



Sources of Islamic Law



Sources of Islamic Law (Sharee'ah)

Source of law, the concept:

Islam is a divine religion chosen and sent down by Almighty Lord of all worlds to guide His slaves (Mankind) to the right path (Siraat-e-Mustaqeem) so that they may enable themselves to live a life as per the demand of Allah the Exalted.

Most of the teachings of Islam are practice based and an axiomatic point is that knowledge is necessarily required before every deed is performed in perspective of Islam especially to classify whether this particular act is in accordance with Islamic teachings and the commandments of Allah The Exalted or not. This classification is essentially needed hence we may not be misguided by any sensualist & devilish person. This confirmation requires some sanctioning source of Islamic law (Sharee'ah) which, in the light of inspiration, are two basics determined as ***Qur'an*** (Al-Kitaab) & ***Hadith*** (As-Sunnah), and two others are followings classified as ***Ijma*** & ***Qiyas***.

Sources

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|----------------------------|-------------|
| 1- <i>Al-Qur'an</i> | (Al-Kitaab) |
| 2- <i>Al-Hadith</i> | (As-Sunnah) |
| 3- <i>Al-Ijma</i> | |
| 4- <i>Al-Qiyas</i> | (Ijtihaad) |

Al Qur'an :- (As source of Shari'ah)

Qur'an is the name of the Holy Book of Almighty Allah which actually is regarded to be the direct utterance of The Almighty. The Qur'an is the only Divine Book which serves as a medium between man and Allah. The Messenger said:

Rejoice! Verily, an end of this Qur'an is in the hand of Allah, and its other end is in your hands. Hold fast to it. You will never be destructed, nor will you go astray after that. (At-Tabarani)

The word Qur'an literally stands for "To read", "To recite" in Arabic Language. It is defined as:

"The Holy book, sent down by Allah the Exalted to His final Prophet MUHAMMAD (Sallallahu Alaihi Wa Sallam), transmitted to us as Mutawatir without any doubt".

Elucidation:

As for the above mentioned definition, there are few parts need further explanation.

The Holy Book:

A book considered as a holy book by millions of Muslims undoubtedly. This particular clause distinguishes between Qur'an and rest of the worldly scriptures because they are not regarded as holy books.

Sent down by Almighty Allah:

Qur'an is unlike other books as it is the direct utterance of Almighty which He sent down as Inspiration through Gabriel (Jibreel). This typical clause differentiates between Qur'an and all other books even if those are considered as holy books by their followers. But actually those are non-revealed scriptures authored by mankind.

To His Prophet Muhammad (Sallallahu Alaihi Wa Sallam):

Qur'an has been sent down upon the heart of Apostle Muhammad (Sallallahu Alaihi Wa Sallam) as per the description of Qur'an itself. This article makes a total distinction between Qur'an and rest of the divine scriptures like Taurat & Injeel (Bible).

Transmitted to us as Mutawatir:

Qur'an, since it's time of revelation, has been Mutawatir and transmitted to us with same characteristic. Mutawatir, as per the interpretation of Islamic jurisprudence, is a terminology used for a specific featured transmission of

narration which causes 100% certainty, assurance and surety of preservation of the narrated text. It is defined as:

"A text narrated and preserved throughout the time by such a large number of people that no one could even think of them to be corrupt all at a time".

This kind of narration always ensures the doubtless transmission of the text. Through clause, Qur'an appears to be a sure short protected divine scripture against rest of the divine books as they are corrupted by lots of amendments made by their followers in later times.

Without any doubt:

This is the final clause that filters and removes all types of suspicions from entire articles of the definition of Qur'an.

The Qur'an as Comprehensive Legislation:

The Qur'an constitutes the most comprehensive concept of Islam on the practical level as the source of the Shari'ah, or the Divine laws and legislation. It is comprehensive because it includes law, as well as the underlying purposes and moral principles, and the creed to which every Muslim must subscribe. Islamic Shari'ah is designed and made suitable not only for Muslims, but for all mankind for all times. The Islamic law governs all human acts, by delineating every person's public or private-duties toward Allah and toward His creation, including man.

Man-made laws are subject to alteration and are based on theories. Whenever a new body of legislators assumes authority, or a new theory appears and appeals to the legislators, the laws are changed accordingly. The Divine law, on the other hand, is unalterable and perpetual because the One Who made it is The Ever-living and Everlasting. He is the Creator Who created mankind and ordained for all human beings what is best for them till the end of time.

Authenticity of Qur'an:

Qur'an is the first and the very major source of Islamic Shari'ah. Because it is the utterance of Almighty Allah and is a reliable scripture. This is not just a faith with no evidence, but a truth that can easily be evaluated by proofs and evidences. For instance,

Protected by Allah:

Qur'an, since it's time of revelation, has been in the protection of the Almighty Allah as He, the Exalted Himself, has promised to preserve and protect the Qur'an from distortion, adulteration, addition, or impairment. Allah says:

إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ (الحجر: 9)

"Verily, we, ourselves have sent down the Dhikr (the Qur'an) and We are there to protect it".

Preserved in hearts & minds:

Among the miracles of Qur'an is the memorization of it. There are millions of Muslims all over the world who have memorized and learnt Qur'an by heart. This is the uniqueness of Qur'an which cannot be observed in any other book.

Mutawatir:

As we have discussed above that Qur'an, since it's time of revelation, has been Mutawatir which ensures the status of Qur'an being a secured source of Shari'ah in Islam.

Intelligibility of Qur'an:

Qur'an is the book of guidance and fully enriched with a quality that it is very simple & easy to understand as it is in plain and clear Arabic language. Unlike other divine books which have lost their original text and even their languages are dead, Qur'an speaks with a language which is alive and spoken, written and understood as a mother tongue even in two of the continents of the world. Any individual can easily learn Arabic language and can gain direct guidance from Qur'an and needs no medium.

Inimitability of Qur'an:

The Qur'an was revealed to the Prophet, in portions, as circumstances warranted during a period of twenty-three years, thirteen in Makkah and ten in Madinah. It is divided into 114 Surahs (chapters) of varying lengths.

Allah, the Exalted, has challenged the Arabs and non-Arabs to produce a Quran similar to the Divine one. The challenge was reduced to ten Surahs, yet they failed to do so. Finally, Allah challenged them to produce a single surah comparable to any of His. Although they were the masters of eloquence and rhetoric, yet they were incapable of taking up the challenge. They realized that the Quran could never be from other than Allah, the Rubb of all worlds.

The difference between the miracles of the previous Messengers; which proved their veracity; and that of Muhammad, the Messenger of Allah, is that theirs took place during their lifetime, whereas the miracle of the Qur'an remains effective everlasting, and challenging until the Day of Resurrection.

Qur'an, the book of principals:

Qur'an is the book of guidance, but it is the principal source of Islamic Shari'ah (law). Allah has sent it down to make manifest everything and to be a means of guidance and mercy to both men and jinn. It gives us the basic

principles of Islamic law. For example, Qur'an commands for establishing prayers but the details of prayers are mentioned nowhere in Qur'an.

After this fact, seeking the details of commandments in Qur'an and ultimately denouncing or falsely interpreting any particular article of Shari'ah in case of not finding details in it is a stupidity and may cause apostasy.

Principals:

Qur'an, being principal source of Shari'ah, provides us root foundations for entire Islamic teachings that have been categorised into five major sorts as per discussed in introduction to Islam and the further required details are provided by Sunnah and Hadith.



Sunnah (Hadith)

As source of Shari'ah (Law) in Islam

Major topics:

- Meanings & definition of Hadith and Sunnah.
- Status of a Prophet
- Obedience of Prophet
- Threat on disobedience of Prophet
- Duties of a Prophet
- Authenticity of Hadith
- Qur'an without Hadith
- Compilation of Hadith
- Major compilations of Hadith.

Hadith:-

Meanings : Word, conversation, newly made thing etc.

Definition : Sayings, actions & Taqreer of prophet Muhammad(sallallahu Alaihe Wasallam).

Taqreer: Approval of Prophet (Sallallahu Alaihi Wa Sallam) by keeping silence upon some utterance or act performed in his presence.

Sunnah:-

Meanings : Way, method, style etc.

Definition : Actions (Life style) of prophet Muhammad (Sallallahu Alaihe Wasallam) that he use to opt.

Status of a Prophet:

According to Qur'an, a Prophet is not a postman that he receives commandments from Allah and conveys the message to mankind and his duty is off. Instead, he has been sent to guide the mankind to the right path that leads to the happiness of Allah Almighty. People have been decreed to follow the footsteps of the Prophet. So that, a Prophet is declared to be a preacher, a teacher, a leader, a role model and a purifier as well.

Obedience of Prophet:

Obedience of prophets is the most important issue in the eyesight of Allah and He, the Exalted, has emphasized upon it very much in His book. For instance,

- Every prophet has been sent to be obeyed as per the statement of Allah the Exalted.

And We sent no messenger but to be obeyed by the leave of Allah. (An-Nisaa: 64)

- And the obedience of a prophet has been considered as the obedience of Almighty Allah.

He, who obeys the messenger, has indeed obeyed Allah. (An-Nisaa: 80)

- Muhammad (Sallallahu Alaihe Wasallam) has been sent as a role model & design for the entire mankind.

Indeed, there is a good model for you in the messenger of Allah, for him who hopes for Allah and The Last Day. (Al-Ahzab: 21)

- One who wants to please Allah and to become a favourite & beloved to him, has no option except to follow the footsteps of the Prophet Muhammad (Sallallahu Alaihi Wa Sallam).

Say, if you love Allah, then follow me, Allah shall love you and forgive you your sins. (Aali-Imran:

Threat for disobeying the Prophet:

Disobedience of Prophet is strictly forbidden by Qur'an and can cause painful punishment. In Qur'an, there are many references regarding the issue.

Duties of Prophets:

Every prophet was appointed to guide the mankind to the right path. And for the purpose, they were assigned four duties according to Qur'an. (Al-Baqarah:129, Aali-Imran:164)

- 1- To recite (convey) the Aayat of Allah to mankind.
- 2- To explain the Holy Book.
- 3- To teach them Hikmah (The Wisdom defined as Sunnah).
- 4- To purify the people.

Authenticity of Hadith:

Some people think that Hadith today, is unacceptable & untrustworthy as it was not saved and compiled in the beginning till 3rd century. As a result, a large part of Hadith was destroyed and people made amendments & changes of their own in it.

But this is totally a lame excuse because Hadith is the interpretation of Qur'an and Qur'an is totally protected by Allah not only it's words but meanings & interpretation as well.

Qur'an without Hadith:-

It is impossible to understand Qur'an without Hadith. If Hadith is no more trustworthy, it means Qur'an is no more a guidance which is obviously false.

Example 1:

Qur'an Commands to establish Salah, but there is no further detail in Qur'an that what does Allah mean by Iqamat e Salah? And how can one act upon this command? Only Sunnah can explain this commandment & makes it practically possible. Prophet (Sallallahu Alaihi Wa Sallam) said, "Perform Salah as you see me performing it".

Example 2:

Allah, in Qur'an, has decreed to perform Hajj, but, by Qur'an only, we are unable to know what Hajj is and how can one perform it? Until, Hadith interprets it for us. Prophet (Sallallahu Alaihi Wa Sallam) said, "Learn from me the methodology of Hajj".

Example 3:

Allah has revealed in Qur'an about lots of events, but none can understand that what event has been discussed in the Ayah?

Compilation of Hadith :-

In the age of Prophet:

Written, Example Sahifa Sadiqa by Abdullah bin Amr bin Aas (R.A.), Sahifa Ali (R.A.). But, mostly Haduth was preserved by memorising and practicing upon it.

1st Century

Hadith was mostly memorised but in the end of the century, Caliph Umar bin Abdul Aziz commanded to preserve it in written shape. As a result, many compilations of Hadith were prepared. For example, Ibn-e-Shahab Zohri's compilation.

2nd Century

Imam Abu Hanifa's Musnad

Imam Maalik's Mautta

Imam Muhammad's Mautta

Imam Ahmad's Musnad

3rd Century

Age of Sihah e Sittah

Major compilations of Hadith:

1. Mautta Imam Maalik
2. Mautta Imam Muhammad
3. Musnad Imam Ahamad
4. Sahih Bukhari
5. Sahih Muslim
6. Sunan e Nasaai
7. Sunen e Abi Dawood
8. Jame Tirmizi
9. Sunan e Ibne Maja
10. Sunan e Tahavi



Ijma (الاجماع)

Meanings:

To be gathered together (مَجْعُودًا), to add together (مَجْعُوعًا), Unanimity & Consensus (اتفاق رائے).

Definition:

Unanimity (General agreement) of all great religious leaders on certain points of law.

Concept of Ijma:

Today, democracy is the most successful political system and also a good solution for the world problems. Many of the problems are being solved through voting and the majority is considered as an authority. And in case, if all the members vote in favour of one certain point, it provides the surety of its being hundred percent correct and useful. Ijma has almost the same concept.

Types of Ijma:

- 1- Ijma-e-Sahaba (unanimity of the Companions of the Prophet)
- 2- Ijma-e-Tabieen (unanimity of the followers of the companions)
- 3- Ijma-e-Ummah (unanimity of the nation)

From another point of view Ijma consists of three types:

Ijma -e-Qowli

If this consensus came down by way of speech, where the Mujtahiddeen had verbally specified the issue. That is, they said that they are unanimous on so and so issue or if each one of them had individually acceded to the fact that he is in agreement or that his math-hab conforms to it.

Ijma-e-Feli

When all of them had implemented and practiced on any particular action and they had all unanimously accepted that act, then this is called Ijma-e-Feli. These two types of Ijma are the most superior.

Ijma-e-Sukooti

If any Mujtahid had said or implemented any ruling/action during his time, and in the subsequent eras, notwithstanding other Mujtahiddeen knowing of this, and having time and opportunity to comment or refute, had maintained silence. Even this is classified as Ijma. Ijma-e- Sukooti is (silent) consent.

Authenticity of Ijma:

Ijma is also one of the sources of law in Islam and is placed on No 3 after Qur'an and Sunnah.

Argument:

وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَىٰ وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّىٰ وَنُصْلِهِ جَهَنَّمَ ۚ وَسَاءَتْ مَصِيرًا (النساء: 115)

Whoever will break away with messenger after the right path has become clear to him, And follow other than believer's way, We shall keep him on the path he has chosen and We shall admit him to the Hell, what an evil place to return.

إَتَّبِعُوا السَّوَادَ الْأَعْظَمَ فَإِنَّهُمْ شَذَّ شَذٌّ فِي النَّارِ (ابن ماجه)

Follow the majority of the nation, whoever will get separation (from Muslims) will be separate in Hell.

لَا يَجْمَعُ أُمَّتِي عَلَى ضَلَالَةٍ وَ يَدُ اللَّهِ عَلَى الْجَمَاعَةِ (ترمذی)

My nation will not get together on deviation and Allah's help (blessing) is along with the league.

Conditions:

Ijma no doubt is acceptable but with two conditions:

- 1- It must not be against Qur'an.
- 2- It must not be against famous of the Sunnan.

Qiyas, Ijtihad

Ijtihad

Meanings: To work hard, to struggle.

Qiyas,

Meanings: Opinion, guess, thought.

Requirement & Importance of Qiyas:

This world is progressive and changeable, the circumstances and the customs are changing with the passage of time. There are so many new problems and points we have to face them. Being Muslims, we need to know the Islamic Shariah's point of view about some certain points. And the only way to know about it is the Qiyas. So Qiyas is necessary and important.

Argument:

Prophet (Sallallahu Alaihi Wa Sallam) sent Ma'aaz ibne Jabal (Raziyallahu Anhu) to Yaman as governor and asked, "How will you take a decision"? He replied, "I will take a decision by the book of Allah". Prophet asked, "If you do not find it in the book of Allah"? He replied, "By the Sunnah of the prophet". Prophet asked, "If you do not find it in Sunnah"? He replied, "I will struggle through my own opinion and I will not stop". Prophet (Sallallahu Alaihi Wa Sallam) said, "All the praises belong to Allah who granted The messenger of the prophet of Allah the divine guidance to the pleasure of the prophet of Allah". (He expressed happiness.) (Tirmizi, Abu Dawood)

Note:

To understand the definition, it is must to know about some important components of Qiyas first.

Qiyas has three components,

- 1- Maqees (مقيس)
- 2- Maqees Alaih (مقيس عليه)
- 3- Illat (علت)
- 4- Hukm (حكم)

Maqees:

Some new point we need to know about its status in the light of Qur'an & Sunnah.

Maqees Alaih:

Some certain point of law which is already sure and clear in Qur'an or Sunnah.

Illat:

The reason & the cause which causes for some typical commandment in some certain point of law.

Hukm:

The particular commandment set by Allah or His messenger.

Definition:

To shift the commandment of Maqees Alaih to Maqees due to same common Illat found in both.

Example:

For example we need to know the status of drugs (like hemp) in Islam which is not mentioned anywhere in Qur'an or Sunnah, so we find that wine is prohibited in Qur'an & sunnah and the reason for its being forbidden is to remove senses & the intoxication and the same reason is found in drugs. So we shifted the order of being forbidden from wine to hemp. We can say that hemp is forbidden in Islam.

In this example the wine is Maqees Alaih which is sure and clear in Islam. The hemp is Maqees about which we need to know. And the intoxication is the Illat which is common in both.

Conditions:

There are two kinds of conditions for the acceptance of Qiyas.

- 1- For Ijtihad.
- 2- For Mujtahid.

For Ijtihad:

It must be under the rules of Ijtihad and must not be against all three sources of law mentioned above.

For Mujtahid:

He must fulfil the criteria for a Mujtahid. Because it is the matter of Islam, so no one is allowed to mislead the nation.

- 1 - Piety (تقوى)
- 2 - Detailed and deep knowledge about Islam