not uphold the violence and he comments –

"When persecution ceases, and men are not forced to accept or renounce a religion, being at liberty to profess any religion of the truth of which they are convinced, then there should be no more fighting. The words that follow make the sense quite clear. If they desist from persecution, the Muslims are at once to stop fighting against them, and hostilities are not to be continued against any except the aggressors". (Holy Quran, Lahore, 1973, p.82).³⁰

The Maulana further points out that:

²⁷ Schacht, Joseph, *Origins of Islamic Jurisprudence*, p.384.

²⁸ Engineer, Asghar Ali, *Islam misgivings and History*, Vitasta Publishing Pvt. Ltd, new Delhi, 2008, p.5.

²⁹ Quran Quoted by Engineer, op cit, p.17.

³⁰ Ibid, pp.17-18.

“A comparison with (22:40) will show that this is the correct explanation. There the object of the Muslims, fights is plainly set forth in the following words. And if Allah did not repel some people by others, cloisters and churches and synagogues and mosques in which Allah’s name is much remembered would have been pulled down. This shows clearly that the Muslims fought not only in defence of mosques, but also in that of churches and synagogues, and even of the cloisters of monks. The same object is stated here in the words of Allah, so that there is no persecution on the score of religion, and everyone is at liberty to hold any belief which he likes. The verse, in fact, lays down the broad principles of religious freedom”. (Ibid)³¹

The above Quranic verse shows that Quran does not support violence unnecessarily.

The Quran lays down very rigorous standards of Justice. Justice is the central value in Islam. No system can be stable without justice. Adil is another name for Allah and thus most fundamental to good governance.

The Quran says,

“O you who believe, be upright for Allah, bearers of witness with justice; and let the hatred of a people incite you not to act justly. Be just; that is nearer to observance of duty. And keep your duty to Allah. Surely Allah is aware of what you do (5:8)”.³²

The Prophet was a highly just ruler. He followed Allah who is described by Quran as “Best of the Judges”. The opposite of justice in Quran is Zulm. The root meaning of Zulm is darkness. Injustice always leads to darkness of oppression and exploitation in society.

The Quran says:

“Allah is friend of believers and brings them out of darkness into light” (2: 257)”.³³

Another important value of Islam is equality of all human beings. It is called Musawat. The Quran says that

“All children of Adam have equal honour”. (17: 70)³⁴

³¹ Ibid, p.18.

³² Ibid, p.116.

³³ Ibid, p.117.

Allah is a creator of all the human beings therefore everyone has right to life and dignity, and no one deprives human beings of this dignity. Thus, a ruler has to ensure equal dignity and honour to all in his regime. There should not be any distinction of colour, caste, creed, language, sex, religion, place of birth, nationality between man and woman

The Quran says:

“O humankind, surely we have created you from a male and a female and made you tribes and families so that you may know each other. Surely the noblest of you with Allah is the most dutiful of you”. (49: 13)³⁵

Hazrat Ali, the fourth Caliph in succession to the Prophet , Wrote a letter to Malik Ashtar whom he had appointed as governor of Egypt. This letter is of great significance on the subject of governance. The letter says:

“Remember, Malik, that among your subjects there are two kinds of people: those who have the same religion as yourself and they are brothers unto you and those who have other religions than yours and yet are human beings like you, men of either category suffer from the same weakness and disabilities ,either intentionally or foolishly and unintentionally without realizing the enormity of their deeds . Let your mercy and compassion come to their rescue and help in the same way and to the same extent that you expect God to show mercy and forgiveness to you”.³⁶

The letter says about nepotism and negligence of duty to God and people. The letter follows :

“So far as your own affairs or those of your relatives and friends are concerned, take care that you do not violate the duties laid down upon you by God and usurp the rights of mankind, be impartial and do justice, because if you give up equity and justice then you will certainly be a tyrant and oppressor. And whoever tyrannizes and oppresses creatures of God will earn enmity of God along with the hatred of those whom he has oppressed”³⁷

³⁴ Ibid, p.117.

³⁵ Ibid, p.118.

³⁶ Ibid, p.119.

³⁷ Ibid, p.120.

About Governance and justice, the first Caliph Abu Bakar said while assuming office,

“O people! Behold me – charged with the cares of Government. I am not the best among you; I need all your advice and all your help. If I do well, support me; if I commit mistake, counsel me. To tell the truth to a person commissioned to rule is faithful allegiance; to conceal it, is treason. In my sight, the powerful and the weak are alike; and to both I wish to render justice. As I obey God and His prophet, obey me, if I neglect the laws of God and the prophet, I have no more right to your obedience.”³⁸

However, Abu Bakr, summarized the Islamic Philosophy of Governance. The main elements include;

1. People should advise the ruler and help him discharge his/her duties.
2. If the ruler governs well, support him/her, and if he goes wrong, counsel him/her
3. To tell the truth to the ruler is fulfilling one’s duty and to keep silent when he/she goes wrong is treason
4. The powerful and weak should be equal in the sight of the ruler and he should deliver justice to both.
5. If the ruler follows God and the prophet, one should follow him/her and if he/she goes against them, he/she will have no more right to people’s obedience³⁹

In order to understand punishment for Apostasy, Quran is, in fact, against the punishment for Apostasy. Even Quran does not support those who want forceful conversion or use any coercive methods. Quran says:

“There is no compulsion in religion”⁴⁰

“For you is your religion and for me is mine”⁴¹

“The dwellers of the desert say: we believe. Say : You believe not, but say, we submit; and faith has not yet entered into your hearts. These Bedouins had submitted (i.e.,

³⁸ Ibid, p.121.

³⁹ Ibid, p.121.

⁴⁰ Ibid, p.140.

⁴¹ Ibid, p.140.

accepted Islam) impressed by victories of Islam but had not become genuine believers as ‘iman’ (faith) had not really entered their hearts. One can become a true believer only when faith enters one’s heart and that can happen only by exercising genuine freedom, not because of social pressure or Coercion or convenience”.⁴²

Quran clearly points out that choosing Islam or not, it is up to individuals.

Quran says :

“If Allah had pleased they would not have set up (other gods with Him). And we have not appointed thee a keeper over them (hafeez), and thou art not placed in charge of them (‘Vakeel).” (6:108)⁴³

Quran gives complete freedom to people to believe or not to believe and against punishment.

The Quran’s pronouncement that:

“He who does an atom’s weight of good will see it. And he who does an atom’s weight of evil will see it.” (99:7-8)⁴⁴

The above verses show that the Quran clearly holds a person responsible for all actions even of an atom’s weight. Coercion and compulsion have no meaning at all.

Allah only sends His Messengers to guide people and leave it to them to accept or not. Thus Quran says,

“And say: The Truth is from your Lord; so let him who please believe, and let him who please disbelieve. We have prepared for the iniquitous a Fire, an enclosure of which will encompass them.”(18:29)⁴⁵

“Those who believe then disbelieve, again believe and again disbelieve, then increase in disbelief, Allah will never forgive nor guide them in the (right way.”(4:137)⁴⁶

“If Allah so desired all those who are in the earth would have believed, all of them would belive. Will you then force people till they are believers?” (10:99)⁴⁷

⁴² Ibid, p.141.

⁴³ Ibid, p.142.

⁴⁴ Ibid, p.143.

⁴⁵ Ibid, p.143.

⁴⁶ Ibid, p.143.

⁴⁷ Ibid, p.144.

“Those who disbelieve after their believing, then increase in disbelief, their repentance is not accepted, and these are they that go astray’ (Emphasis added) (3:89).⁴⁸

This shows clearly that Allah does not prescribe death for apostasy. As we know, several historians have misinterpreted the pre Mughal and Mughal period on the above issue, (Apostasy issue) by saying that Islam is an orthodox religion which is not as far as Qur’anic verses are concerned.

However, we have seen that Quran deals with number of subjects at social, cultural, spiritual and moral levels. It deals with subjects not only at the given social but also at moral levels. Therefore, it is important to note that Quran has to be understood not only in the context in which the verses were revealed but also at different levels when these were expressed. However, Quran was a great source of law during our concerned period.

The Sunna

The second major formal source of Islamic law is the Sunna. This word means ‘Practise’, ‘Tradition’ or ‘Precedent’ and derives from stories that relate to the behaviour of the Prophet Muhammad and of his companions. These stories (known individually as Hadith, Plural Ahadith) record the minutiae and detail of how the prophet and his Companions sought to live their lives in accordance with the newly – promulgated religious order propounded by the Qur’an. Particularly important amongst these stories are those which relate to the Prophet himself in which he is not infrequently being asked to arbitrate disputes or decide questions of law.

It was accepted that a new system of law required new norms of behaviour. The lives of Muhammad and his Companions were seen by later generations as exemplary, being influenced by Muhammad’s closeness to God. Their behaviour therefore served as a pattern for that of all Muslims. The Ahadith were recalled, recited and recorded, at first orally and later collected into books. These collections of Ahadith which form the basis of the Sunna are textually a much broader formal source than the Quran. The reason for this is that, while the text of the Quran was finalized very soon after the Prophet’s death, in the reign of the third Caliph Uthman (who ordered an authoritative recension to be drawn

⁴⁸ Ibid, p.144.

up and all other contradictory texts to be suppressed), the Ahadith were not collected together in book form for at least a century after this. It was only at this stage that the Hadith stories were accepted as an important source and their collection began.⁴⁹

Majid Khadduni, an eminent Islamic Scholar, points out that the pre-Islamic law of Arabia was embodied in a system of customary law, comprising legal and moral principles, known as the Sunna. The Sunna grew out of the custom of the forefathers and its enforcement by practice established its legal validity. Since the structure of pre-Islamic Arab Society, even in the relatively large cities of Mecca and Medina, had not fully become urban, the character of the customary law of the settled population did not essentially differ from that of the tribal population.⁵⁰

A.J. Wensinek talks that Moslem tradition is however, a term which in Arabic is expressed not by one but by two words, hadith and sunna. The former denotes a communication or a tale, in this case, the oral or scribal translation of the saying or actions mentioned; the latter means “use” and “Tradition”, in this case, the exemplary way in which Mohammed used to act and to speak. So hadith is the external, sunna the internal side of tradition; hadith is the form, sunna the matter.⁵¹

In the Quran, the Sunna usually occurs in two connections. Sunnatawwalin and sunnat Allah. In Hadis by sunna is commonly understood Mohammad’s sunna comprising his deeds, utterances and his unspoken approval. “Muhammad’s sunna in the sense of his words, actions and silent approval is fixed orally and in writing in the Hadis. In theory the conceptions of Sunna and Hadis are different but in practice they often coincide.⁵²

The sunna or tradition is a real storehouse of material for the life of prophet and of Muslim institutions. During his life-time the prophet had decided many questions from case to case and his words and deeds and silent approval were reduced to writing and came to be termed as ‘Sunna’. These traditions of what the Prophet said and did,

⁴⁹ Edge Ian, (ed.), Islamic law and legal theory, op cit, p. xvii.

⁵⁰ Khadduni, Majd, “Nature and sources of Islamic Law” in ‘Islamic Law and Legal Theory’ (ed) Ian Edge, op.cit., p.88.

⁵¹ Wensinck. A.J. “The importance of Tradition for the study of Islam” in “Islamic law and Legal theory (ed.) by Ian Edge, op cit, p.239.

⁵² Shorter Encyclopedia of Islam, pp.273-75.

“gradually laid the foundations of what is now called Islam. And it is to tradition rather to the Quran that we must refer for Mohammadan law.”⁵³

The group of Muslim jurists called Ashab al Hadis as opposed to those known as Ashab al-Ray, attached greater importance to sunna as a source of law in preference to Ray. The zeal of Ashab al-Hadis led them to forge a number of traditions called Hadis alleged to have been said or done by the Prophet. Most of these traditions were invented in the 8th century A.D. in order to justify innovations and tendencies which were very foreign to the intentions of the Prophet. Eminent Muslim jurists and scholars made compilations of the traditions in the 9th century either according to the chronological order of the successive authors or on the basis of their subject matter.⁵⁴

IJMA

The third source of Islamic law is ‘ijma’ which means ‘consensus’. The technical term ‘ijma’ comes from a root jama’a, signifying “the totality”, “everybody”. The verb jama’a means “to bring together” and in the fourth conjugation, jama’a “to agree together”. Thus ijma means literally ‘unanimous agreement’ or “total consensus”. Ijma also means consensus on rules of law claimed to be derived from either the Quran or the Sunna. Ijma may take one or two forms which are analytically distinct.⁵⁵

The first connotation of ijma is ijma al umma, “consensus of the people”. This refers to cases where a customary rule is adopted by common consent, even though the rule is not to be found either in the Quran or in the Sunna as transmitted in the Hadis reports. The second type of ijma (of far greater practical importance once a systematic Islamic jurisprudence began to develop) is ijma-al-ulama, “consensus of the scholars”. This type of consensus is rarely unanimous in practice; it really consists of an agreement to abide by the majority view.⁵⁶

⁵³ Dictionary of Islam, p.400.

⁵⁴ Muslim Institutions, pp.65-66.

⁵⁵ Wegner, Judith Romney, “Islamic and Talmudic Jurisprudence: The four Roots of Islamic law and Their Talmudic Counterparts”, *The American Journal of legal History*, Vol.xxvi, 1982, pp.39-40.

⁵⁶ *Ibid*, p.40.

Al-Shafii defines ijma as the view held by the majority of the Muslims and uses it as a secondary source of elucidation on questions which cannot be decided from the Quran and the Sunna of the Prophet.⁵⁷ After some time, ijma was defined as the agreement of the mujtahids of the people (i.e. those who have a right, in virtue of knowledge, to form a judgement of their own) after the death of the Prophet, in any age, on any matter of faith. Ijma thus did not signify the opinion of the masses. The agreement was not arrived at by a council or a synod but was reached 'instinctively and automatically'. As a result of the agreement the points in dispute got settled and each settled point became the essential part of the faith; and disbelief in it came to be regarded as an act of unbelief (kufr).⁵⁸

However, Ijma was regarded as a major source of law and helped in overcoming the difficulties arising from the disputes among Muslim jurists about the rulings and methods of interpretations. "By means of ijma what was at first an innovation, and as such heretical, has been accepted and has over-ridden the earlier sunna. Ijma has not simply fixed unsettled points, but has changed earlier doctrines, of the greatest importance. It is thus regarded by many, within and without Islam, a powerful instrument of reform."⁵⁹

Qiyas

The fourth root of Islamic law is a system of logical reasoning called Qiyas. Although Qiyas came to be called the fourth root only in the classical, post-Shafian period (Shafian himself called Qiyas a "branch" rather than a "root" of jurisprudence), the term itself is pre-shafian. We first find the verb qis, "analogize" in the earliest known post-Quranic legal text, a document called the instructions of Umar b. Khattab to the

⁵⁷ Shorter Encyclopedia of Islam, p.613.

⁵⁸ Encyclopedia of Islam, II, p.448.

⁵⁹ Shorter Encyclopedia of Islam, p.158.

Qadi Abu Musa al-Ashani. Its contents are recorded in text which, though dating from the late ninth century, trace the document back to the early eighth century.⁶⁰

Qiyas, "deduction by analogy" originally signified the derivation of rules of law by analogy with earlier rulings found in the either Quran or the Sunna. The oldest juristic analogies were rather crude. For instance an attempt to fix five dirhams (by analogy with five fingers) as the minimum value of stolen goods which could incur the Quranic penalty of amputation of the hand.⁶¹

But, later on, analogies became more sophisticated and the art of Qiyas developed into an elaborate system which included many other kinds of rhetorical argument besides analogy.⁶²

Al-Shafii says in his Risala that Qiyas is used in the cases which are not dealt with in the Quran, Sunna or ijma. He regards Qiyas as of two kinds, Qiyas-i-Jali or evident and Qiyas-i-Khafi or hidden.⁶³

However, the use of Qiyas was permissible only when it was impossible to use these sources or "roots". "If traditions require to be verified by the sacred text, Qiyas does still more so. Quran is the word of Allah, while Qiyas is the work of feeble intelligence."⁶⁴

Shariah Law

Islamic law is in Arabic known as the 'Shariah'. This means 'the right path' or 'guide' and refers to the fact that Islamic law is an all-encompassing set of principles which guides the good Muslim down the right path towards a pure life consistent with Islam, whose reward will be everlasting life in Paradise.⁶⁵ Joseph Sachacht says that

⁶⁰ Wegner, Judith Romney, "Islamic Talmudic jurisprudence; The Four Roots of Islamic Law and Their Talmudic Counterparts", The American Journal of Legal History, Vol.xxvi, 1982, p.44.

⁶¹ Ibid, pp-44-5.

⁶² Ibid, p.45.

⁶³ Dictionary of Islam, p.482.

⁶⁴ Shorter Encyclopedia of Islam, p.226.

⁶⁵ Edge, Ian, op.cit., p.XVI.

Shariah is “the core and kernel of Islam itself”.⁶⁶ Theologically, the Shariah is a God-given law which is immutable and applicable in every age, but as we shall see, a large part of it is now to be found in the writings of medieval Islamic jurists.

Shariah law is nothing but sincere human approach to divine injunctions as contained in the Quran.⁶⁷

The Shariah covers every aspect of life and every field of law international, constitutional, administrative, criminal, civil, family, personal and religious. In addition, it covers an enormous field which would not be regarded as law at all in any modern classification. Every human act is regarded as characterized, to some degrees by *hush* or *qubh*, seemliness or unseemliness, conformity or deformity; and these qualities can only be known by divine revelation. Everything from murder to social etiquette, and from incest to the rules of religious retreat – is thus evaluated, and may be classified as coming under one of the five categories of things commanded, recommended, left legally indifferent, reprobated, or forbidden by God Himself. In large part this system is, of course, such as no human court would attempt to enforce, and any sanction, in these cases, can only be exacted at the bar of eternity: but, enforced or unenforced, this whole system of duties forms part of the sacred law.⁶⁸

Thus Shariah stands supreme, exacting one standard, prescribing unified norms and exercising- in- theory – an exclusive authority over every aspect of life.⁶⁹

Regarding the origin of the Shariah, it seems to have developed only around the turn of the first century of the Muslim era. However, it was only with the establishment of the ‘Abbasid dynasty, moreover, with its ostentatious championship of the Shariah, that the law schools crystallized, that the classical theory of jurisprudence won acceptance, and that the office of “Qadi” became officially at least – reserved for those

⁶⁶ Schacht Joseph, *An Introduction to Islamic Law*, Oxford University Press, 1964, Delhi, p.1.

⁶⁷ p-2

⁶⁸ Anderson, J.N.D., “Law as a Social Force in Islamic Culture and History” in Ian Edge (ed.), book, *op.cit.*, p.488.

⁶⁹ *Ibid.*, p.491.

learned in the sacred law which this office particularly, and in theory exclusively, came to serve.⁷⁰

There are different opinions on Shariah. Some people say that Shariah is progressive or some people say, it is not progressive. The Sufis held different views and Ulema adopted some traditional views. These Ulema adopted theocratical idea of state, while Sufis developed brotherhood ideas. These are who think differently.⁷¹

Thus, we have seen that four roots of Islamic laws are: Quran, divine scriptural revelations; sunna, oral traditions from the Prophet; Ijma, consensus of the jurists, and Qiyas, the juristic method of logical argument.⁷²

⁷⁰ Ibid., p.492.

⁷¹ J.N.D., Anderson discusses greatly the Shariah by referring several scholars opinion. He discusses the issue of Islamic State, Progressiveness or Negativeness of Shariah, Problems of Sharia and so on. See his article "Law as a Social Force in Islamic Culture and History" in (ed.), book of Ian Edge, Op.cit. Asghar Ali Engineer also holds different views on Quranic teachings and Shariah. See his book, Islam, op.cit.

⁷² Wegner, Judith Romney, 'Islamic and Talmudic Jurisprudence', AJLH, vol.xxv, 1982, p.30.

Islamic Jurisprudence or Fiqh

Fiqh meaning ‘intelligence, knowledge’, denoted Muslim or Islamic Jurisprudence, The term covers all aspects of religious, political and civic life. It includes criminal laws regulating the administration of the state and the conduct of war.⁷³

Fiqh (also spelled Fikh) is the Arabic term for positive law. Joseph Schacht points out that, “Islamic law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself. The very term Fiqh ‘knowledge’, shows that early Islam regarded knowledge of the sacred law as the knowledge par excellence.”⁷⁴

Bernard Weiss holds the view that, the term fiqh, which was usually rendered as “Jurisprudence”, originally was used much in the same sense as “ray” There was no doubt that a great deal of the positive law of Islam stems from this early ‘ray’. However, an essential characteristic of Islamic jurisprudence was that it eventually set aside the relatively unrestricted, discretionary ‘ray’ in favour of a more constrained, text-oriented approach to the exposition of law. The text-oriented approach was regarded as the only true means by which Islamic law historically developed. The classical Muslim jurist was guided, not by intuition, but by dalil, by textual evidence. Fiqh becomes more conceptual knowledge than intuitive perception.⁷⁵

Another Islamic scholar Goldziher holds the view that, “even the names of legal speculation (Fiqh – intelligence) and of its students (Fuqaha’ – intelligent) have been influenced by the Latin term juris (prudentia) and jurist (prudent) in their special application to the study of law and teacher of law.”⁷⁶

⁷³ Encyclopedia of Islam, II, p.101; Shorter Encyclopedia of Islam, p.102.

⁷⁴ Makdisi, John, ‘Legal Logic and Equity in Islamic Law’, The American Journal of Comparative Law, Vol.33, 1985.

⁷⁵ Weiss, Bernard, Interpretation in Islamic Law: The Theory of IJTihad, The American Journal of Comparative Law, Vol.26, 1978, p.202.

⁷⁶ Encyclopedia of Islam, p.102; Shorter Encyclopedia of Islam, p.103.

Kremer is of the opinion that even many of the provisions of Roman law adopted by Islam found a place in the Muslim Jurisprudence through the intermediary of the Jews.
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However, in terms of origins of Islamic Jurisprudence, Joseph Schacht said that, the origin of Islamic jurisprudence to the second century of Islam, that was about one hundred years after the Muslim conquest of Mesopotamia in 637 A. D. (When the region was renamed Iraq). This region had previously been part of the Persian Empire, with its centuries-old tradition of formal law making and jurisprudence. Schacht concluded that "Mohammedan jurisprudence originated in Iraq. "The discovery that Islamic jurisprudence emerged on the banks of the Euphrates and not on the sands of Arabia, home of the prophet and birthplace of Islam, clearly invites further investigations."⁷⁸

Schools of Law

Joseph Schacht points out that, the foundations of Muhammadan law were laid down in Medina in the first century of the Hegira by persons who applied religious norms such as those expressed in the Quran and in "Traditions" from the prophet, to the customary law of Medina.⁷⁹ The first such attempt said to be on record to Codify the Islamic law was the Majmua' of Zaid bin 'Ali (died 740 A. D.), founder of Shia sect of Zaidiya.⁸⁰

The Muwatta of Malik bin Anas (715 – 95 A. D.), is recognized as the oldest corpus juris of the Sunni Branch of Islam. It developed later on as theological centre of Medina in Hijaz. In Iraq, Hammad bin Suleman became the pioneer of another school of fiqh. Iman Abu Hanifa belonged to this School and was placed on a firmer footing by his two great pupils, Abu Yusuf (died 795 A. D.) and Mohammad bin al – Hasan - al - shaibani (died 804 A. D.). Almost at the same time, fiqh was being systematically

⁷⁷ Encyclopedia of Islam, II, p.102; Shorter Encyclopedia of Islam, p.103.

⁷⁸ Schacht, Joseph, The Origins of Muhammadan Jurisprudence, (Oxford, 1950, 1979, (ed.), p.190.

⁷⁹ Schacht, Joseph, "Foreign Elements in Ancient Islamic Law", in Islamic Law and Legal Theory (ed.), by Ian Edge, 1996, Dartmouth, p.5.

⁸⁰ Shorter Encyclopedia of Islam, p.104; Encyclopedia of Islam, p.103.

developed in Syria by ‘Abd al – Rahman al – A wzai (died 774 A. D.), Sufyan al – Thawri (died 778 A. D.) was yet another important teacher belonging to the Iraqi school of fiqh.⁸¹

However, freedom in legal speculation set on the foot of the movement to develop into a variety of schools, each led by a distinguished Mujtahid, around whom a large number of disciples gathered and discussed questions of law. Although these leading jurists often attacked each other, as in the case of Abu – Hanifa and his critics, there was on the whole a tolerant attitude on the part of the Muslim community towards their leading jurists, believing that inspite of differences on matters of positive law (furu) they all sought the truth, each according to his light. But lack of direction in the ijtiḥad (Independent judgement) and “disagreement” tended to multiply the schools and to accentuate the rivalry among the followers. During the second and third centuries of the Islamic era (the eighth and ninth of the Christian era) the Islamic world was abounding with a great number of schools of law, major or minor. These schools varied from the liberal Hanafite and Mutazilite jurists - permitting large measures of independent judgement – to the conservative Zahirite and Hanbali jurists who, not only rejected ijtiḥad , but also insisted on a literal interpretation of the Quran and ḥadith

Each school consisted of the out set of a group of disciples who followed their master in giving certain answers to specific questions, practical or speculative.⁸²

However, in the fourth century of the Islamic era, only four schools were recognized, namely, the Hanafi, Maliki, Shafii and Hanbali schools.⁸³

1. The Hanafi School

The Hanafi school has been named after Imam Abu Hanifa, the patriarch of the ‘Iraqi School. Abu Hanifa was born at kufah, in Iraq, in the year of 80 of the Muslim Calendar, which corresponds to the year 700 A.D. He was born at a time when

⁸¹ Ibid., pp.103-4; Ibid.; pp.104-5.

⁸² Khadduni, Majid, Nature and Sources of Islamic Law, the George Washington Law Review, in Ian Edge (ed.), pp.17-18.

⁸³ Ibid., p.19.

Umayyad glory was at the highest level and its ruler 'Abd al – Malik b. Marwan was ruling.

Abu Hanifa was described as tall, of medium weight, with fine beard and of great impressiveness of bearing. He was always well- dressed and serious talker. He did not prefer light talk, never laughed and seldom smiled. He was by occupation a silk – merchant, with a shop in kufah in a house belonging to one' Amr b. Huraith, one of the companions of the prophet. However, it was through the influence of al – Imam al – Shafii , a scholar of reputation at that time, that Abu Hanifa was led to take – up the study, first theology, then, a year later, canon – law (fiqh). At that time, Abu Hanifa became firmly established as teacher, his reputation grew, and his following became extended until he had the most numerous following in the city of kufah. He came to be regarded as a leading fiqh scholar and a great logician and oracle of Sunni jurisprudence. Abu Hanifa has given his own logic regarding wadu (ablution), prayers, reciting Quran, divorce and marriage, social economy and so on.

Abu Hanifa had many, famous pupils like Abu Yusuf, Muhammad b. al – Hasan, known as al-shaibani and Zifir b. al-Huzail, and he died in Baghdad in 767 A.D⁸⁴.

Hanafi school played a very predominant role in Islamic law and developed many legal Hanafi texts.⁸⁵ Hanafi became very famous in Iraq, Syria, Egypt and Turkey.⁸⁶

Thus Hanafi school has the credit of being the first to present questions of fiqh for discussion and solution, and that the school also was the first to record and classify and arrange cases. According to many people that, “Abu Hanifa worked on quite new principles and erected a very tolerant system in which he made the greatest concessions to the speculative method of deduction (Qiyas) is quite unfounded In any case, there is in general no real difference of principle among the different fiqh schools in Islam.”⁸⁷

⁸⁴ Adams, C.Charles, 'Abu Hanifa, Champion of Liberalism and Tolerance in Islam' in Ian Edge (ed.), *Islamic Law and Legal History*, pp.377-387.

⁸⁵ *Encyclopedia of Islam*, I, pp.90-91; *Shorter Encyclopedia of Islam*, pp.9-10; *Dictionary of Islam*, p.570; Neel J. Coulson: *The Thought Quarterly*, No.40, p.20.

⁸⁶ Adams, C. Charles, p.226.

⁸⁷ *Ibid.*, p.387.

2. The Shafii School

The founder of this school or Mazhab was Mohammad bin al-shafii. He was a Hashimite belonging to the tribe of the Quraish and was thus remotely connected with the prophet.

Muhammad ibn – Idris al – Shafii was born in 767 A. D. in Palestine, in either Ghaza or Askalon. Taken as a child to Mecca, he later distinguished himself at the feet of the jurist Malik in Medina. After Malik's death, shafii traveled widely, both to Syria and to Iraq, where he met the famous jurist shaybani of the Hanafi school. Shafii spent his final years in Egypt, where he completed the Risala, a work begun in Iraq and destined to have profound effect on the development of Islamic legal theory⁸⁸

It was generally believed that, al-shafii laid down for the first time the theory of law in a systematic form. His contribution to jurisprudence was claimed by his biographers to resemble the work of Aristotle in logic and work of Al-khalil b. Ahmad in prosody.⁸⁹

In the Risala, shafii postulates the existence of four sources of law: 'Legal authority may consist of

1. Communication in the book, i. e., Quran or
2. The Sunna; or
3. Ijma; or
4. Qiyas

Except first of these, Shafii invested each of these concepts with a new significance, relating them each other in ways that were radically new in Islam. His notions had direct parallels in Talmudic law.⁹⁰

Al-shafii, studied the Quran deeply, says that it was the basis of all legal knowledge. He thought that the Quran contained guidance for any occurrence (nazilah) which might befall a Muslim. After reading Quran, he specified legal provisions such as

⁸⁸ Wegner, Judith Romney, 'Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts', *The American Journal of Legal History*, Vol.xxvi, 1982, pp.50-51.

⁸⁹ Hasan, Ahmad, *Al-Shafii's Role in the Development of Islamic Jurisprudence*, Article in 'Islamic Law and Legal Theory', (ed.), by Ian Edge, op.cit., p.239.

⁹⁰ Wegner, op.cit., pp.50-51.

prayer, zakat, pilgrimage, and fasting, and clear prohibition from certain evils like adultery, drinking, eating blood, carrion and swine flesh. The second includes certain duties whose details were explained by the sunnah of the prophet like the number of the prayers, amount on which Zakah falls, and the time – limit for the payment of Zakha. The third consists of the legal provisions established by the prophet and not provided by the Quranic text. This was based on the authority that the Quran made the obedience of the prophet obligatory on Muslims. The fourth comprised the rules derived through Ijtihad.⁹¹

Al-Shafii classified the Quranic statements into two: general (amm) and particular (khass). He said that there were certain statements which were absolutely general, and intended to be general; there were others which were general and were intended to be so' yet refer to certain particulars as well.⁹²

The most controversial point between the early schools and Al-Shafii was the concept of the Sunnah. The early schools took the established usage of the Muslims and the practised traditions as Sunnah. Al-shafii launched a movement to eliminate this practice. He validated solitary traditions from the prophet and proved that Hadith was the only channel for knowing the sunnah of the prophet. The bone of contention between him and the early school was the solitary traditions (Khabaral-Wahid).⁹³

In order to understand the shafii scheme of Ijma, Shafii says that it should recognize the theoretical and practical need for a global ijma if a unified sunna were to be achieved. Shafii's theory of ijma was set down in the Risala. He discussed both notions of consensus, the ijma of people and ijma of the scholars. He assigned a higher value to former, stated that the ijma of the people was the only kind truly deserving the name.⁹⁴

There were three salient features in Shafii's treatment of Qiyas. These were his rankings of Qiyas below the other three sources of law; his promotion of qiyas over ray

⁹¹ Hasan, op.cit., p.240.

⁹² Ibid., p.241.

⁹³ Ibid., pp.241-42.

⁹⁴ Wegner, op.cit., p.56.

as the better form of legal reasoning; and his introduction of several 'new' types of argument under the rubric of Qiyas.⁹⁵

Thus, the Shafii school played a very significant role in the Islamic law. His teaching is still eagerly studied in Azhar Mosque. It is even now predominant in South Arabia, Bahrin, The Malay Archipelago, the former German East Africa and some parts of Central Asia.⁹⁶

3. Maliki School

Maliki school was named after Malik bin Anas. He probably was born in about 710 A. D. at Medina, where he spent most of his life, he got in trouble with the Government, received flogging at the hands of the governor and suffered a dislocation of shoulder. He died in 795 A.D. at the age of 85 in Medina. Many details of his life were buried in fiction . His fame rested Chiefly on his Muwatta, which received a surprising Success. One of the main objects in his juristic thought that appears in 'Muwatta' is the permeation of the whole legal life by religious and moral idea. This work recorded the usual consensus of opinion in Medina and became authoritative as the expression of compromise.

'Muwatta' was his main achievement. It can be regarded as evidence of the stage reached in the general development of Muslim law of this time.

4. The Hanbali School

The Hanbali school was named after Ahmad bin Mohammad bin Hanbal, the celebrated Islamic theologian. Ibn Hanbal was born at Baghdad in November 780 A.D. In that city he attended the lectures of Al-Shafii and received instructions from his traditions .He attained great fame from his profound knowledge of both civil and Spiritual laws..

Majid khadduni Says that Hanbalites opposed not only ijtihaad, but also rejected all forms of Qiyas and sought to find all the answers to their problems in the Hadith.

⁹⁵ Ibid., p.58.

⁹⁶ Encyclopedia of Islam, IV, pp.252-53; Shorter Encyclopedia of Islam, pp.512, 613-14; Dictionary of Islam, p.570; Nell J. Coulson: The Thought Quarterly, No.40, p.20.

Even the ijma, which had been established as an infallible principle, ranked in their eyes inferior to weak Hadith.

The Hanbalites followed the rigidity and austere life which was opposed by the Hanafi and Shafii. The Hanbalitis were against state gift or any post.

Ibn Taymiyyah (A. D. 1260 – 1327), a great Hanbali jurist who developed interest in Hanbalism, was adopted by the wahhabi movement of Arabia as the official creed of the movement.

This mazhab was much more widely spread in the countries of Islam till the 14th century A.D. The rise of the Ottoman power dealt Hanbalism a very severe blow and set it on its way to decline.

Source of Law: Shiah Tradition

The Shiahs, as are well-known, have the very greatest reverence for 'Ali, - a reverence, which if not greater, is yet more in evidence, than that which they show towards Mohammad himself. 'Ali's father, Abu Talib, and Mohammad's father, 'Abdullah, were brothers, so Mohammed and 'Ali were first cousins. 'Ali married Fatimah, the daughter of Mohammad, from whom come the only lineal descendents of Mohammed. According to Shi'ah tradition, Mohammed designated 'Ali as his successor, made him the repository of his wisdom and knowledge, and enjoined upon his followers the observance of the rights of 'Ali and his House in the strongest possible terms. The chief point of dispute between the orthodox Sunni Mohammedans and the Persian Shi'ahs concerns this very point. The former maintain that Abu Bakr, 'Umar and 'Usman were usurpers, who kept 'Ali out of his just rights., The Shi'ahs, therefore, refuse to recognize them and curse their memory, and regard 'Ali as the first rightful successor of Mohammed. 'Ali's short reign of five years was full of warfare and troubles, caused by the opposition of the rival party of the Umayyids, and ended with his assassination in the mosque at Kufah. 'Ali's eldest son, Hasan, only reigned six months, and then abdicated in favour of Mu'aviyah, son of Aby Sufyan, and head of the rival House. Hasan's younger brother, Husain, was invited by numerous factions among the inhabitants of Kufah to revolt against Yazid, the son of Mu'aviyah, who had succeeded his father, and started from Mecca with this object in view. But he was intercepted by a captain of Yazid's and slain at Karbala, with his household of seventy-two persons. Thus the temporal headship of Islam passed from the House of 'Ali, and its place was taken by a succession of religious leaders twelve in number, known by the name of the Twelve Imams. 'Ali and his two sons, Hasan and Husain, are reckoned as the first, second and

third in order of sacred hierarchy; while the twelfth is the concealed Iman Mahdi, who it is believed will appear again at the end of the world. These Iamams are regarded as inspired guides, the sources of divine wisdom and knowledge. The memory of 'Ali, whose best-known title is Amiru'l-muminin (Prince, of Commander of the Faithful), and his younger son Husain, commonly known as Saiyidu'sh-Shuhada (Prince of the Martyrs), has taken a very strong hold on the imagination of the Persians. Their devotion is maintained by the annual recitation of Passion Plays, depicting the death of Hussain and his family and followers. The devotion of the Persians to 'Ali is also evinced by the invocation of his name when anything difficult or arduous has to be done, or when a man or an animal stumbles, etc. It is also written as a lucky motto over shops or the doors of houses, and is a common cry of the dervishes or religious beggars. It is to be seen from afar blazoned in large white letters on one of the mountains overlooking Kerman.

The exalted position held by 'Ali in the eyes of the Shi'ahs comes out very clearly in the Hyat-ul-Kuloob and in Mr. Merrick's book, which is in part a free translation, and in part an abridgement, of the original Persian, with an Appendix containing many copious notes. The perusal of either of these will give a very good idea of the religious ideas of the majority of the Persians, especially those which centre round 'Ali. The subject is, therefore, of considerable interest. And as the book is very scarce, a brief account of the chief things which it has to say about 'Ali may perhaps prove not unwelcome.

There are perhaps few places in tradition where a free rein is given to the play of fancy that where it undertakes to throw light on the state of 'Ali before his birth. Mohammed said, "Myself and 'Ali were created one light, and we ascribed glory to God on the right side of the empyrean two thousand years before God formed Adam." Mohammed also declared that he himself (with 'Ali, Fatimah, Hasan, and Husain) was created before the creation of any other thing. God uttered a word from which He formed light. He then pronounced another word from which He formed spirit. He next tempered the light with the spirit, and then formed the sacred Five, who ascribed praise to God when there was no other existence to give Him glory. When God willed to create the universe, He expanded the "light" of Mohammed, which was created from God's light and represented the soul of Mohammed, and from it formed the empyrean. Similarly after this the lights of 'Ali, Fatimah, Hasan and Husain were expanded, from which were formed in succession the angels, the heavens and the earth, and the moon, and lastly from the light of Husain, paradise and the Hurs were formed. Another account says, on the authority of Imam Mohammed Baqir, that the Most High formed Mohammed of clay, which clay was a gem under the empyrean. From the excess of the clay were formed in succession 'Ali, the college of Imams and the hearts of all the Shi'ahs. The compiler of the Hyat-ul-Kuloob remarks that the traditions about the creation of the lights or spirits of these exalted personages are numerous and discordant!

After the creation of Adam, the Most High caused the light of 'Ali to appear on Adam's middle finger, and the lights of the rest of the sacred family on his other four fingers. "The beaming radiance on these lights was like the sun, so that the heavens and earth, and empyrean and throne, and the curtains of the tabernacle of greatness and glory, were by it illuminated." The light of Mohammed and 'Ali was placed in Adam's loins and transmitted from generation to generation through pure progenitors, until it came to their grandfather, 'Abdu'l-Muttalib, when it was divided into two parts, Mohammed's light being placed in the loins two parts, Mohammed's light being placed in the loins of his father 'Abdu'llah, and 'Ali's in those of Abu Talib. The Mohammedan light continued with Adam until the conception of Shith (Seth), when it was transferred to Hawwa (Eve). At the birth of Shith it shone upon his forehead, and in the same way it was passed on from one to another of the progenitors of Mohammed, until it arrived at the forehead of Mohammed himself. Before the conception of 'Abdu'llah, and also of Fatimah, the traditions relate that the father was made to partake of the water and food of Paradise by angelic or other agency: This being preliminary to the transference of the Mohammedan light.

The coming of 'Ali was foretold by the astrologers and magicians of that epoch, and it is also alleged that his name occurs in the Sacred Books. In the age preceding of Ali' there lived a very famous soothsayer, surnamed Satih. His body was destitute of bones, except the skull. He used to be rolled up like a garment, and taken wherever he wished to go, and then unrolled and laid on a mat. He surveyed the heavens almost incessantly, and took very little sleep. He was transported in a basket to the presence of Kings who wished to consult him. In this night vigil, he beheld fearful portents in the heavens, foretelling the advent of Mohammed and 'Ali, and conspired with Zarqa, queen of Yemen and the most famous magician of that country, who had also seen the heavenly portents, to quench the prophetic light before it should burst forth in the world. Arrived at Mecca, Satih conceals his real intentions from the chiefs of the Quraish, and foretells to the sons of 'Abdu'l-Muttalib the appearance of the illustrious chieftain and valiant champion 'Ali, whose name, he declares, in the Taurat (Pentateuch) is Siriya, in the Injil (Gospel), Iliya, (Elijha), and among his own people, 'Ali. This reckless identification of Ali with Iliya may be compared with the assertion that Mohammed is foretold under various names in the Scriptures. Ham, a demon, and alleged to be the great-grandson of Iblis (Satan), is also made to aver that 'Ali's name is in the Sacred Books. He was, it is said, the only true believer among the demons. One day he came to Mohammed in the guise of a gigantic man of terrible appearance and asked for religious instruction. Mohammed handed him over to 'Ali, at which Ham demurred. But on learning who he was, Ham was quite satisfied and remarked that he had seen his name in the Sacred Books, which is also called Iliya.

High opinion is also entertained of 'Ali in heaven. Adam beholds the name of 'Ali with those of the other Imams inscribed upon the empyrean. During Mohammed's night journey to heaven (mi'raj), he beheld the similitude of 'Ali and the rest of the Imams on the right side of the empyrean, all performing prayers in a sea of light. 'Ali's similitude in heaven is created of divine light. At his martyrdom it appeared as if wounded, wherefore the angels who visit 'Ali's celestial likeness morning and evening, curse the assassin. 'Ali's image has been placed by God near the Sidratu'l-muntaha. This is the loto-tree of Paradise, the circumference of which is a hundred years' journey of terrestrial time: it has its roots in 'Ali's celestial palace, and one of its leaves would cover all the people in the world. God did this in order to satisfy the burning desire of the angels to behold 'Ali. They humble themselves and bow before the image. Whatever Mohammad, whose similitude is also in heaven, and 'Ali command, the angels perform; and whatever they ask of God He grants. During Mohammed's night journey to heaven the angels inquired so particularly about 'Ali, that Mohammed began to conclude that 'Ali was better known in heaven than himself. The angel of death will not take the souls of Mohammed and 'Ali, but God Himself will do so. Mohammed beheld a personage in heaven whom he supposed to be 'Ali, and began to address him, whereupon Gabriel explained that it was an angel created in 'Ali's likeness, and when those angels who are privileged to approach near the Deity wish to behold 'Ali, they visit that angel. The angels enjoy their exaltation by loving Mohammed and 'Ali. Those angels who helped the Mohammedans at the battle of Badr, all had the form of 'Ali. The previous prophets whom Mohammed saw in heaven, and questioned as to their exalted rank, replied, "We were raised up on account of your prophetic office, and the imamate of 'Ali, son of Abu Talib, and of the imams of your posterity." Mohammed and 'Ali are the only prophets to whom God has given two of His own names (Mahmud and 'Alia-i.e., Praised and Most High). God spoke to Mohammed in heaven in the language or style of 'Ali. The twelve Imams are declared by God to be His "proofs, vicegerants and friends." Mohammed said on one occasion, "God has sworn by His own holy nature, that whoever humbles himself before 'Ali to the degree of a hair's breadth, thereby exalts his rank in paradise a hundred thousand years' journey." When 'Ali once expressed his very great affection for a certain chapter of the Koran (Surah 112), Mohammed exclaimed, "Verily, were it not that I fear a sect of my followers will say of you, what the Nasara (Christians) affirm of 'Isa (sc. Of the divinity of Jesus), I would this day declare some things in your praise, so that you would pass no company that would not gather the dust on which you tread, for the blessing it confers." This shows of caution, however, has not prevented the natural consequences of the extravagance of the traditions concerning 'Ali. The Persian sect of the 'Ali-Ilahis maintains that the Deity was incarnate in 'Ali. In Luristan, among the Deity was incarnate in 'Ali. In Luristan, among the Kurds, in the district of Kemanshah, and among the tribe of Hazarah, scattered about Kabul and Qandahar, are found members of this sect, or of the kindred sect of the Nusairis. Nusair, as the Shi'ahs

say, addressed 'Ali as divine, and was smitten to death by him for the blasphemy. Upon 'Ali's prayer, at the earnest request of the relatives, Nusair was restored to life, when he immediately exclaimed, "O' Ali, I believed you to be divine before, but now by your restoring me to life I know you to be Deity."

It is asserted moreover that whenever 'Ali fought in the cause of God, Jibrail (Gabriel), attended him on his right, Mikail (Michael) on his left, and Israfil in rear, while the "angel of death" ('Izrail) marched before him. The great idol Hubal in the Ka'bah prostrates itself on its face before Mohammed and testifies to the imamate of 'Ali. On different occasions, rocks, trees and a lizard salute 'Ali by his name and titles, testify to his imamate and proclaim his glory and excellencies, or declare the felicity of his friends and the fate that awaits his enemies. More marvelous still, there was a thorn-tree of the desert, which had grown to an enormous size and exhibited other astonishing properties after Mohammed had poured at its foot the water with which he had performed his ablutions and gargled his mouth. At Mohammed's death this tree cast its fruit, but subsequently yielded fruit, although smaller and less delicious. After a period of thirty years its fruit fell again, little of its verdure was left, and its beatify departed, and soon the intelligence arrived at the martyrdom of the "Commander of the Faithful." On the day of Husain's martyrdom it became perfectly dry, fresh blood sprang up under it and bloody water distilled from its leaves. At the death of 'Ali, angels were sent down to assist at the funeral preparations and the interment, as was the case also at the decease of each succeeding Imam, as well as of Mohammed himself.

'Ali is, of course, reputed to have performed many miracles, most of them in conjunction with Mohammed. Certain infidels were raised to life at 'Ali's prayer, and bore testimony to him. In answer to a Challenge from some of the unbelieving Quraish, 'Ali at Gabriel's command cursed ten of them, who immediately became afflicted with gangrene, leprosy, blindness, palsy and convulsions, but were healed on repeating a prayer asking for cure for the sake of Mohammed and 'Ali and their pure family. The stores of wheat, barley, dates and raisins, belonging to an unfilial young man, were changed to putrid masses, and his money to stone, by Mohammed and 'Ali. At the prayer of 'Ali in the name of Mohammed and his family, a camel spoke and disclosed her master's crime. At 'Ali's prayer a stone was transmitted to gold to pay a debt owed by a distinguished Mohammedan to a Jew.

'Ali's deeds of prowess are also solemnly recorded. At the defeat of the Mohammedans at Uhud (Ohod), 'Ali's valour was conspicuous. When his sword was broken, Mohammed gave him his own weapon "Zu-l-faqar," with which 'Ali slew all who attacked Mohammed. 'Ali received ninety, or, as some traditions say, forty wounds all in front. At Khandaq, 'Ali kills the infidel champion, 'Amir, by stratagem. Having distracted his attention, he cut off both his legs at a single blow. During the expedition against the Bani Mustalaq, 'Ali drove a clan of jins, "like Zinkis" (Zanzibaris of negroes),

from a certain wadi where they had taken up their abode. At the conquest of Khaibar, besides other deeds of strength and bravery, 'Ali slays the Jewish champion, Marhab, his second blow cleaving the stone ring on the helmet of Marhab, the helmet itself and his head, crying as he did so, "Allahu akbar." At 'Ali's prowess the angels in heaven shouted in astonishment, and Gabriel was commanded by God "to sustain the excess" of that Hashim like blow, lest it should cleave the earth in twain. "the blow," said Gabriel, "fell vastly heavier on my wing than the weight of the seven cities (which Gabriel, when ordered to destroy the people of Lot, took up from the earth and carried upon single feather of one of his wings), notwithstanding the fact the Michael and Israfil both caught 'Ali's arm in the air to check its force."

'Ali was sent on different missions by Mohammed. There was a certain tribe of jins, called the Bani Bijah, living beneath the ground. Some of them became believers, and quarrels arose about water and pasturage between them and their unbelieving brethren. So 'Arfatah, one of the jins, came in the midst of a whirlwind to solicit Mohammed's intervention. When he disclosed himself his appearance was most strange, as he had much hair, a high head, prominent eyes which opened laterally, small eye-sockets, and teeth like a beast of prey. Undeterred by the messenger's unprepossessing appearance, 'Ali accompanied him, offered the unbelieving jins three conditions, and on their rejection slew eighty thousand of them, whereupon the rest of them became Musalmans. On another occasion 'Ali was sent to Yemen with a letter from Mohammed, and within one day the whole tribe of Hamadan became Mohammedans, and the conversion of the rest of Yemen followed.

God once gave Abraham an ark in which were cells for all the prophets and all their wazirs. Abraham broke open the cells, and in the last found Mohammed, by whose side was 'Ali, represented by a gigantic portrait beaming with light, and with his hand resting on Mohammed's girdle. On the portrait was the inscription, "This is the similitude of the wazir of Mohammed, and who is aided by divine victory" (? Help). In answer to Abraham's inquiry, God declared that Mohammed and 'Ali were blessed and made immaculate, and chosen with their offspring before creation because of the goodness and purity of their hearts. Mohammed will deliver to 'Ali "the banner of praise," which he will receive from God. Under the standard will be marshaled every prophet, righteous person and martyr, all of whom 'Ali will conduct into Paradise. 'Ali is the gate of the city of knowledge, the gate of Mohammed's wisdom, which he will spread abroad. Before sending him on his mission to covert the people of Yemen, Mohammed gave to 'Ali, who was different on account of his youth and inexperience, a slight blow on the chest, saying, "On Lord, guide his heart!" After this, "Ali affirmed that he never afterwards had the least doubt respecting any judgement he pronounced. 'Ali, when weighed in scales brought from heaven against the whole multitude of the Moslems, outweighs them all. Mountains salute Mohammed and assure him of victory

over all his enemies with the aid of 'Ali. He is so stalwart a champion of the faith that there were all the inhabitants of heaven and earth to become infidels, God by him would sustain the true faith. One day a rude Arab named Bura greedily partook of a poisoned shoulder of mutton, which had been placed before Mohammed, before being invited to do so, and died in consequence. After the funeral, at which 'Ali prayed that God would forgive Bura, Mohammed assured the relatives that a magnificent inheritance was Bura's in Paradise, and added that the Most High declared that "if Bura's sins had exceeded in number the sands, particles of dust, drops of rain, leaves of trees, hairs of animals, glances of their eyes, their breathings, motions and steps, all would have been pardoned at the prayer of 'Ali." On the other hand, if empyrean, and still harboured an atom of enmity to 'Ali, his only reward from God would be that of vengeance. It should, however, be noted that, in spite of all the exaggerated praise of 'Ali, Mohammed's precedence is safeguarded in many places. Nor can 'Ali's sinlessness be maintained in the face of such a tradition as the following, which says that Mohammed saw in similitude all his sect, and addressing 'Ali said, "I saw and implored forgiveness for you and your Shi'ahs."

According to Shi'ah tradition, Mohammed took great care during his lifetime to secure a pre-eminent position for the sacred family, which besides himself included his daughter Fatimah, her husband 'Ali, and their two sons Hasan and Husain. Only these were permitted to partake of the table sent down from heaven to Mohammed laden with viands and fruits of Paradise. After the conquest of Mecca, Mohammed sent herald to the Christians of Najran amongst others, summoning them to embrace Islam, pay tribute or prepare for war. Upon this a controversy ensued at Najran, and a deputation was sent to wait upon Mohammed, the chief point at issue being whether the Christians or Mohammedans were right in their opinions about Jesus, the latter holding Him to be no more than a prophet. At last it was decided to make an appeal to God, and invoke His curse on whichever party lied. At the time appointed, Mohammed took with him to the ordeal only 'Ali, Fatimah and their two sons, next to Mohammed "the most exalted of mankind," and sat down with them under a cloak which had been spread over two small trees and the space between them swept.

The night after Mohammed's death, God sent an angel to comfort the bereaved family with the consideration that all must die, and the assurance that they were particularly chosen and favoured by the Lord.

At the Day of Judgement all men will have to pass over the bridge named Sirat. In the *Haqqu'l-Yaqin*, another of Majlisi's works, it is said that a part of this bridge, in length three thousand years' journey, is excessively difficult. Mohammed and 'Ali will be the first and second to pass it. And none will pass it without great difficulty except Mohammed and 'Ali and the family of the prophet, who will traverse Sirat together "like the leaping lightning."

Various instances occur where blessing and help are said to have been received through the invocation of blessings on Mohammed, 'Ali, and the sacred family. It is asserted that Adam, after his fall, through humbling himself before Mohammed and his family, was saved and delivered from his fault and shame and dishonour; and by taking refuge in the name of spirits of Mohammed and his family, Adam enjoyed the utmost degree of safety and pardon through them.

From the traditions cited in the Hyat-ul-Kuloob, after marking every allowance for later additions and exaggeration, it seems clear that Mohammed used every means in his power to secure the succession for 'Ali. Mohammed declared that Gabriel, when he descended from Heaven with Michael and Israfil to invest Mohammed with the prophetic office, pointed out 'Ali to Israfil as Mohammed's "brother and successor." When the people of Medina objected to 'Ali being left in charge there while Mohammed was absent on a military expedition, Mohammed consoled him with the consideration that he was his brother, holding in respect of him the rank of Aaron to Moses, and that he would be Khalifah among his people. Mohammed associated 'Ali with himself in the sacrifices he offered in his last pilgrimage to Mecca. During the return journey Mohammed halted at a place named Ghadir-i-Khum at which caravans never stopped, as it has neither water nor pasturage. The express object of this was to solemnly inaugurate 'Ali as his successor, in accordance with the divine command. The pack-saddles of the camels were piled together to form a sort of pulpit (some traditions say it was of stone, and Mohammed ascending this made a long oration to the people, and in the most explicit terms announced 'Ali as his successor. "Know ye then," he said, "O people, that the Lord of the universe has ordained 'Ali your prince and ruler, your imam and leader, and has made obedience to him obligatory on Muhajirin and Ansar (i.e., those who accompanied Mohammed on his flight from Mecca to Medina, and those of the citizens and inhabitants of the desert, on Arabs and 'Ajamis (i.e., Persians), on free and bond, small and great, white and black, on all who worship God in the unity of His nature. Over all these the authority of 'Ali extends and his orders reach. Whoever disobeys him is accursed, and all that render him due obedience shall enjoy the mercy of God, "--- and much more to the same effect. The covenant was then solemnly ratified by the leading Mohammedans and the whole multitude of those present, by shaking hands with Mohammed and 'Ali. After his return to Medina, Mohammed authoritatively commanded all his wives to render obedience to 'Ali as his successor, and spoke much about the same subject in his addresses to the people and in many assemblies. Mohammed further declared that, when he met his followers after the Resurrection at the foundation of Kausar, he would demand of them what their conduct had been towards the two great things he had left among them, viz.: the book of God and his family. And during Mohammed's last illness 'Ali was again pointed out in the plainest terms as his successor and khalifah.

Mohammed further tried to remove from Medina before his death those whom he knew to be opposed to 'Ali's succession, some four thousand in number. He accordingly ordered them to retire to the frontiers of Syria, and appointed Usamah-ibn-i-Zaid their general. So unwilling were they to start, that they had to be forcibly compelled to quit Medina. But all Mohammed's careful plans proved to be of no avail. While the army was still in the neighbourhood of the city, Mohammed was attacked with what proved to be his last illness, and Abu Bakr and 'Umar, who were kept informed of the progress of Mohammed's sickness by 'Ayishah, returned secretly to the city. The very next day Abu Bakr, being informed by his daughter that neither Mohammed nor 'Ali would be present to lead the public morning prayers, takes upon himself to do so. Mohammed, hearing of this, with extreme difficulty made his way to the mosque, signed to Abu Bakr to retire from his place, and began afresh the prayers Abu Bakr had already commenced. At the very time that 'Ali was filling up Mohammed's grave, the news was brought that Abu Bakr had been formally constituted khalifah or successor to the "prophet."

In fact, whatever the reason was, the majority of the Muslims were evidently determined not to have 'Ali as Mohammed's immediate successor. He was comparatively young, being only about thirty-three years of age at the time of Mohammed's death, and famous of his witty speeches. Perhaps it was felt that he had not the necessary force of character to cope with the serious situation created by Mohammed's death, when the whole future of Islam was at stake. Many of the converts to Islam had lost relatives slain in battle by 'Ali, and they may naturally be supposed to have cherished very friendly feelings towards him. The headship of Islam merely from a worldly point of view offered a splendid prize to the rude Arab. Quite apart from the other considerations just mentioned, this is quite enough to account for the fact that the most able and ambitious of the elder Moslems had no intention of forfeiting their chances of so enviable a position by allowing themselves to be at once and permanently set aside through acquiescence in the claims of 'Ali and his House. Indeed, Abu Bakr and 'Umar are stated to have made a league before Mohammed's death, the first article of which was to set aside 'Ali. At any rate the weight of the opposing faction was too strong for him, and not all the influence of the "prophet" himself, backed by several portents which were reported to have been seen after his death, indicating 'Ali as the rightful heir and the rival party as usurpers, were able to turn the scale in his favour.

The memory of the three first Khalifahs, Abu Bakr, 'Umar and 'Usman, is expected by the Shi'ahs on account of their having kept 'Ali out of what they regard as his right. This detestation finds expression in the tradition that during the expedition to Tabuk, twenty four men, among whom were Abu Bakr and 'Umar, Abu Sufyan and Mu'aviyah, conspired to the effect that 'Ayishah and Hafsah, the daughters respectively of Abu Bakr and 'Umar, poisoned Mohammed.

In spite of his martial valour and eloquence of speech, indications appear even in the 'Shi'ah traditions of the unpopularity of 'Ali, if not of actual contempt felt for him. Jealousy on account of his special intimacy and close relations with Mohammed is not an adequate explanation. When 'Ali accompanied 'Arfatah to the country of the jin below the earth, the hypocrites exulted in his supposed death and said, "Al-hamdu-lillah (Praise be to God!) God has delivered us from Abu Turab" (a nickname, signifying, 'father of dust.') When Mohammed started on the expedition to Tabuk, leaving 'Ali in command at Medina, the hypocrites were much scandalized, and taunted 'Ali with having been left behind lest he should bring misfortune on the expedition. 'Ali, therefore, took his arms and followed Mohammed to Juraf, where he was consoled by him and persuaded to return; but on the way back an attempt was made against his life.

'Ali was only ten years old when Mohammed assumed the prophetic office. Fourteen years after this 'Ali married Fatimah, one year after the Hijrah. She was the only child of Khadijah, who was born after Mohammed announced his mission, and was nine years old at the time of her marriage. Mohammed and Ali were inseparable companions. 'Ali said, "I always augmented my knowledge." "His light," said Mohammed, "was transmitted with mine through pure progenitors, he is partner in all the excellencies conferred on me.... The first I embrace Islam, with whose aid I fear not the opposition of all others." At a feast, when invited to eat before 'Ali, Mohammed says, "The Most high makes no such distinction between me and Ali. He created us one light, and our friends and enemies are the same, likewise our joys and sorrows, and 'Ali will eat when I do." Before the assumption of the prophetic office, when Mohammad was in the habit of retiring to Mount Harra, for prayer and meditation, it was 'Ali with Khadija who alone marked the significance of these things and the future Prophet's growth in divine love and knowledge and all that is praiseworthy and excellent. 'Ali was the first to be instructed by Mohammed in the ceremonial prayers and ablutions. When Mohammed invited his near relations to a feast in order to announce his mission to them, he proclaimed that the first believer should be his khalifah, brother, coadjutor and successor. All the others remaining silent, 'Ali rises and accepts the offer, but is told by Mohammed to resume his seat, as an older man may perhaps come forward. None, however, does so. The invitation is three times repeated, accepted by 'Ali, and ratified by the prophet, and the company disperse laughing. All through the Mecca period, when Mohammed was looked upon as mad, foolish, bewitched and in league with Satan, 'Ali faithfully stood by him, and he was also cheered by the tenderness and consolations of his wife, Khadijah. Once Mohammed and 'Ali were pelted with stones by Abu Lahab and a mob in the streets of Mecca. When Mohammed was proclaiming his mission at the time of pilgrimage, and was driven away by a mob to mount Abu Qubais, it was 'Ali and Khadijah who went to seek him, found him and brought him home at night, and defended him in his house from the missiles of his enemies. When Abu Talib took Mohammed and the rest of the Bani Hashim and retired for safety to the defile called after him the defile

of Abu Talib, fearing that an attempt might be made on Mohammed's life, he caused him to sleep part of the night in one place and part in another, and made 'Ali sleep the first part of the night with Mohammed so that the blow of any intending assassin might fall on 'Ali. Similarly, 'Ali slept in Mohammed's place and cloak the night he fled from Mecca. Mohammed refused to enter Medina until 'Ali arrived: this was the beginning of Abu Bakr's jealousy of 'Ali. In 'Ali's expedition against Bani Zubaid, he appropriated to himself a girl who should have been reserved for the "prophet" himself. On complaint being afterwards made to Mohammed, he declared that whatever was his was likewise 'Ali's.

'Ali was entrusted with the performance of all the last offices for Mohammed after his death. He is to wash the corpse with six sacks of water brought from the well of Ghars, to wrap it in special robes with embalming perfumes: and to seat the body upright, when it will answer all his questions. Of the camphor brought from Paradise by Gabriel for Mohammed's obsequies, Mohammed reserves one-third for 'Ali. Mohammed gave him his armour, clothing, animals and also his ring, and appointed him his executor. During his last illness Mohammed is nursed by 'Ali with the greatest tenderness and devotion. He lies with his head in 'Ali's lap. When sitting, 'Ali supports him. Day and night, 'Ali scarcely ever leaves him. Mohammed calls for his friend and brother, and is only satisfied when 'Ali comes: he presses him to his bosom and communicates to him a thousand chapters of knowledge, each one opening into a thousand more. On the day of his death, Mohammed repeatedly said, "Call the beloved of my heart." He took him under his coverlet and imparted mysteries and secrets to him, "till at length, the bird of his sacred spirit sped its flight to its nest in the empyrean of mercy." Shortly before his death Mohammed gave various injunctions to 'Ali, and among other things bade him endure patiently the violence which awaited him in this world. When the "prophet" had breathed his last, 'Ali announced his death to those around. In washing and burying the body 'Ali was assisted by Gabriel, the angel, and the Holy Spirit (Ruhu-l-Quddus), who is declared by the Imam Mohammed Baqir to be an angel superior to Gabriel and Michael. Allah, The Most High caused 'Ali to hear their conversation, which was a charge by Mohammed, and an engagement by the angels, to protect and aid the "Commander of the Faithful" ('Ali). 'Ali performed the funeral prayers, and afterwards permitted the companions of the "Prophet" and all the people to enter the house in tens, and recite the following verse from the Koran, "Verily God and His angels bless the prophet. O, true believers, do ye also bless him and salute him, with a respectful salutation." (Sur, 35, ahzab, 56). After the body was laid in its last resting-place, 'Ali enclosed the grave with brick, filled it up, and poured a quantity of red pebbles on it.

Concluding remarks – We cannot wonder at the hold such a hero has taken on the imagination of the Persians. But we are astonished at the dimensions and elaborate details of the structure which has been raised on such an insecure and untrustworthy

basis as that of biased tradition. This, however, presents no difficulty whatever to those whose stock of religious beliefs is supported and sustained from this dubious source. For the traditions, on which they rely, are by the Shi'ahs traced either to Mohammed or to one or other of their twelve sinless Imams. And every such tradition, handed down on what is considered respectable authority, carries with it the weight of an inspired revelation. With regard to themselves the Imams declared that whatever was asserted in their praise, provided only that divinity was not ascribed to them, fell short of the whole truth concerning their glory and dignity, - a licence of which the very fullest advantage has been taken. It is hardly too much to say, that the more incredible the assertion made on such unimpeachable authority, the more worthy of belief does it appear to the all too ready credence of willing listeners.

From the Christian standpoint there is much that an enlightened religious consciousness looks for, and looks for in vain in this ideal 'Ali; and the omissions are fatal. There is in him no true sense of the defilement of sin, or desire for growth in holiness and in likeness to God. The chief ground of acceptance with God is correct belief with reference to the Diet and His reputed messengers. This, it may be remarked by the way, presents a curious contrast with modern Western thought, where there is a marked tendency in the opposite direction, and a disposition to regard a man's life as the supreme test of his religion, and if the life be adorned with the beauty of goodness and virtue, to regard it as unnecessary and almost impertinent to inquire from what religious source, if any, this goodness and virtue spring. In the famous prayer of Kumail, which was taught him by 'Ali, there are indeed abject confessions of sin and reiterated supplications for mercy and pardon: but one of the believer's chief claims upon God's compassion and forgiveness is his confession of the Unity of the Godhood, - a thing which was all very well for the pagan and idolatrous Arabs who embraced Islam, but which sounds singularly antiquated and insufficient in this present age as a ground of appeal to the divine mercy. In place of the actually realized salvation and peace of the Christian, the pathetic prayer ascends, "Have mercy on one whose resource is hope, and whose weapon is weeping."

The Shi'ahs who adopted the cult of 'Ali and Husain and deliberately and persistently reject the Scriptural revelation of Jesus Christ, both as regards His divine and human personality and His work of atonement and mediation. These truths, intelligently understood and embraced, can alone satisfy some of the strongest cravings of the human spirit. The heart yearns for a guide of such transcendent merit as to be worthy of all confidence, capable of satisfying the highest aspirations and able to bridge the gulf between seen and the unseen. With all its natural and inevitable limitations in certain directions not essential to its main purpose, this is what the Christian revelation really and truly does for countless numbers of humble, seeking souls. The nemesis of rejected truth, as in so many other cases, have overtaken the Shi'ahs. If the truth once for all

revealed is not apprehended, whether through ignorance, neglect or prejudice, the restless heart perforce seeks to satisfy its needs in some other way, and is liable to be ensnared and enslaved by every form of specious error.

THE SHIAH DOCTRINE OF THE IMAMATE

The expression, "the Shi'ahs," signifies companions or followers, and its reference in legal and theological terminology, ancient and modern, is to the partisans of 'Ali and his sons. They are agreed in the assertion that the Imamate is not an ordinary matter, to be left to be determined by an assembly of the people, but the Imamate is a pillar of the faith, in fact the very foundation of Islam. It is not regarded as permissible to think that the prophet could have been unmindful of it, or that he would have left it to the people to determine. It was necessary rather for him to appoint the Imam for the people, and that the Imam himself should be without sin, great or small, and that "Ali was indeed the one whom Mohammed designated. Their opinions they base on statements which they have received by the authority of traditions, and to these traditions they give meanings which are in accord with their doctrines. Men of these traditions are not recognized by those who follow the Sunnah, who know good money from bad, nor by the writers of Law. For the most part, there are statements that are ambiguous, or that are uncertain in their transmission, or that are essentially different in their meaning from the Shi'ite interpretations of them.

They are accustomed to divide this statement in to two classes, the Clear and the Concealed. An example of the Clear declaration is found in the words of the Prophet, "He to whom I am Master, 'Ali is also his Master." This they take to mean that the right of Master or Lord in Islam belongs to 'Ali. 'Omar therefore said to him (derisively), "So you have the mastery of all the Moslems, both men and women!."

Another saying of the Prophet, "The best judge between you is 'Ali," they mean to say that the Imamate has no other significance than this, namely, the right of judging according to the commands of God. The same idea is expressed again in these words, 'invested with authority," which they find revealed in the command, (Koran iv: 62, Rodwell), "O ye who believe! Obey God and the Apostle and those among you invested with authority." This authority is the right to judge and to decide. And they say that in the deliberation of the Saqifah, in order that in the deliberation of the Saqifah, in order to determine the question of the Imamate, 'Ali was the only one who could bring about a

decision.⁹⁷ Observe also another of their texts, "Whoever pledges loyalty to me, even at the risk of his life, will be my representative, charged to exercise authority after me." And no one else took such a pledge of loyalty except 'Ali.

Here is an example of the class of statements where the sense is Concealed. They say that when the Prophet had received the Sura of Immunity (Koran ix) during the pilgrimage at Mecca, he first commanded Abu Bakr to explain it (to the Arab idolaters), when he received a further revelation to assign the duty of delivering this message to some one of his own family. It was in compliance with this command that he commissioned 'Ali to take this Sura and to recite it to them. This indicates, they say, that 'Ali had obtained the preferred right. They point out in addition to this that the Prophet is not known have placed anyone over 'Ali in command, whereas he did place 'Usama ibn Zaid over Abu Bakr and 'Omar on one expedition, and 'Amru ibn al-'Aas over them at another time. They consider that all of these things go to prove that 'Ali and no other was intended for the Caliphate. Some of their proof texts, however, are unknown (to orthodox Moslems) and others are far from being subject to the interpretations they put upon them. There are some of the Shi'ahs who consider that these texts point to 'Ali definitely and personally, and that they also indicate the right of his successors. Those who hold this opinion are called the Imamis, and they reject the two Shaikhs (Abu Bakr and 'Omar) because they did not acknowledge the supreme command of 'Ali, and did not give allegiance to him as these texts required. They have therefore scoffed at Abu Bakr and 'Omar in their office as caliphs. But we will not pay any attention to the way in which some of the more bigoted of their party have slandered these two Caliphs, for the Shi'ahs, as well as we, have already refuted these accusations. Another group among them say that these texts indicate that the appointment of 'Ali was required on account of his unique qualification and not on mere personal grounds. They claim that people fail in their purpose when they do not give the matter of qualification its rightful place. This group is known as the Zaidis. They do not reject the two Shaikhs and do not object to their caliphates (literally imamates), while they say that 'Ali was the qualified. They held that an imamate that was based on the preference of the people was valid, even though one better qualified might have been available.

The Shi'ahs are not agreed as to the succession of the Imamate (literally, caliphate) after 'Ali. There are those who maintain that the succession belonged to the children of Fatima, one after the other, by special designation (from 'Ali). We shall have more to say about this opinion later on. They are called Imamis because they taught as an article of faith the necessity of recognizing the Imam and his designation, which is the central principle in their beliefs. The other chief division of them accepted the succession of the children of Fatima, but subject to the choice of the Shi'ah community. They insist

⁹⁷ According to the orthodox account 'Ali was sick that day in the house of Fatima and did not assist in the discussion which took place in the Saqifah.

that the Imam be learned, abstemious, liberal and brave. He must be ready to take up arms and establish his claim to the Imamate. These are Zaidis, and they get their name from their leader, Zaid ibn 'Ali ibn al-Husain as -Sibt (the grandson). In a discussion with his brother Muhammad al-Baqir, Zaid held to the opinion that the Imam was obliged to justify his cause (if necessary) by the force of arms. Al-Baqir objected to this on the ground that on that principle their father, Zain Al-'Abidin, would not have been an Imam, for he never took up arms to assert his rights, and did not attempt to do so. He went on to accuse Zaid reproachfully of having accepted doctrines of the Mu'tazilites from Wasil ibn 'Ata. The Imamis had controversy with Zaid on the subject of the "Imamate" of the two Shaikhs, and as he declared that it was valid, and that he did not deny them the right to that office, they repudiated his authority and ceased to count him in the number of their imams. For this they were called the Rafizah, or the Repudiators, (Cf. Friedlander, *Journal American Oriental Society*, vol. xxix, p. 140 ff).

Others considered that the Imamate passed from 'Ali to one or the other of his sons, the two grandsons (of the Prophet). But they were not in entire agreement about this, for some considered that it belonged to Muhammad, the "son of the Hanafite woman," the half brother of Hasan and Hussain, and that it should follow the line of his children. This party was called the Kaisanis, but we will omit the disagreements among these people for the sake of brevity.

One group among them is called the Ghulat, or those who go beyond the bounds of reason or of faith in claiming the divinity of the Imam, saying either, "he is a man who has acquired the qualities of divinity," or, "he is an individual in whom divinity has been established." This belief corresponds to the Christian claim for Jesus. But the fact is that 'Ali "burned with fire" whoever made this assertion about him. And Muhammad the son of the Hanafite woman was exceedingly angry with al-Mukhtar ibn Abu Ubaid for speaking to him in such a fashion, and cursed him and refused to have anything more to do with him. Ja'far as -Sadiq acted in the same way towards anyone who addressed him in that manner.

Some of them asserted that the Imam has a perfection that no one else can have, and that when he dies his spirit passes to the Imam succeeding him, who is then the possessor of this peculiar perfection. This is a doctrine of transmigration. Among the Ghulat there is one group who say that the Imamate ceased to be transmissible when it passed to the individual who was destined to be the last of the Imams. They are called the Waqifis, and some of them say that the last Imam is still alive; for he did not die, but is only concealed from the eyes of men. They undertake to prove this by reference to al-khidr (Koran xviii; 64). The same claim is made in regard to 'Ali, with the added details that he is in the clouds, and the sound of the thunder is his voice and the lightning is his whip. The very same sort of thing, also, they say about Muhammad ibn Hanafiyaah, and

that he is in Mount Razwa in the land of the Hejaz. The poet Kuthayyir (723 A..D). has written the following verses in this connection:

“Four complete are the Imams of the Quraysh, the lords of Right:

‘Ali and his three good sons, each of them a shining light. One was faithful and devout; Kerbala hid one from sight; One, until with waving flags his horsemen he shall lead to fight Dwells in Mount Radwa, concealed; honey he drinks and water bright.”⁹⁸

The Ghulat of the Imamis, and particularly the “twelvers,” hold this doctrine also, for they maintain that the twelfth of their Imams, Muhammad ibn al Hasan al-askari, whom they call al-Mahdi, (the rightly guided), when imprisoned with his mother, entered a sort of well or pit in the house his family occupied at Hilla. There he disappeared, but he is to come forth at the end of the age to fill the earth with justice. In proof of this they refer to a tradition which is found in the book of al-Tirmidhi in a regard to the Mahdi. Even up to the present time they are confidently expecting him, and they call him al-Muntazar, the one they were waiting for. every night after the evening prayer they stop at the gate in front of this well or pit. As they approach they call out his name and beseech him to return, until the stars come out. Then they disperse and come again the next night to repeat the same performance. This also they have kept up until the present time.

There are some of the Waqifis who say that the Imam who died will return to life in this world. They substantiate this claim by what they find in the Koran concerning the People of the Cave, (The Seven Sleepers, Koran xviii; 8); and concerning the “man who passed by a city,” (Koran ii: 261); and concerning the Israelite who was murdered, whose corpse was struck with the bone of a cow that they were commanded to sacrifice, (Koran ii; 68; Cf. Numbers xix and Deut, xxi: 1-9), “The cow was to be sacrificed in order that a murderer might be discovered through the miracle to be wrought by a piece of her flesh,” (Rodwell, op. cit.); and from other such references to extraordinary things that are like miracles, but which serve as proof only in their proper connection. As-Sayyid Himyari, (Nashwan ibn Sa’id al-Himyari, d. 1177 A.D.), wrote verses about them.

We have written enough about these Ghulat of the Imamis, for the teachers of the Shi’ah do not credit them, and have themselves pointed out the futility of proofs of this sort.

As for the Kaisanis, they considered that the Imamate passed from Muhammed ibn Hanafiyyah to his son Abu Hashim. Hence they were also called the Hashimis. At this point there was division, for some of them held that after the death of Abu Hashim, the Imamate should pass to his brother ‘Ali, and afterwards to ‘Ali’s son, al-Hasan. Another group maintained that before Abu Hashim died, in the region of ash-Shirat, on

⁹⁸ Translation by Professor Nicholson, L.H.A., p. 216.

his return journey from Syria, he appointed Muhammad ibn ‘Ali ibn Abdullah ibn ‘Abbas, and that this Muhammad had designated his son Ibrahim, who was known as “the Imam”; and that Ibrahim had appointed his brother Abdullah ibn al-Harithiyya, who was called as –Saffah; and that he turn had appointed his brother Abdullah; Abu Ja’far, who was called al-Mansuri; and that so the Imamate passed in his line, by succession and by agreement, one after the other, to the last of them. This is the sect of the Hashimis who were supporters of the dynasty of the Beni ‘Abbas.

Among them were Abu Muslim, Sulaiman ibn Kathir, Abu Samat al-Khallal, and others. To have a better proof of the rights of the Abbasid dynasty, there were some of this sect who declared that the Imamate had come from al-‘Abbas (the uncle of Mohammed), for they said that he had survived the Prophet and that he was the main best fitted for that office.

The Zaidis followed and interpreted the Imamate according to teachings of their own. They held that to be determined by the choice of the legal authorities (literally “the leaders in the loosing and the binding”) and not be designation. To the imamate of ‘Ali they agreed, as also to that of his son-al-Hasan, and of al-Hasan’s brother al-Husain, then of al-Husain’s son, ‘Ali Zain-Al-Abidin, and of his son Zaid ibn ‘Ali. The latter was the leader of this sect.

He took up arms at Kufa, declaring his claim to the Imamate. He was killed, however, and crucified at the Kunasat (a place for refuse near Kufa). The Zaidis then claimed the imamate for his son Yahya, who went to Khorasan and was killed at al-Juzjan, after he had designated Muhammed ibn Abdullah ibn Hasan ibn al-Hasan the “grandson” (of the Prophet). He was called An-Nafs az-Zakkiya, “the Pure Soul.” He took up arms in the Hejaz and assumed the title al-Mahdi. But the troops of al-Mansur came against him at once, and he was defeated and killed. Be he had given the authority to his brother Ibrahim, who succeeded in starting an uprising in al-Basra. Associated with him was a certain ‘Isa ibn Zaid ibn ‘Ali. Again al-Mansur, or his commanders, marched against them with the troops, and they defeated and killed both Ibrahim and ‘Isa. ‘Ja’far as Sadiq had forewarned them of the consequences of this uprising, and they count his forewarning them among his miracles.

There were some among them who said that the Imam who succeeded Muhammad ibn Abdullah, an-Nafs az-Zakiyya, was Muhammad ibn al-Kasim, who took up arms in Taliqan but they came against him, and he was led in captivity to al Mu-tasim, who put him in prison, where he died.

Others of the Zaidis said that the Imam after Yahya ibn Zaid was his brother ‘Isa, the same man who was along with Ibrahim ibn Abdullah, when they were both killed by al-Mansur. They traced the imamate to him, and on his right the claims of the Zanj are

based, as we mentioned in account of them. And there were others who held that the imam after Muhammad ibn Abdullah was his brother Idris, who fled to the Maghrib and died there. His son, Idris ibn Idris, rose up in his place and founded the town of Fez. After him certain kings succeeded him in the Maghrib until they became extinct, as we mentioned in our description of them. After this the Zaidis were entirely disorganized.

But from among those who remained there was a missionary who gained authority in Tabaristan, i.e., al Hasan ibn Zaid ibn Muhammad ibn Ismail ibn al-Hasan ibn Zaid ibn al-Hasan, his "grandson," and his brother was Muhammad ibn Zaid. An Nasir al-Atrush (the deaf defender) also announced his claim to the imamate in Daylam, and the people became Moslems through him: his name was al-Hasan ibn 'Ali ibn al-Hasan ibn 'Ali ibn 'Omar. This 'Omar was the brother of Zaid ibn 'Ali, and his descendants held the government in Tabaristan. It was by their help that the Daylamites gained the authority and supremacy over the caliphs at Baghdad, as we showed in our account of them.

The Imamis traced the imamate from 'Ali, the wasi, to his son al-Hasan by designation, then to al-Hasan's brother al-Husain; then to his son 'Ali Zain al-Abidin; then to his son Muhammad Baqir; and then to his son Ja'far as-Sadiq. But from this point there are two lines of descent. One division traces the imamate to Ja'far as-Sadiq's son, Musa al-Qazim. They are the Ithna 'Ashariyya, the "Twelvers," who stop with the twelfth imam, and adhere to the doctrine of his concealment until his return at the end of the age.

The Isma'ilis hold to the imamate of Isma'il, as the imam by the clear statement of his father Ja'far as-Sadiq. From their point of view his designation was adequate, for even if he did die before his father, nevertheless, the imamate remained in his line of descendants, as in the story of Aaron and Moses, (Koran xx; 31 and xxv; 37). They say that the imamate then passed from Isma'il to his son Muhammad al-Makhtum, and that he was the first of the imams to be concealed. For, according to them, as he did not have great strength, his missionaries held forth the hope of his return as an appeal to the people. When he gets the needed strength he will appear and make known his claim. They say that Muhammad al-Makhtum was succeeded by his son Muhammad al-Habib, who was the last of the concealed imams. For he was succeeded by his son 'Ubaidullah al-Mahdi, whose missionary, Abu 'Abdullah, the Shi'ite, appeared among the Kitama, and the people responded to his invitation. The missionary then brought him out from his place of restraint in Sajilmasa and he ruled over Kairwan and the Maghrib. His sons after him ruled over Egypt, as is shown in the records about them.

The Isma'ilis got this name on account of their belief in the imamate of Ismail. They were also called Batinis on account of their adherence to the doctrine of the hidden or concealed imam. Again they were called the al Muhida ratahida because of some of

their sacrilegious teachings. While some of their doctrines were old, there were others that were new, which al-Hasan ibn Muhammad as-Saba preached in the end of the fifth century (after the Hijra). He gained certain strongholds in Syria and Iraq, and he did not lose his hold there until the general destruction distributed them between the Turkish rulers in Egypt and the Tatar rulers in Iraq.⁹⁹

The Ithna 'Ashariyaa, who are often spoken of as the Imamis, are among the more modern representatives of that sect. They assert the imamate of Musa al-Kasim ibn Jafar, claiming that he succeeded to the imamate on the death of his older brother, Isma'il, who was imam while their father was still living. But before he died, Ja'far had also designated Musa for the imamate. Then his son 'Ali ar-Rida became the Imam. He was the one to whom al-Ma'mun bequeathed (the Caliphate), but who died before Ma'mun, so the bequest was not carried out. Then his son, Muhammad at-taqi, became the imam, and he was followed by his son 'Ali al-Hadi, and then came his son, al-Hasan al-Askari, and finally his son, Muhammad al-Mahdi al-Muntazar (the one they are waiting for) as we have described.

But in regard to each of these doctrines the Shi'ites have many differences of opinion besides the ones I have mentioned. Whoever wishes to study and examine them in detail has the "Books on Religions and Sects," Kutub al-Milal wa'l-Nihal, by Ibn Hazm, Shahrastani, and others. "He causeth whom He will to err, and whom He will guide," (Koran xvi; 95, Rodwell).

THE ITHNA 'ASHARI-SHI'I JURISTIC THEORY OF POLITICAL AND LEGAL AUTHORITY

In studying Ithna ashari Shi-I doctrines it is necessary to rid ourselves of the notions that an Ithna ashari Shi-I corpus of jurisprudence was to begin only after the Shi Buyids had established themselves in Baghdad (334-945) and, that unlike theology and law, the evolvement of a juristic theory of state (government) began even later, as a concomitant of the establishment of a stable and extensive Ithna ashari Shi'I government¹⁰⁰. As a matter of fact IthnaashariShiism owes its characteristic features to the promulgation of its theological as well as its political doctrines before the advent of

⁹⁹ The doctrines taught by this as-Saba are mentioned in the book, al-Milal wa'l Nihal, "The Religions and Sects," by Shahrastani, (Cureton text, p. 150; Haarbrucker trans., p. 225).

¹⁰⁰ Cf. W. Montgomery Watt, *Islamic Philosophy and Theology*, 99, Edinburgh 1962; L. Binder, *Iran, Political Development in a Changing Society*, 73, Berkeley and Los Angeles 1962; C. Brockelmann, *Geschichte der Arabischen Literatur (Supplement)*, I 320-3, 704-12, Leiden 1937; R. Storchmann, "Shia", *Encyc. of Islam*, Ed., I, IV, 354; D. M. Donaldson, *The Shi'ite Religion*, 284, London 1933.

any form of IthnaashariShi'i political order, and these doctrines were sifted and codified under the impact of a relentless refusal to make legitimate any Muslim government established after the death of the Prophet, except that of the first Imam 'Ali b. Abi Talib.¹⁰¹ Subsequent Ithna ashari shi'i regimes including those of the Buyids and the Safawids did not compel the IthnaashariShi'i jurists to modify those doctrines materially.

An adequate examination of the Ithna ashari Shi'i sources reveals that by 320-932 at the latest, abu Ja-far Muhammad Ibn Ya'qub Ibn Ishaq al-Kulini al-Din, the earliest of the Four Books of Ja'Fari fiqh, a compendium of approximately 16,200 Imami traditions arranged according to subject matter expressing the Ithna ashari Shi'i pronouncement on all matters one usually encounters within the purview of Muslim jurisprudence¹⁰². Unlike early authoritative Sunni compilations of Hadith such as the Sahih of Bukhari al-Kafi contains an exposition of the theory of the Imamate in a special section, the "Kitab al-Hujjah" (the "Book of the Proof"), significantly placed in the part dealing with the Usul and immediately following the "Kitab al-Tawhid" (The "Book of the Unity of God"). Furthermore, traditions establishing negative as well as positive precepts concerning legislation and political and judicial authority occur in the Furu' and in the remaining sections of the Usul. Owing to its great bulk, to repetitions, and to the absence of a detailed index, al-Kafi is difficult to handle. A painstaking reading is rewarding, however, as one is constantly astounded by the vehement polemic centered on the subject of the legitimate and just governance and the authoritative legislation directed against other Islamic schools of law outside as well as within Shi'ism and underlying the discussion of every aspect of jurisprudence. To Kulini, indeed, goes the credit of sifting and systematizing the Imami Hadith but considering his own biography and those of his immediate rawis, his code may be safely regarded as a product of the Ithna ashari -Shi'i circles of Qum and Baghdad in the second half of the third century A.H.¹⁰³ Later Ithna ashari Shi'i divines, no matter under what Ithna ashari Shi'i regime they lived and wrote, expressed basically the same views in respect to the doctrine of the Imamate as those exposed in al-Kafi. They qualified it with additional supporting proofs based on the Quran and Hadith; they adopted and developed dialectical proofs that may be regarded of great interest; nonetheless, the basic principles remained identical with those of Kulini. Among these divines, highly esteemed by the Ithna ashari Shi'ah down to the present time and whose works are available to the researcher, may be mentioned

¹⁰¹ 'Imamate', 11-41/632-61, "Caliphate" (i.e., in government) 36-41/656-61. Ithna ashari Shi'i jurisprudence proclaims the succession of the imamate of 'Ali to the prophecy of Muhammad, "bila fasilah (with no interruption) and that whoever denies this, rejects something which is made compulsory by religion, "fardan min al-din". See. Mufid, *Awa'il al-Maqalat fi al-Madhahib al-Madhahib al-Mukhtar*, ed., Charandabi, 33, 42, Tabriz, 1364/1944.

¹⁰² New edition in 8 vols., Tehran 1374-77/1954-57.

¹⁰³ For a discussion of Ithna ashari Shi'i and Sunni biographical sources concerning Kulini, see the preface by Husayn 'Ali Mahfuz to the new edition of al-Kafi, I, 7-50. See also H. Laoust, *les schismes dans l'Islam* 149-150, paris 1965 and H. Corbin, *Histoire de la philosophie Islamique*, 54-7, 350, Paris 1964.

Muhammad al-Hasan al-Tusio (d. 460/1067), and Ibn Babuyah al-Saduq (d. 381/991-2), authors of the remaining three of the Four Books, and al-Shaykh al-Mufid (d. 413/1022), all three of whom lived and wrote under the Buyids; al-Hasan b. Yusuf b. al-Mutahhar al-Hilli (d. 726/1326), who ministered to the Ilkhani ruler Muhammad Khudabandah, the convert to Ithna ashari Shi'ism; and Muhammad Baqir Majlisi (d. 111/1699-1700) of the Safawid period.

A complete presentation and an adequate analysis of the various principles of the Imamate as exposed by the Ithna ashari Shi'I jurists is, of course, far beyond the limit set for this paper. I shall confine myself to a brief discussion of the most essential doctrines that bear directly on the question of the authority of the Imam and on the question of its delegation, or rather of its nondelegation¹⁰⁴.

Like any other Islamic school of law, Ithna'ashari-Shi'I jurisprudence conceives of the Shari'ah, in content, to be the revealed will of God combined with the legal derivatives resulting from its interpretation, and, in function, to be the regulator of all affairs of the community and the individual. But, like Isma'ilism, and unlike the Zaydi and the four Sunni schools, it confines infallibility to the divine source of the Shari'ah whereas it extends the duration of that source so as to include the lifetimes of the Twelve Imams after the death of the Prophet. Twelver-Shi'ism rejects any belief that may proclaim Muhammad or any of the Twelve Imams as a partaker of God's attributes and actions or that may make them an incarnation of the Godhood, and it regards God as the One Lord, the Omnipotent and the Omniscient. On the other hand, it regulates the relationship between God and mankind in accordance with a prerequisite that deems the validity of the taklif to be bound by the moral law. Contrary to Ash'arism, it obliges God to give man right guidance, to reward him for obedience, and to punish him only for disobedience. It stipulates the imposition of the obligation of the fulfillment of the law, by God, upon those who are legally bound, the Mukallafin, on condition of their knowing His commands, His reward for obedience and His punishment for disobedience. Otherwise taklif is not valid¹⁰⁵. Since the knowledge of God's will is not within man's

¹⁰⁴ Bedies al-Kafi, the following works, written by jurists, have been consulted: Sadiq, 'Ilal al-Shara'I, Najaf, 1382/1963'; Hilli, Minhaj al-Karamah, Lithog./ Tehran 1296/1878; Tusi, Kitab al-Ghaybah, Tabriz, 1323/1905; Mufid, op. cit.; and Kitab al-Irshad, Najaf 1382/1962; Majlisi, Bihar al-Anwar, Lithog, Persia, 1301-15/1883-97; Muzaffar, Dala'il al-Sidq, II, Najaf, 1372/1953, Ma'rof, 'aqidat al-Shi'ah al-Imamiyyah, 'ardun wadirasatun, Beirut 1376/1956; and Burujirdi, Ruslah-i-Tawdih al-Masa'il, Tehran, 1375/1955.

¹⁰⁵ Miller translated Hilli as follows: "taklif which is responsibility (ba'th) to him whom obedience is due (wajib) in that in which is labour (mashaqqah) by way of beginning ('ala jihal'il'ibrida) on condition of knowing". Al-Babu'l-Hadt 'ashar, par. 131. London, reprinted, 1958. Kulini quotes a tradition stating that "the Imam Ja'far al-Sadiq was asked: 'He who knows nought has he any obligation?' He said, 'No', (man lam ya'rif shay'an hal 'alayhi shay'un. Qala, 'la') al-kafi (Usul), I, 164. Tehran, 1374/1954. Sadiq comments on "human actions" as follows: "Our belief concerning human actions is that they are created (Makluqah) in the sense that Allah possess foreknowledge (Khalq taqdir), and not in the sense that Allah compels mankind to act in a particular manner by creating a certain disposition (Khalq takwin). And the menaing of all this is that Allah has never ceased to be aware of the potentialities (maqadir) of human

power and since God is too exalted to reveal Himself to even man, it follows, argues the Ithnaashari Shi'i, that in order to impose taklif, God chooses in every generation the best among men, al-abdal, reveals His truth to them and designates them to guide mankind¹⁰⁶. Being the best does not save them from committing sin or falling into error. Hence God, by his grace, fadl, confers infallibility, 'ismah, on those He designates. Those whom God chooses and designates are His proofs, hujaj, to the mukallafin. They are the messengers, rusul, the prophets, anbiya', and the Imams. The rusul are singled out as the prophets who brought new revealed laws, al-shara'i¹⁰⁷. There had been families of prophets, for example, the family of Abraham and the family of 'Imran (III:30). Prophecy was not inherited by all members of a prophet's family by virtue of their physical relationship, however but only by him who, by virtue of God's choice, was the best among a prophet's family. There have been usurpers and evil-doers and these are accursed in this world and on the Day of Resurrection they will be shamefully rejected.¹⁰⁸ Knowledge acquired by the Prophets through revelation was inherited. Every prophet inherited all the knowledge of the prophets who were his predecessors. The prophet Muhammad, thus, possessed besides what was revealed to him the knowledge of all the prophets before him.¹⁰⁹ Like other Muslims the Ithna' ashari Shii jurists consider Muhammad to be the only prophet of Islam, the last of the prophets and superior to all other messengers and prophets. They also assert the absolute and all-inclusive authority of the Quran and the

beings." Risalat al-I tiqadat al-Imamiyyah, Engl. Transl by Fyzee, A Shi'i Creed, 31-32. London 1942, Hilli says: "if the creature were not the bringer into existence (mujid) of his actions, then his taklif would be impossible, other wise, he would be responsible for what he is unable to perform". Al-Babu'l-Haadth 'Ashaar, par. 120. See also Mufid, op. cit., 21-22, 24-26, 28-29; Muzaffar, op.cit., I, 351, 353, and R. Brunschvig, Devoir et pouvoir, Histoire d'un problem de theologie musulmane, Sutida Islamica, XXI, esp. 42-44, 1964.

¹⁰⁶ On the controversies with mutazilites concerning the Ithna'ashari Shi'i doctrine that Reason needs revelation in order to know and to conclude, "al-aqlu yahtaju fi 'ilmihi was-nata'ijji 'ila al-sam'I", see Mufid, op. cit., 11-12.

¹⁰⁷ Mufid states: "All the rusul are prophets but not each prophet (Nabi is a messenger (rasul), among the prophets of God there were keepers of the laws (Shara'I) of the rusul and successors to them in their positions [as keepers of the law]", idem, 12. See also Kulini, al-Kafi (Usal, I, 176-177).

¹⁰⁸ "Our belief concerning them (al-zalimun [evil-doers, usurpers]) is that they are accused and dissociation from them is necessary. Allah the Mighty and Glorious says: "For evil-doers there will be no helpers" [2,273; 3,189;5,76]. And Allah says, Exalted is He: 'Who doeth greater wrong than he who invented a lie concerning Allah? Such will be brought before their Lord and witnesses will say: These are they who lied concerning their Lord. Behold! The curse of Allah is upon the wrong-doers, who debar (men) from the way of Allah, and would have it crooked, and who are disbelievers in the Hereafter' [11, 21-22]. Ibn 'Abbas in explaining this verse says: Verily, in this context, by 'the way of Allah' (sabil Allah) is meant 'Ali b. Abi Talib and the Imams, on whom be peace. Ana din the Book of Allah (are mentioned) two kinds of leaders: he who guides rightly and he who leads astray. And Allah the exalted says: 'And we made the chiefs(or leaders) who guide by Our command' (21, 73; cp, 32,24). And Allah says: 'And We made them patterns (so for'a' immalan, lit, "leaders") that invite unto the Fire, and on the Day of Resurrection they will not be helped. And We made a curse to follow them in this world and on the Day of Resurrection they will be among the hateful' (28, 41-42)." Sadiq, op, cit., 105-106. See also Kulini, op. cit., I, 216.

¹⁰⁹ Kulini cites the Iman Ja'far al-Sadiq as follows: "God bestowed on Muhammad the sunan of the prophets. The Iman was asked 'what were those sunan?' He answered, 'the knowledge (Ilm) of all the prophets, all of it.'" Idem, 222-223.

Sunnah¹¹⁰, but they do not accept the corollary that the Qur'an and the Sunnah should be God's proofs, *hujaj* to the *mukallafin*, after the death of the prophet. They are of the opinion that men went astray in interpreting the Qur'an and that the Sunnah was maliciously distorted by evil-doers. In this respect the Sixth Imam, Ja'far al-Sadiq, is quoted as follows: "I was considering the Qur'an, and I have seen the *murji'*, and the *qadari*, and the *zindiq* who does not believe in it, [all of whom] have used it in their disputes in order to overcome men in argument. Then, I knew that the Qur'an cannot be a proof, *hujjah*, without a guardian, *qayyim*"¹¹¹. And on the authority of the First Imam, 'Ali bin. Abi Talib, the following Tradition is quoted concerning the Sunnah: "In the hands of the people are truth and falsehood, the abrogating and the abrogated, the general and the special, the definite and the ambiguous, the well-remembered and the doubtful. Lies were quoted on the authority of the Prophet of God in his lifetime until [finally] he arose to address the people and said: 'O people! Lies have overwhelmed me. Now, he who tells a lie on my authority, on purpose, let him take his seat in hell'. Then, after his death, they [again] told lies on his authority"¹¹².

Because of this, and rejecting the alleged words of the Prophet which formed the foundation of Sunni political and legal theories, "My community will never agree upon error"¹¹³, the Ithna ashari Shi'I jurists came to the conclusion that it was incumbent upon God not to discontinue after Muhammad's death his mission to mankind, and that this was necessary for the *mukallafin* to maintain the attainment of real knowledge and the carrying out of actions leading to blessedness and reward, *thawab*; in other words, they claimed that prophecy should not cease in Islam after Muhammad. But faced categorically with the Quranic precept that Muhammad was the seal of the prophets (XXXIII: 40), they circumvented it by formulating the doctrine of the Imamate as

¹¹⁰ "There is absolutely nothing which is outside the Quran and the Sunnah (*ma min shay'in illa wafih* *kitabun 'aw sunnatun*)", idem, 59 (on the authority of the Imam Ja'far al-Sadiq). See also idem, 62, tradition no.1, quoted on the authority of the Imam Musa al-Kazim.

¹¹¹ Idem, 169. This attitude of the Ithna ashari Shi'I jurists towards the Qur'an is observed also in the following tradition quoted by Kulini on the authority of the Imam Ja'far al-Sadiq, "Verily, the Quran is not a rational being (*laysa binatiqin*) who commands and forbids but there are those who are endowed with the knowledge of the Qur'an who command and forbid". Idem, 246.

¹¹² Idem, 62.

¹¹³ On the authority of the Eighth Imam, Muhammad al-Rida, Kullini quotes the following: "...Who, then, is able to recognize the Imam or able to choose him? Never! Never! Minds went astray and hearts were perplexed.. They desired to set up the Imam by confused, lost, and imperfect minds and misleading opinions. Indeed they only went further from him. Satan made their deeds appear beautiful to them and led them astray from the right path and they were seeking their way. They turned away from God's choice and from the choice of the Prophet of God, may God bless him and his progeny, and [they turned away from] his family to their [own] choice while the Qur'an calls to them 'And it is not for a believer, man or woman, to have any choice in their affairs when God and His Apostle have decreed a matter; and whoever disobeyth God and His Apostle have erred with palpable error' (XXXIII: 36) and, 'Will they not then meditate on the Qur'an? Are locks upon their hearts' (XLVII:26)...Nay! It is God's grace. He bestows it on whomever He wills and God is the possessor of great grace. How could they be able to choose the Imam I". Idem, 200-202.

standing in place of prophecy, qa'imatun maqamah, carrying on its function except in the matter of divine inspiration without a mediator, wahy. So the Ithna ashari Shi'I Imam is the successor of Muhammad, khalifatuhu wa qa'imun maqamahu, having his cumulative knowledge and all his attributes except divine inspiration without a mediator, wahy. He is chosen by God, infallible and sinless, perfect and the best man of his age, al-afdal. The identification of the status of the Imam with that of a prophet is confirmed by the Ithna-ashari Shi'I ruling that Reason, al-'aql, does not deny the Imam the office of prophecy. Mufid expresses the general opinion of the Ithna'ashari Shi'I jurists when he states "it is divine law that forbae our Imams being given the name of prophecy, not reason, [for reason] does not forbid it, (wa'innama mana'a al-shar'u min tasmiyati 'a' immatina bi'lnubuwwati duna 'an yakuna al- 'aqlu mani 'an lidhalika)"¹¹⁴ It must be firmly asserted in this context that although in Ithna'ashari Shi'I juristic phraseology the status of the Imams is subordinate to that of Muhammad, their status, in fact, is one of equality. Imami traditions bestowing on the Imams such status are abundant and it suffices here to mention that contrary to current opinion Ithna'ashari Shi'ism does not content that the Divine light passed from Muhammad to 'Ali and afterwards to the Imams¹¹⁵ but that the drop of primordial light created by God before He created Adam was placed by God in Adam's loins and passing "from pure loins to wombs undefiled"

¹¹⁴ Mufid, op. cit., 12, 39.

¹¹⁵ Cf. Manzooruddin Ahmed, "The Classical Muslim State", in *The Contemporary Middle East, Tradition and Innovation*, ed., by Benjamin Rivlin and Joseph S. Szylowicz, 100, New York, 1965. Sadiq cites Abu Dharr as follows: "I heard the Messenger of God saying: 'I and 'All were created from one light, we were ascribing glory to God on the right side of the Throne, two thousand years before God created Adam. And when God created Adam, He placed that light in his loins. When he settled in Paradise we were in his loins and when he meditated sin, we were in his loins. When Ibrahim was cast into the furnace, we were in his loins. God transmitted us continually from pure loins to wombs undefiled until He placed us in 'Abd al Muttalib when He divided us into two parts,, placing me in the loins of 'Adbullah and placing 'all in the loins of Abu Talib". Sadiq, op. cit., I, 134-135. See also Kulini, op. cit., 441-442. Cf. Ibn Ahi al-Hadid, *Sharh Nahj al-Balaghah*, II, 450. Cairo, 1959 and Majlisi, op. cit., IX, 3-4. Referring to "Ghadir Khumn", Prof. Mahmood Shehahi of the Univeristy of Tehran, Faculty of Law, states the following: "There was no doubt as to what Muhammad intended for he gathered the people in the bright sun and gave them news of his impending death and then made Ali the main topic of his speech. He made Ali the new master of the people and in relation to God he raised Ali's status to the level of his own". *Islam – The Straight Path*, edited by Kenneth W. Morgan, 187, New York, 1958. Of outstanding interest are the following excerpts from a statement by Ayatullah Sayyid Hibatu'l-Din Shahristani in answer to the following g questions: "Are the Imams, may peace be upon them, more excellent than the prophets, may peace be upon them, or , is the opposite?". "... I have already expressed my opinion that the successor to the most excellent of the prophets may be considered higher in rank than some of the prophets. In other words, it has not been proved that the divine succession to the greatest of the prophets is less in rank than prophet... [This is] in addition to what was related[to the authority of the Prophet] concerning 'Ali, my peace be upon him, that he is the brother of the Prophet and the Prophet's self [see commentary on the Quranic verse of al-Mubalah in the authoritative Ithna ashari-Shi'I tafsir, the *Majma'al-Bayan fi Tafsir al-Quran* by tabasi, II, 451-453. Tehran, 1371/1951] and that he is the most excellent of men after him, that his wife is the most excellent of women, that their descendents are the best descendents and that al-Hasan and al-Husain are the masters of the Youth of Paradise- and this includes any prophet who died young; and 'all the people of Paradise are young' and 'Ali is [part] of me and I am [part] of 'Ali' and 'Husaun is [part] of me and I am [part] of Husain.' And how do you know? HGad prophecy lasted and continued, then it would have continued in them...". Mufid, op. cit. 43, not. 1.

through successive generations finally separated into two in the loins of ‘Abd al-Muttalib, one going to the father of Muhammad and the other to the father of ‘Ali whence it manifested itself in the first Imam.

This concept of the status of the Imamate in relation to prophecy is the basis of the Ithna ashari Shi’I and theological notion that unites the authority of the Shari’ah and that of the Imam: the living Imam is the living entity of the infallible divine law, its interpret-maker and executor. Yet, until now, the Ithnaashari Shi’I doctrine of the Imamate has not served juristically to enhance or justify the position of the Ithna ashari Shi’I ruler despite the existence of an Ithna’ashari Shi’I sovereign state for more than four centuries in addition to the various earlier Ithna’ ashari Shi’I regimes. On the contrary, it deems, in fact, as unbelief any declaration to the effect that the ruler is the Representative of the Shari’ah or the Shadow of God upon earth, and it divests him of any authority but temporal power the source of which may be the ruler’s own person and/or that of other fellow-men, in either case human and not divine¹¹⁶. Unlike the other Islamic schools of law, Ithna ‘ashari’Shi’ism has not endowed the existing power with the halo of divine validation and in sharp contrast to Isma’ilism the Ithna’ashari-Shi’I doctrine of the Imamate renders the status of the Ithna ashari-Shi’I ruler antithetical to that of the Isma’ili Fatimi caliph¹¹⁷. Moreover the Ithna’ashkari-Shi’I concept of stipulated validity of the taklif based on a moral interpretation of the divine attribute of justice sets before the ruler an exemplary Lord to imitate, an omnipotent and omniscient though not arbitrary autocrat.

As much as it denies the possibility of delegation of the Imam’s constitutional authority to the Ithna ashari-Shi’I ruler, Ithna’ashari Shi-‘sim does not vest in the marji’ al-taqlid (the religious juridical authority to be obeyed by the muqallidin, those who are not acquainted with the precepts of the law, a term applied during the last few decades to the “grand” Mujtahid in Iran) the sovereign legal authority of the Imam, and it would be contrary to the very essence of Ithna ashari Shiism to regard the mujtahid as more than an ordinary application, and even more contrary to institute him as a performed of the

¹¹⁶ By way of implication this idea is contained in the Persian Constitution of 1906-7, and in the present amended constitution. See Article 2 of the Supplementary Fundamental Laws of Oct. 7, 1907/Shahban 29, 1325, Engl, transl, by E.g. Browne, *The Persian Revolution of 1905-9*, 87-88, Cambridge 1910; see also Ann K.S. Lambton, article “Dustur” in EI, 2nd ed.

¹¹⁷ In Isma’ili belief the Fatimi caliph himself was the Imam and at periods of salr (concealment) the concealed (master) Imam expressed his will through his apparent “trustee”, while the Ithna ashari Shi’I belief the hidden Imam is absent (gha’ib) and not available through the intermediary of a human agency. For a study of the status of the Fatimi caliph, see P.J. Vatikiotis, *The Fatimid theory of state*, Lahore, 1957. See also al-Qadi alNu’man, *Da’aim al-Isma was) Dhikr al-Halal wa’l-Haram wa-l-Qadaya wa-l-ahkam ‘al Bayti Rasuli ‘Illah*, ed. Fyzee, I, Cairo 1383/1963.

function of the Imam during the Great Occultation by virtue of “an ex ante appointment”¹¹⁸

The uniqueness of the Ithna ashari Shi’I doctrine of the Imamate can be explained by reference to the distinct Ithna ashari Shi’I concept of al-Ghaybah. On the one hand the Twelfth Imam is alive, and therefore the infallible origin of legislation and infallible guidance are deemed to be uninterrupted and everlasting. On the other hand, he is considered to have been absent, gha’ib, inaccessible to believers, and unreachable except by the will of God since ca. 329/940, the end of the Lesser Occultation. It is believed that this situation will remain until “after the advent of the al-Sufyani”¹¹⁹, that is until resurrection. The Twelfth Imam’s embodiment of the divine Shari’ah is therefore non-transmittable; his supreme authority as the infallible interpreter, be it individual or ex consensus while emphasizing the fallibility of Ijtihad and subjecting it to the principle of trial and error and setting utmost limits to the Ijma in definition and application¹²⁰.

In assessing the Ithna ashari Shi’I theory of legal and political authority we should realize that we are dealing with two variant situations; namely one in relation to the historical Imamate when the Imam was both alive and accessible to the believers, and the other during the Imam’s absence. Concerning the first situation we are right to conclude that Ithna’ashari Shi’ism advocates politically an absolute theocratic government and legally perpetuates a notion of a living expression of the divine command. By way of implication, however, Ithna ashari Shi’ism holds that this is an ideal state, hypothetical and beyond the attainment by the believers. Concerning the second situation, lasting from ca. 329/940, probably earlier, until the end of time, Ithna ashari –Shiism conceives of no authority exercised by a human being as being divine and no legislation infallible. Applied to an Ithna’ashari Shi’I community living at this period, namely between 329/940 and the end of time, the Ithna ashari Shi’I doctrine of the Imamate secularizes its political institution, demands humanization of both the legislative body of such a community and the very process of legislation, sanctioning an interpretation of justice in terms of welfare, based on and derived from the welfare of the individual and not the interest of any institution, either religious or political.

¹¹⁸ L. Binder, “The Proofs of Islam: Religion and Politics in Iran”, in *Arabic and Islamic Studies in Honor of Mailton A.R. Gibb* ed., by George Makdisi, 122, Leiden, 1965. Cf. the following Tradition quoted by Kulini on the authority of Imam Jar’far al-Sadiq: “Be wary of judging: sitting in judgement is confined to the Imam who is the one who knows the principles of judgement, who is the one who administers justice among the Muslims; [and it is confined] to a prophet or the wasi of the prophet (illaqu’l hukumata fa’inn’lhukumata innama hiya lil ‘imami al’alimi bi’l qada’l al’adili fi’l muslimina linabiyyin ‘aw wasiyyi nabiyyi)”, al-Kafi (Furu) VII, 406. See also Ann K.S. Lambton, *A Reconsideration of the Position of the Marja’al –Taqlid and the Religious Institution*, in *Studia Islamica*, XX, 1964.

¹¹⁹ Tusi, *op. cit.*, 257; Majlisi, *op. cit.*, (New Edition, Tehran in progress) vol. LIII, 318. See also *ibid.*, vol. LI, 360-361; vol. LII, 151; vol. LII, 6 and Kulini, al Kafi (Rawdah), VIII 241.

¹²⁰

Ithna ashari Shi'ism and the Sunni legal theological schools unite in behaving in the divine origin of authority. In this they share common ground with the other monotheistic religions, Judaism Samaritanism and Christianity. However, Ithna ashari Shi'ism is unique in having adopted an attitude towards the administration of divine authority that ruled out any compromise leading to the identification of actual power with divine authority; consequently barring from the de facto ruler the legal means that may proclaim him as de jure in terms of divine law. This attitude evolved out of purely Arab-Muslim social and political circumstances in early Islam that may be termed in the words of a humorist as the trick which history played upon Islam in destining the Umayyads, of all Muslims, to were, so clearly, the mantle of the seal of the prophets; a historical "accident" the sequel of which was expediency in conceiving the lawful government on the part of the "orthodox" jurists from Abu Yusuf to ghazali and the dominance in "orthodox" theology of an arbitrary normal interpretation of God's relationship with mankind¹²¹ In humanizing the process of legislation in the absence of the Twelfth Imam, Ithna ashari Shiism does not secularize the law sanctioning the community of the believers. It differentiates, however, among the sources of legislation in such a way that, in fact, only the text of the Quran is left as ultimately divine and therefore infallible. Ithna ashari Shi'I jurisprudence has rejected any claim that the transmitted text of the Quran in the form available to the people, namely, the 'Uthmanic Codex, is not its genuine divine recession¹²². On the other hand, it has not guaranteed to that extent the transmission of the text of the Sunnah, Prophetic as well as Imami. Accordingly the text of the available authoritative Imami Hadith may be judged as nearer to the truthful practices and sayings of Muhammad and the Imams than any other version but not as the ultimate truth which is not available. That also applies to the available authoritative interpretation of the Quran. In other words, the available transmission of the Quran is infallible (ma'sum)¹²³ while its interpretation, the transmission of the Sunnah of the Prophet and that of the Imams and their interpretation are all fallible and their infallible version will be available only on the reappearance of the Twelfth Imam at the end of tieme.

¹²¹ See N.A. Faris, "Development in Arab Historiography as Reflected in the Struggle between 'al;I and Mu'awiyah" in *Historians of the Middle East*, ed., by B. Lewis and P.M. Holt, 435-441; E.L. Petersen, 'Ali and Mu'awiyah in early Arabic tradition, trans, by A .Christensen. Copenhagen, 1964; and G.E. von Grunebaum, *Medieval Islam, A study of Cultural Orientation*, 153-169; Chicago, 1946 and *Islam, Essays in the Nature and Growth of a cultural Tradition*, especially 1-30, London, 1961.

¹²² Cf. Goldziher, *Die Richtungen der Islamischen Koranauslegung*, 270-277. Leiden, 1920; Noldeke Schwally, *Geschichte des Qurans*, 102-103; and W. St. Clair Tisdall, 'Shi'ah additions to the Koran', in *The Moselm World* vol. II (1913), 227-241. The present writer does not share the opinions expressed by the above cited authorities concerning the "Shi'ite Qurn" and maintains that except so far as differences that arose from different readings (qira'at) and so far as the order of the surahs and some of the odd verses are concerned, the Imami Shi'ahs join the Sunnis in the belief that the text of the 'Uthmanic Codex (the one between the two boards "ma bayna'l-daffalayan") is the genuine recession of the revealed Qur'an.

¹²³ See preceding note.-

Such a notion inevitably raises a question concerning the Muslim view of history which is based on the dogma that the revelation to Muhammad was final and complete. This is no doubt that Ithna'ashari Shi'ism tallies in form with this dogma; but it expects a further perfection of the interpretation of the divine will while implying that this perfection is an ideal beyond the reach of the believers. Combined with this notion, as we have seen, is a concept that asserts a humanized and therefore fallible process of legislation from a.c. 329/940, probably earlier, until the end of time. Considering that these notions originated in the crucial formative period of Islam and that they have become the basis of an important Muslim school of Jurisprudence and theology, one is inclined to maintain that we need to revise our assessment of early Islam through a wider comparative study of the various doctrines of its different schools without giving too much credit to the dubious traditional labels "orthodox" and "sectarian".

Implementation of Islamic laws in pre Mughal and Mughal period

If one goes to primary sources of pre – Mughal and Mughal period like Ziya al-din Barni's *Tarikh-i-Firuz Shahi*, *Fatawa-i-Jahandari*, Afif's *Tarikh-i-Firuz Shahi*, Yahya ibn Ahmad Sihrindi's *Tarikh-i-Mubark Shahi*, Isami's *Futuh al – Salatin*, Ferishta's memoirs, Babur's *Babur nama*, Gulbadan Begum's *Humayunama*, Abul Fazal's *Ain-i-Akbari*, Akbar's *Akbar nama*, Jahangir's *Tajuk-i-Jahan giri*, Kazim's *Alamgir Nama*, Letters of Aurangzeb etc, that will find that the rulers were not able to follow Islamic laws in absolute terms. They have followed their own rules of law: Barani called it *Zawabit*.¹²⁴ Mughal also followed their own rule of law. Ziya al di Barni has given full description of State laws, .He says following ;

Three exhaustive are devoted by Barani to the question – what is law, its importance and role in social and political affairs. Other renowned writers on *Mirrors for Princes* hardly show interest in such crucial issues and this ultimately supports the thesis that the *Fatawa-i-Jahandari* ranks not only as a major extent work on political ideas of the

¹²⁴ Barani, Zia-ud-din, *Fatawa-i-Jahandari*, (ed., with introduction & notes by) Dr. Afsar Saleem khan, published by Research society of Pakistan, university of Punjab, Peshawar, September. 1972, pp, 132-133.

Delhi Sultanate but deserves a highly respectable place in the long chain of similar works produced outside the boundaries of the Indo-Pakistan sub-continent.

The Term *zabita* employed by Barani as a synonym for law is defined by him as ‘the pursuance of a course of action which the ruling authority imposes upon itself as an obligatory duty with a view to realizing the ends of government and from which he does not deviate ever’¹²⁵. Law is an indispensable requirement of a State and government. In its absence, social, political and economic unbalance captures the realm. Law aims at both immediate and ultimate good. It suppresses moral turpitude, social sins, political turmoil and economic chaos. Barani enumerates three kinds of laws – Law of the Sharia suiting all times and circumstances, customary law and man-made law. All the three kinds are essential for running the administration¹²⁶. In the Sharia governed ideal State, the Law of the Quran and Sunnah stands supreme. But the secular State of the noble ruler of Khita, i.e., Qadir Khan was essentially based upon the customary and man-made law and it functioned smoothly. The Sharia law is revealed law and it exhibits the reason of the Supreme Being, who is infallible. For its interpretation the ruling authority should seek the assistance of the learned ulema. For day to day governmental business, Barani feels the necessity of legislation by the power and urges the use of impartiality, honesty and wisdom in performing this duty. Law making is a very difficult task and the king must make it obligatory upon himself to seek the consultation of the intelligent and wise. Personal whim and fancy should be kept aloof from law and it should not be contradictory to Sharia, reason and public welfare. Like Plato and Farabi he strongly believes that law is the custodian of virtue and justice in human affairs. The State founded upon tyranny, fraud, service and individual caprice is tantamount to a tyrannical entity. In laws grounded upon virtue and reason Barani visualizes the stability and prosperity of government and administration. Both Sharia governed as well as virtuous secular states are administered by laws. Barani quotes the ideal law prevalent in the State of Sultan Mahmud of Ghazna and the rational rules of governmental administration enforced in the secular realm of Qadir Khan of Khita. Both kingdoms prospered on

¹²⁵ F.J. Nasihats, V, XII and IXV. For definition of *Zabita*, see f. 157b.

¹²⁶ *Ibid*, ff. 159-161b

account of the efficiency of sound laws¹²⁷. Barani entertains enormous aversion for lawless and dictatorial States. To whom a monarchy was grounded on the principles of virtue, justice and noble descent is the final destiny of mankind. His ideal ruler is far from being a tyrant or a despot. He is the 'vicegerant of God Almighty' and is committed to the grave duty of the protection of religion and public welfare.

This concludes the summary of the major political doctrines of the Fatawa-i-Jahandari, a copious and valuable dicta on government and administration. The fundamentally realistic origin, form and colouring of the work have been projected at some considerable length. However, the theme of each Nasihat deserves more exhaustive treatment. Barani in his last few days of life felt the urgency of educating princes, governors and administrators in the science of 'government' and 'administration'. The very fact that the supremely valuable treatise had survived in a single manuscript copy, however, does not prove the unpopularity and rejection of the political ideas of the author. The curious form and the anonymous character of the work are the main factors accounting for its non-utilization and reference by the succeeding literati. It is indeed a mirror of past experience and key to sound administration. That political authority should be impartial, neutral and noble, which are the main doctrines developed in this book. Justice and benevolence are the obligations of ruling power. Politics and government are a means to an end and man has to account for his actions hereafter. If these basic principles of the Fatawa-i-Jahandari are incorporated in the modern constitutional systems of the developing States, surely they will be able to achieve political stability, economic viability and moral integrity.

¹²⁷ Ibid.