

Assignment

Subject: Islamic jurisprudence-2

Assignment Title: Primary Sources of Islamic Laws

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Sources of Islamic Law:

At the very apex, the Quran is the primary source, which is accompanied and interpreted by the Sunnah of Prophet Muhammad (Peace be Upon Him), hereafter referred to as the Prophet Muhammad. One of the preliminary points to bring to the attention of the students is that tradition dictates it is good practice to recite the words 'Peace be Upon Him' pursuant to the mention of this Prophet and accordingly they ought to be encouraged to do the same. As shall be examined in due course, in addition to the primary sources, ijma, qiyas and ijtihad represent the secondary sources. Jurists have extended the secondary sources so as to include the practices of Islamic rulers and caliphs, their official instruction to commanders and statesmen; constitutional laws and internal legislation of Islamic States, both in the historic as well as the modern era. For example, Professor Bassiouni has regarded the consistent practice of Muslim Heads of State (the Khalifas) as secondary sources of Islam.

The Quran:

The Quran It is at this juncture that the audience ought to be introduced to the background as to the revelation of the Quran. According to the Muslim belief, the Quran is the sacred book which was revealed from Allah to the Prophet Muhammad from 610 to 632 A.D, amounting to a period of 23 years. In terms of content and structure, the Quran contains 114 chapters, which are called suras in Arabic. The suras contain 6236 verses, which are called ayahs in Arabic. The Quran was revealed over two periods which are known as Meccan and Medinan. The majority of suras with a theological character were revealed during the Meccan period. By way of contrast, those revealed during Medinan period predominately contain ayahs of a political, social and legal character. The theme of strict monotheism (tawhid) remains as a central theme throughout the Quran. Another very much significant aspect of the Quran is the recognition of Muhammad as the last messenger of Allah. Abu Zahrah recognizes that the Quran takes the form of five types of text. It will be useful to make students aware of the same and these are as follows:

1. Explicit (nass)
2. Apparent (dhahir). - 'an apparent meaning derived from a text which is general and non-specific'.
3. Indicative (dalil) - 'an interpretation which diverges from its obvious meaning'.
4. Implicit (mafhum) - have an added meaning coinciding with its obvious meaning'.
5. Expositive (tanbih) - underlying reason for a judgement (like the statement 'it is filth'). (Muhammad Abu Zahrah the Fundamental Principles of Imam Malik's Fiqh at

There are a total of 200 verses related to legal rulings in the Quran and these may be classified as follows:

1. 70 verses on family and inheritance law
2. 70 verses on obligations and contracts
3. 30 verses on criminal law
4. 20 verses on procedure.

An important point for the lecturer to raise is that the Quran does not deal with just family, contract and criminal law and that the application of the principle of analogy has enabled jurists to extend the scope of Quranic rule to other areas of law. For the benefit of

clarity, it would be useful for the lecturer to provide an example of this. It ought to be reinforced that neither Prophet Muhammad nor any other human being had any influence over the divine book. This is with the exception to its structure and the names of the surahs (chapters) which, were established in the years that preceded the Prophet's death. While meticulously noted down and revealed in stages during the lifetime of the Prophet, the Quran was produced as an authentic whole text during the reign of the third Caliph Uthman. The Quran is aimed at establishing basic standards for Muslim societies and guiding these communities in terms of their rights and obligations. At the time of its revelation, it provided a set of progressive principles. It advances values such as compassion, good faith, justice and religious ethics. The students should be reminded that the Quran is first and foremost a religious text and is not a legal document per se. In reiterating this point, two leading comparative lawyers, namely Zweigert and Kotz, may be referred to who note that "only a few of the statements in the Koran constitute rules of law capable of direct application. It consists mainly of precepts of proper ethical behaviour too generally phrased to have the precision and point of legal rules. For example, the Koran prescribes that a

Muslim must act in good faith, that he must not bribe judges, and that he must abstain from usury and gambling, but it does not specify what legal consequences, if any attach to a disregard of these commandments. Furthermore most of the rules of behaviour contained in the Koran concern the rituals of prayer, fasting and pilgrimage; even where it deals with legal problems in the narrow sense, such as those of family law, it does not offer an integrated system of rules but simply gives the solution of a few individual problems with which Muhammad was concerned as a judge and prophet of the law". (K Zweigert and H Kotz, Introduction to Comparative Law, 3rd edn (Oxford, Clarendon Press, 1998) 305). An interesting point to raise is the evolution of what was considered to be the primary sources. The Quran has always been viewed by Islamic jurists as the primary and imperative source of Islamic law. After the death of Muhammad, it alone played a significant role in the decisions of the first 'rightly-guided' caliphs. Subsequently, during the rule of the Umayyad caliphs, emphasis began to be given to the independent reasoning of the caliphs. Moreover, during the rule of Abbasid caliphs, when Islamic jurisprudence reached its heights, Prophetic Traditions seem to have achieved an

equal status with the Quranic rulings. Thus, Prophetic Traditions were employed in equal footing with the Quranic rulings and were accordingly considered to be primary source of Islamic law. This does not suggest that the Quran does not have legal force without the traditions of Prophet, but that the latter serves as the instrument or tool for the interpretation of the legal nature of the Quranic rulings.

Sunnah (Prophetic Traditions):

The Prophetic traditions as indicated above are usually referred to as Sunnah. The lecturer may literally define Sunnah as meaning tradition or customs and before the emergence of Islam, it denoted the customs and traditions in pre-Islamic Arabia. Goldziher explains the meaning of Sunnah as “flow and continuity of a thing with ease and smoothness”, whereas Ansari suggests that as a result of evolution of the word ‘Sunnah’, it started to mean “way, course, rule, mode, or manner, of acting or conduct of life”. (Wael B. Hallaq, *The Formation of Islamic Law (Formation of the Classical Islamic World, 27)*, Ashgate Publishing (January 2004), p. 259-260). How were the Sunnah formed? This was as a result of traditional stories

transmitted from the Prophet Muhammad called Hadiths. The memorisation and transmission of the Sunnah in literary form is characterised as Hadith. The term Hadith which means 'occurring, taking place' represents the 'report' of the Prophet Muhammad's Sunnah. The term Hadith has been deployed in the Quran 23 times in total. The Sunnah of Muhammad therefore is preserved and communicated to the succeeding generations through the means of Hadiths. An interesting point is that the Hadith consists of two parts. Isnad and matn. Students need to be asked about the difference between the two. Isnad refers to the link, the source or the chain of narrators of the Hadith. Hence a Hadith in its isnad would report the person who acted as transmitters. The matn contains the substance of the Prophets' sayings, deeds or actions. It is recommended that the lecturer refer to an extract from a Hadith to illustrate this point clearly. Shabbir opines that Hadith might be transmitted in the following three forms:

1. Qawl,

Which means all the sayings and the utterances of the Prophet Muhammad

2. Faail,

Which denotes the actions and daily practices of the Prophet Muhammad

3. Iqrar,

Which denotes the tacit approval on the part of the Prophet of acts done and practices carried on by his followers. Shabbir further states that Hadiths have been classified according to their origin, degree of authority and reference to persons. In respect of origin, the Hadiths are classified into Qudsi and Nabvi Hadiths. Qudsi generally denotes the Hadith, which had been uttered by Prophet under divine inspiration, whereas nabvi denotes the Prophet's un-inspired opinion or judgment. The lecturer may consider it useful in respect of the degree of authority, to classify the Hadiths into the following:

1. Mutawatir (continuous), mashhoor (well known) and ahad (isolated) Hadiths denotes the traditions continuously transferred through a long and uninterrupted chain of narrators, which are ultimately considered as genuine and authentic. It is said that they have received universal acceptance and has been narrated by an indefinite number of men belonging to the categories of companions, successors and successors

of successors. Mutawatir has an imperative character in that it bears a binding and decisive personality.

2. Mashhoor is said to have been derived from the knowledge of the majority but is not universally adopted and has a lesser degree of legal enforcement in comparison with mutawatir.

3. Ahad denotes those Hadith which are known to isolated individuals and have no value in the sense of legal enforcement. The last criteria for the classification of Hadiths refer to the persons on whose authority the Hadith is received:

(i) Ahsan consists of Hadiths, the narrators of which belong to persons who are established, absolute, trustworthy, of good reputation and possess a strong memory.

(ii) Hasan contains Hadith, the narrators of which are from trustworthy persons of good reputation and good memory, but who do not fall into the category of moral excellence .

(iii) Gharib or daif narrations of Hadiths which are of questionable authority. The structure of the Hadith is such that it usually starts with the word “haddathana (narrated to us), then a series of narrators are cited, the

last of whom heard the tradition directly from the Prophet. In circumstances where the connection with the Prophet is not established, it is called mursal Hadith.