

Muslim law

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DIVINE GROUP OF INSTITUTION

MUSLIM LAW

INTRODUCTION `

Islam may perhaps be the comparison between the three Abrahamic sects, placed halfway between what might be considered legalistic Judaism and theological Christianity. That's because it's almost unquestioned in modern Islam that it is only lawful to determine the will of God expressed in the Quran and Sunnah. Islam holds that these primary sources (Quran and Sunnah) are believed to constitute the authentic and genuine sources of religious and legal practice and basic origins of law are related to them organically. It is thus commonly agreed that no human innovation in jurisprudence that directly contradicts the Quran, and the Sunnah has ever continued to be included in the literature body governing the rituals and worship of Muslims.

Origin of Muslim law

(A Unit of Divine Group of Institutions)

Muslim law is believed to have been originated from the divine. The divine communicated it to Prophet Mohammad who prescribed them in Quran. In the later days, the disciples of prophet Mohammad (or Muslim jurists) have refined and polished these principles. The provisions of Quran are vast and dealt with almost all aspects of human life. Scholars describe the word sharia as an archaic Arabic word denoting "pathway to be followed", or "path to the water hole". The latter definition comes from the fact that the path to water is the whole way of life in an arid desert environment. Shariah, also spelled sharia, the fundamental religious concept of Islam, namely its law, systematized during the 2nd and 3rd centuries of the Muslim era (8th-9th centuries). Total and unqualified submission to the will of Allah (God) is the fundamental tenet of Islam: Islamic law is therefore the expression of Allah's

command for muslim society and, in application, constitutes a system of duties that are incumbent upon a muslim by virtue of his religious belief known as the shariah (literally, "the path leading to the watering place"), the law constitutes a divinely ordained path of conduct that guides muslims toward a practical expression of religious conviction in this world.

Development of Muslim law

1. Pre-Islamic era

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2. Islamic era

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3. Disappearance of prophet

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4. Sunni law converted into two sects

i.e. Sunni and shia

U

5. British era

U

6. Shariat act, 1937 (collaborative effect of sources of muslim law)

1. Pre-islamic era (in arabic areas)

This state is also called ayyam-e-jahiliya which means period of ignorance.

In such stage, customs were prevalent but most of these customs were barbaric or inhumane.

Superstitions were followed at its peak and polygamy was so common, so there was need for reforms.

2. Islamic era

This era starts with the birth of Prophet Mohammad at Mecca. Abu Talib was the last custodian of Prophet Mohammad.

3. Disappearance of prophet

Prophet Mohammad disappears in Madina and 3 caliphs claimed the throne (caliphate) after his disappearance.

1. Abu Bakar

(father of prophet's wife (Aysha))

2. Umar

3. Usmar →	Ali (son-in-law of Prophet Mohd. (husband of Fatima)	Hasan (Ali's own son)
Abbasids dynasty	Ommayad dynasty (take over after hussain)	Hussain (Ali's son and Hasan's brother)
Ottoman dynasty (Mustafa Kamal Pasha) - 1924 (abolished the caliphate)		

Sunni laws

After the death of prophet, it divided into different sects i.e Sunni and Shia laws only because of widow of Prophet Mohammad, Aysha, who wants her father, Abu Bakar to succeed to as caliphate but sunnis were in favour of Ali who is Fatima's husband i.e son-in- law of prophet. Due to this, dispute arises between sunnis and shias.

4. British era

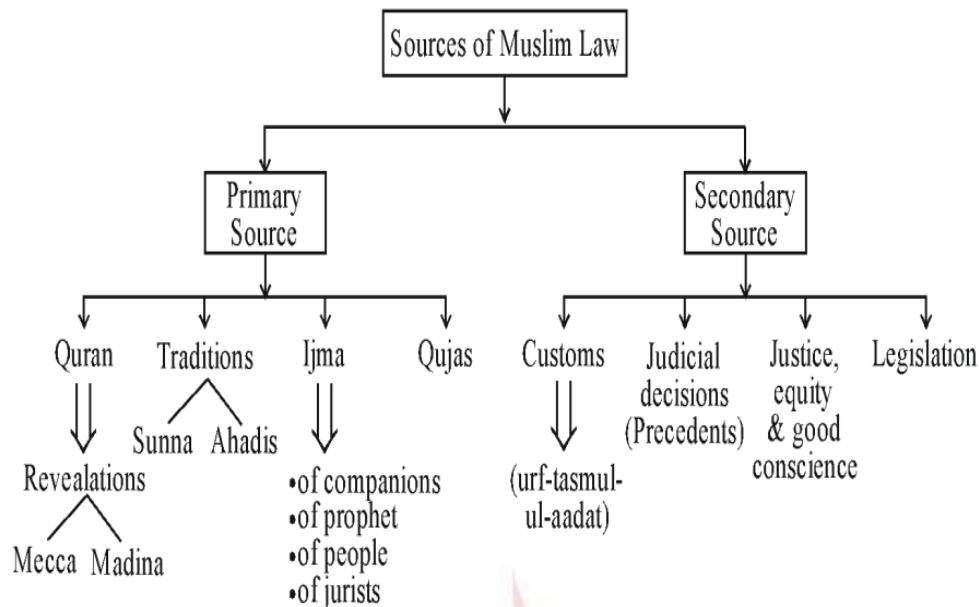
Initially there were personal laws i.e. civil laws and criminal laws & codification was done not on all these personal laws.

5. Shariat act, 1937

- This results into mixture of all sources of Muslim law.
- Sec. 2 of this act abrogated all the customs.
- Shariat is the law in the wider sense.
- It means the totality of Allah's commandment each command is a Hukum.

Shariat literally means 'path to be followed'. Prophet says, —men may marry women for their piety or for their property or for their beauty but they should marry for piety i.e deep respect for god & religion. ll

SOURCES OF MUSLIM LAW



PRIMARY SOURCES

1. *Sunna (Traditions or Ahadis)*

It denotes some practice and precedents of the Prophet, whatever the Prophet said or did without reference to God and is treated as his traditions. Where the words of Allah could not supply an authority for a given rule of law, Prophet's words were treated as an authority because it is believed that even his sayings derived inspiration from Allah. Sunna or traditions consists of: Sunnat-ul-Qual (word spoken), Sunnat-ul-Fail (conduct) and Sunnat- ul-Tahrir (silence).

2. *Quran*

It is the name of the holy book of the Muslims containing the direct revelations from God through Prophet. The direct express or manifest revelations consist of the communications which were made by the angel, Gabriel, under directions from God, to Mohammed, either in the very words of God or by hints and of such knowledge which the

Prophet has acquired through the inspiration (Ilham) of God. All the principles, ordinances, teachings and the practices of Islam are drawn from Quran.

3. *Ijma (Consensus)*

Ijma means agreement of the Muslim Jurists of a particular age on a particular question of law, in other words, it is the consensus of Jurist's opinion. There are three kinds of Ijma:

Ijma of Companions: The concurrent opinion of the companions of Prophet was considered most authoritative and could not be overruled or modified.

Ijma of the Jurists: This was the unanimous decision of the jurists (other than companion).

Ijma of the people or masses: It is the opinion of the majority of the Muslims which was accepted as law. But this kind of Ijma has little value.

4. *Qiyas (Analogical deductions)*

It means measuring or comparing a thing to a certain standard, or to 'establish an analogy'.

For valid Qiyas, the following conditions must be fulfilled: The process of the Qiyas can be applied only to those texts which are capable of being extended. The texts should not be confined to a particular state of facts or rules having a specific reference. The analogy deduced should not be inconsistent with the dictates of the Quran and authority of Sunna. The Qiyas should be applied to discover a point of law and not to determine the meanings of the words used in the text. It must not bring a change in the law embodied.

SECONDARY SOURCES

1. *Judicial decisions — (Precedents)*

This implies that lower courts must follow the procedural rules established by higher courts in previous decisions.

There are number of judicial decisions which have given new dimension to Muslim law:

In **Maini Bibi v. Choudhry Vakil Ahmad**, the privy council held that a widow possesses the right to retain the property of her husband till her dower money was paid.

In **Bai Tahira v. Ali Hussain**, the Supreme Court gave a new line of approach to the law of maintenance. The Supreme Court held that a woman will be entitled for maintenance under section 125 of criminal procedure code even though she has received a lump-sum amount under her customary law. A similar view also taken in Shah Bano's case.

2. Custom OR Urf

In various matter of Muslim law, custom play a significant role when the matter is relating to their: agricultural land; testamentary succession among certain communities; and charities other than wakf, because these matters have not been included in the section 2 of Shariat Act, 1937. Custom influenced the growth and formation of shariah in several ways: A number of texts, particularly traditions are based upon usages. A part of the shariah based upon tacit or silent approval of the prophet comprises many of Arab customs.

Imam Malik says that the customary conduct of the citizen of Medina was a sufficient Ijma to be relied upon in the absence of other texts.

3. Legislation

Muslims are governed by various legislations passed by many legislatures, which have considerably supplemented the Muslim law. Some of them are:

- Guardian and Wards Act, 1890 Shariat Act, 1937
- Muslim Women Protection of Right and
- Divorce Act, 1986
- The Mussalman Waqf Act, 1923

- The Dissolution of the Muslim Marriage Act, 1939

4. *Equity justice and good conscience*

If nothing works i.e. if the existing sources are not sufficient to solve the problem arising with the change and development in society then judges use their own reasoning and give judgment based on equity justice and good conscience.

SCHOOLS OF MUSLIM LAW

Schools under Muslim can be broadly defined in two parts-

- Sunni School
- Shia School

SUNNI SCHOOL

The four main Sunni Schools are:

- The Hanafi School
- The Maliki School
- The Shafi School
- The Hanbali School

All these schools are also known as orthodox schools.

1. *Hanafi School (699 AD — 767 AD)*

The Hanafi school has been named after Imam Abu Hanifa, the patriarch of the 'Iraqi School. Abu Hanifa has given his own logic regarding wudu (ablution), prayers, reciting Quran, divorce and marriage, social economy and so on. The Hanafi school played a very cardinal role in Islamic law and evolved many legal Hanafi texts. Thus, Hanafi school is acclaimed of being the first to bring up questions of Fiqh for discussion and solution, and that the school also was the first to record, categorize, and organize cases. According to many people, "Abu

Haifa 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."

2. *Maliki School (711 AD — 795 AD)*

It recognises the traditions of companions and as far as possible, new rules should be obtained exclusively from traditions. The founder of this school was Imam Malik. They were followers of the hadiths however only the ones that were authentic or adequate even if they were not correct as per the parameters laid down. People of Madina also followed a certain way of Islam, this way was also followed by the Maliki School. They accepted the practices of the people of Madina and the sayings of the companions of the prophet. They followed Qiyas only when the Quran or Sunnat were silent on that particular matter. Also followed as per the "Public Interest" —Al-masalih, al- mursalah. Pupils of Imam Malik were Imam Muhan and Imam Shafi. This school was popularly followed in North Africa, Morocco, Spain, Algeria, Tanzania, etc.

3. *Shafi School (767 AD — 820 AD)*

The founder was Imam Muhammad Ibn Idris Ash-Shafi who was also a disciple of the Maliki School. They followed all four sources. They rejected public interest methodology followed by the Maliki school and were also not in favor of Isthiasan. Shafi was the first person to collect —Sources of Law. Their teachings were popular in Lebanon, Syria, Egypt, and some parts of Iraq, Pakistan, Iran, Yaman, and India as well.

4. *Hanbali School (780 AD — 855 AD)*

This school was founded by Imam Ahmad bin Hanbal (d. 855 A.D.) of Baghdad. Imam Hanbal did not establish a separate school himself; this was rather done by his disciples and followers. The Hanbaliyya was the most conservative of the four schools. Its rigidity and intolerance eventually caused its decline over the years.

In the eighteenth century, however, this school was revived with the rise of Wahhabism and the growing influence of the House of Sa'ud. Today, Hanbaliyya school is followed only in Saudi Arabia. The Hanbalis insist on the literal injunctions of the Holy Qur'an and the Hadith and are very strict in the observance of religious duties.

SHIA SCHOOLS

1 .*Ashriya School*

The founders of this school are twelve Imams, thus the Arabic Term Itna Ashris means ' Twelvers. They are followed in Syria, Lebanon, and Pakistan. The majority of the Shias follow this school. In India also this school is followed by Muslims residing in Lucknow, Murshidabad, and Deccan, Kashmir.

2. *Ismailiah School*

The school of Ismailis accepted only seven Imams and were hence known as the 'Seveners'. Their origin could be traced to Egypt. There consist two groups of them viz, (1) the Kohojas or Eastern Isamilis who were believed to be followers of Aga Khan who was the 49th Imam in the line of the prophet, and (2) Western Ismailis popularly called as Bohoras who were divided among the Sulaymanis and Daudis. They prevailed in Central Asia, East Africa, Arabia, Pakistan, Syria, and Iran.

3. *Zaidivah School*

Imam Zaidi founded this school. They believed that Imam should be based on election, so the succession in this school is through the election. They believe Imam to be above and considered as a 'right guide'. The Zaidis were followed in the South of Arabia, mostly in Yemen.