

The Sources of Muslim Law

- **Sources of Muslim Law**
- The main sources of Muslim Law are mostly all divine. According to the prominent writers of Muslim Law, the sources are of two categories.
- Shariah Sources
- Extraneous Sources.
- Primary sources are those which the Prophet himself directed to be the sources of Muslim Law. The primary sources are authentic documents where the basic principles and philosophy of Islam are described. The whole of Muslim personal law is based on the *Shariah* sources.

The Sources of Muslim Law

The *Shariah* Sources or Primary Sources:

- The Quran.
- The Hadis.
- Ijma (Consensus of Opinion).
- Qiyas (Analogical deductions).
- Istihsan (Preference).
- Istidlal and Istihab.
- Istihad and Taqlid.

The Quran

- The word Quran has been derived from the Arabic word '**Quarra'** that means to read. The Quran, which is the '**divine communication**' to the Prophet of Islam. Every word of the Quran is the word of Allah, communicated to the prophet Mohammad through Gabriel (the angle).
- It is the paramount and universal authority of Muslim Law. The Quran in its present form is a holly book divided into 114 chapters and consists of approximately 6666 verses. The chapters were arranged under the personal direction of the Prophet. Thus it is not arranged in chronological order, not by oversight but as command by the prophet.

The Quran

- The verses of the Quran are called *ayat* and the chapters of this holly book are called *sura*. Not more than 200 verses are concerned with legal principles and nearly about 80 verses are concerned with marriage, dower, divorce and inheritance.
- The portion of the Quran, which was disclosed to the Prophet Muhammad at Medina, is concerned with legal principles, and the portion at Mecca deal with the philosophy of life and Islamic religion.
- The Quran does not in any of its portion profess to be a code complete in itself. It was given to the world in fragments, during a period of 23 years (609 to 632 A.D.) and it was never collected in the lifetime of the prophet.

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Legal functions of the Quran:

- Sometimes, when the prophet was faced with legal problems, he used to seek Divine guidance, and the answers, which he received through Divine revelation, formed a definite legal element in the Quran.
- The non-legal text of the Quran that deals with morality and conscience has an effect on the legal science of Islam.

Legal functions of the Quran:

- By pointing out that the previous revelations have been corrupted the Quran declared the legal material with the ‘people of the book’ unreliable.
- It is also called upon the people to abandon the customs of their ancestors in favor of the law of Allah.
- The Quran converted the heathen Arabs to the law that is the direct command of Allah. Since it is cordial tenet of Islam that God is one, the whole must emerge from Him.
- The believers are bound to search for that whole, which can be found in addition to the Quran, from the special system built up by the holly Prophet, the *Sunnah*

The Traditions of the Prophet (SM)

- Traditions were recorded according to their subject and the subject matter was arranged under the headings of law books. Gradually six collections of traditions were made during the third century of Islam. These are:
- Al – Bukhari;
- Muslim;
- Ibn Majah;
- Abu Daud;
- Al-Tirmidhi;
- Al-Nasai.

Abdur Rahman I: *Shariah: The Islamic Law*, Ta-Ha Publications, UK, 1984; page, 52.

Kinds of Traditions

The traditions are of two kinds:-

- Sunnat
- Al Hadis

These two have been classified into following three classes on the basis of the mode or manner in which it was actually originated: -

Sunnat-ul-fail i.e., Traditions about which the Prophet did himself.

Sunnat – ul -qaul: i. e., Traditions about which he enjoined by word.

Sunnat –ul- taqrir i. e., the things done in his presence without his disapproval.

Kinds of Traditions

- three classes of Al-hadis are given below:-
- ***Hadis Mutwatir (Continuous)*** i. e., Traditions that are have publicly and universally accepted and are held as absolutely authentic. Narrated by an indefinite number of men who were the companions, Successors and Successors of Successors.
- ***Hadis Mashhoor. (Well Known)*** – These were reported by a limited number of Companions in the first instance and thereafter fulfilling the conditions of a continuous tradition.
- ***Hadis Ahad (Isolated)***: - These do not rest upon the testimony of one or more narrators, who are limited in number, nor fulfilling the conditions of either of the above two classes.

Ijma (Consensus of Opinions of Muslim Jurists)

- *Ijma* has been defined as the **agreement of the Muslim jurist-consults (seek advice from)** in any particular age on a judicial *Ijma* rule. The authority of *Ijma* as a source of law is founded on the Quranic and Sunnah text; one each of which given here;
- “O ye who believe: Obey God and obey the Prophet and those of you who are in authority, and if you have dispute concerning any matter, refer it to God and the Prophet.”(**The Quran 4:59**)
- “There can be no consensus on error or misguided behavior amongst my people” (**Al-Hadith**).

Ijma (Consensus of Opinions)

- Ijma has been classified into three types: -
 - **Ijma of the companions of the Prophet,**
 - **Ijma of the jurists,**
 - **Ijma of the people.**

The *Qiyas* (Analogical deduction)

- The Qiyas (Analogical deduction):
- This is the last primary source of Muslim law. Qiyas means reasoning by analogy from the above three sources, i.e., the Quran, the Hadith and the Ijma. In Qiyas rules are deduced by the exercise of reason.
- This has been supported by a Hadith of Prophet, which may be quoted here. When Mu'adh was being sent to Yemen, the Prophet asked him on what would base his decision. "I will judge them according to the Book of God" he replied, "if failed then the usages of the Prophet, after that source I shall follow my own reason." And the Prophet agreed to that.

Conditions to justify for the validity of Qiyyas

- I. The original source from which Qiyyas is deduced must be capable of being extended, that is, it should not be of any special nature.
- II. The law of the text must not be such that it can't be understood by human intelligence nor must it be in the nature of an exception to some general rule.
- III. The original order of the Quran or Hadith to which the process of Qiyyas is applied should not have been abrogated or repealed.
- IV. The result should not be inconsistent with any other verse of the Quran or any established *Sunnah*.
- V. Qiyyas should be applied to ascertain a point of law and not to determine the meaning of words used.

Istihsan (Preference)

- **Istihsan (Preference):**
- Qiyas has been accepted as a definite source of law, and it can't be easily overridden. But in the presence of a stronger source than Qiyas, such as a text of the Quran, Hadith or Ijma, the Qiyas should be set aside and the 'stronger basis' would be adopted through juristic preference or Istihsan.

Istidlal and Istihab, Istihad and Taqlid

Istidlal (reason and logic) and Istihab (permanency):

Istidlal is an effort to reach at some rule acting on certain **basis**. It connotes a special source of law derived from reason and logic.

Istihab: Istihab literary means permanency. It is used to denote the things whose existence or non-existence should be presumed to have remained as such for lack of establishing any change.

Istihad and Taqlid: Istihad means interpretation. Istihad in the linguistic sense means the expanding of efforts. As a technical term it means efforts in seeking and arriving at rules from the various source of law. It is the opposite of Taqlid (imitation) where the opinions of others are followed without understanding or scrutiny.

Secondary Sources of Muslim Law

The Extraneous Sources / Other sources:

1. Legal fiction
2. Positive Legislation
3. Custom and Uses

- **Legal Fiction:**
- We find many examples of legal fiction in the opinions of Roman jurists and in the precedent of English courts. They are all based upon the contention that the old law remains supposedly unaltered, but they need changes and modification. In Islamic law too, there are such instances.
- **Positive Legislation:**
- The history of the Islamic states shows that the Caliphs and Sultans enacted laws either directly or indirectly whenever public interest demands such action. The legality of such legislation is based upon the Quran and Hadith;
- “O ye who believe! Obey God and the Prophet and those of you who are in authority.” (Quran 4: 59)

- **Custom and Usages:** Before the advent of Islam in Arabia, custom was the basis entire social life, religion, morality, trade and commerce.
- After the advent of Islam, Quran and the tradition took the place of the custom, which lost much of its importance. It influenced the growth and formation of *Shariah* in several ways:
- A number of texts, particularly traditions are based upon custom.
- A part of the shariah based upon silent approval of the Prophet comprises many of the Arab customs.
- Imam Malik says that the customary conduct of the citizens of Medina was a sufficient *Ijma* to be relied upon in the absence of other texts.
- In the course of their conquest, when the Arabs came upon customs which is unknown to them, and which was not in conflict with any of the *shariah* texts, such customs made inroads into the shariah by means of *Ijma*, *Istihsan* etc.