

Course: Islamic
Jurisprudence II
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Primary Sources of Islamic Laws-

Group 3 Topic Assignment

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This assignment is a PDF form submission and fulfilment of Islamic Jurisprudence II course presentations taken in class.

It is divided into the following heading:

- ❖ **Introduction to Sources of Islamic Law**
- ❖ **Holy Quran as the 1st Primary Source**
- ❖ **Hadith and Sunnah as the 2nd Primary Source**
- ❖ **Other Secondary Sources of Islamic Law**

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Islamic law is a code of basic principles which determine the relationship between man and God on one hand and among the individual themselves. Islam carries significant characteristics of an elaborate legal system seeking to regulate broad areas of human conduct in accordance with its ideal paradigm of what constitutes right and wrong. Islamic precepts, which Muslims believe to have been inspired by God, should be followed by believers by means of thought and deed. Classical Islamic jurisprudence rests on a monotheistic outlook that regards God as the ultimate source of law, for He alone is taken to be the ultimate sovereign whose omnipotence over human affairs stems from His status as the creator of the universe. Humankind accordingly needs no further justification to be subordinate to His will. Unsurprisingly, in relation to Lord (rabb), Islam characterizes humans as servants ('abd). The word 'Islam', likewise, derives from the Arabic term salám, which has a two-fold meaning: peace and submission (to God). A Muslim, then, is a person who submits to God's will to the exclusion of any other revered entity. Fiqh or Islamic jurisprudence is the source of a range of laws in different topics that govern the lives of the Muslims in all facets of everyday life. The word "Fiqh" is an Arabic term meaning "deep understanding" or "full comprehension". Sources of Islamic Jurisprudence: Fiqh is an expansion of Shariah or Islamic law based on five sources which are classified into primary and secondary.

Primary Sources of Islamic Law

The Arabic term for source in Islamic law is dalil (guide). There are two primary sources of Islamic law: Quran and Sunnah. Quran and Sunnah make up Shariah (pathway), the source of all principles of Islamic law.

The two primary and transmitted sources of Islamic Law are the Quran and the Sunna (Prophetic traditions and practices). This combination of the two crucial sources of Islamic Law is seen as a link between reason and revelation. Indeed, the marriage between these two sources has resulted in the emergence of Islamic Law [8: p. 15]. The Quran is considered the most sacred and important source of Islamic Law, which contains verses related to god, human beliefs and how a particular believer should live in this worldly life. The human conduct that should govern the believers' life, which is clearly stated in the Quran, is indeed the domain of Islamic Law. The Quran comprises about five hundred legal verses that explicitly set out legal rulings that need to be applied by all believers [8: p. 16]. Even non-legal verses in the Quran do support the establishment of the legal system of Islam, as will be expounded by Professor Almatroudi. The second primary and transmitted source of Islamic Law is the Sunna, which represents the Prophet Mohammad's (peace be upon him) deeds and sayings, which were formulated in the form of narratives and became known as Prophetic Hadith [8: p. 16]. The Sunna also comprises a number of legal provisions that must be applied by all believers of Islam. Certain legal rulings in these transmitted Islamic sources are definitive. In other words, the lawgiver (God) has formulated them in such a way which does not need personal legal reasoning and is not open to different interpretations as they are clear and definitive. Conversely, there exists a corpus of legal contents stated in both the Quran and the Sunna, the application of which requires reasoning. The law-giver who has formulated certain legal rulings stated in the Quran and the Sunna in such a way that never accepts two different interpretations, could have also done the same with regard to the rest of legal contents laid down in the aforementioned Islamic sources. However, there has been a pivotal reason behind making a huge bulk of legal contents mentioned in the Quran and the Sunna open to legal reasoning. This flexibility in the law qualifies it to be legally valid for all legal cases regardless of time and place as it is amenable to development and change.

Quran

The Qur'an is the book revealed the messenger of Allah, Muhammad (PBUH) as written in the *Mashaf* and transmitted to us from him through authentic continuous narration (*tawatur*) without doubt.¹ Other jurist defines that the Qur'an is the words of Allah (Exalted) that were revealed to the Prophet (PBUH) in Arabic through the Angel *Jibril* (PBUH). The literal meaning of Quran is that which should be recited, read, or studied and refers to the book embodying the revelation from Allah to Prophet Muhammad. There is only one authentic and uniform text of the Quran in Arabic that is in use throughout the Muslim world. The Arabic text is often found in the English translations, however, there are many translations and interpretations of the Arabic text. The Qur'an is the primary and most authoritative source of Islamic law. Since the Qur'an is believed to contain the literal words of God, it is deemed the most authentic record of Islamic law, incarnating the final, inimitable and infallible injunctions of everlasting validity. God in the Qur'an affirms Islam's complete nature, saying: "Today I have perfected your religion for you, and I have completed My blessing upon you, and have approved Islam for your religion". Although the Qur'an expresses that "[e]very nation has its Messenger" and that there is no difference between these Prophets, Muhammad is believed to have closed the line of Messengers by re-introducing the original and unadulterated teaching of God. The Qur'an (which literally means recitation or reading) constitutes the most important source of Islam, which is composed of the divine revelations received by the Prophet, who sought to form a moral socio-political order operating in accordance with the sacred messages delivered by God. The Quran contains a set of moral and judicial injunctions which are the basis of Islamic law and concern life of human beings in every detail. The Quran as a source L aw the early revelations revealed in Makkah deal largely with beliefs and morals. It was later, after the Prophet's (PBUH) migration to Madinah when Muslims lived in an organized society that the principles regarding crime, succession and international law were revealed. The basic law in Quran is mainly contained in a simple sentence on which whole structure of law can be built. Example: Give full measure when you measure and weigh with a balance that is straight. (17:35) Importance of Quran as source of law: The Quranic law is everlasting, perpetual, and universal.

The Collection of the Qur'an Islamic tradition holds that the Qur'an is revealed to Muhammad by God through the medium of the angel Gabriel. According to Muslim theology and jurisprudence, the entire corpus of the Qur'an sprang from Muhammad's reception of divine revelations (*wahy*). Muhammad received revelations in instalments during the Mecca and Medina period, over the course of twenty-two years (AD

610–632) until his demise. The Qur'an is revealed in Arabic, containing 114 chapters (surah's), 6,236 verses (áyat), and a total number of 77,934 words. The whole body of the Qur'an was completed during the lifetime of the Prophet who called on his scribes to record what had been revealed to him. The Prophet's recitations were initially written down on whatever material came to hand, including palm leaves, wood pieces, and parchment. Under Muhammad's supervision, these fragmented pieces were subsequently collected into súrachs or chapters. Although the Qur'an existed in its full, albeit fragmented, form since the first revelation, the writ-ten material was not brought together into a single codex during the Prophet's lifetime. The assembly of the entire Qur'an text was a lengthy and arduous task. Most commentators concur that an official codex had been collected under the rule of Uthmán, the third Caliph, within the period of 20 years following Muhammad's death. Uthmán concerned himself with ascertaining whether the texts he assembled had been directly recited by the Prophet. During this process, the chief Qur'an material was the one collated by Muḥammad's chief secretary, Zaid Ibn Thábit. Uthmán is known to have ordered an authorized version of the Qur'an to be assembled and copied, and to have commanded his governors to destroy all variant texts. For one of the main challenges lay in the fact that Arabic was the language of desert nomads, and its spoken form was far more sophisticated than its written form at a time when written Arabic lacked vowels or diacritical marks. This led to the acknowledgement of seven variant, but equally authoritative, readings (qira'át) of the Qur'án, which could have caused significant controversy over the meaning. However, when the Qur'án was redacted and an authoritative version was adopted, this put an end to alternative readings. This redacted version, effected by a number of learned ṣaḥábah (companions of Prophet Muḥammad), "has since remained unchanged and unchallenged".

Sunnah

The Sunnah can be defined as the saying, deeds, tacit approvals which emanated from the Prophet (PBUH). The significant element of the Hadis is that it is the collection of the narrations or texts that address that the Prophet said, did, approved or disapproved. Sunnah is also equally important as Quran. From literal meaning. Sunnah means a clear path or a beaten track. Sunnah refers to all that is narrated from the Prophet s.a.w including his actions, sayings and whatever he has tacitly approved which are not revelations of the Quran. The understanding of Sunnah is compulsory in order to understand the teachings of Quran. It is also common for people to ask the Prophet directly for legal rulings on various matters. When he passed judgment on such matters, all of these details were recorded. They were used for reference in future legal rulings.

Sunnah is roughly translated as the traditions and practices of Prophet Muhammad. The Sunnah Loyal observance of the example of the Prophet, along with the commands of God in the Qur'án, plays a key role for Muslims in their quest to secure peace in this world and achieve salvation in the hereafter. The prophetic practice, also known as the Sunnah, forms the second principal source of Shari'ah. The Sunnah includes the anecdotal accounts of Muḥammad's sayings, deeds, views, habits, or tacit (dis)approvals of certain practice. The concept of Sunnah is occasionally used to refer to the practice of Muḥammad's companions, too. The written account of these practices is termed the ḥadīth, which contains the documented record of what Muḥammad is considered to have uttered or done during his lifetime. While the Qur'án embodies the binding law in God's own words, Sunnah is taken to be the reflection of God's wisdom with which the Prophet had been inspired. Confirming this point, the Qur'án demands believers to follow the model pattern of behaviour exhibited by the Prophet. For Muslims, the significance of the Sunnah lies in the fact that Muḥammad was the final messenger of God, and as such his practice bears a decisive role for a better appreciation of the Qur'án. Sunnah is the actual embodiment of the will of Allah shown in the actions of His Messenger (PBUH). Hadith means all sayings, deeds, his silent approval of behavior of his companions and description of his personality. Law The Holy Quran being the word of Allah treats, major issues and often deals with subjects in brief terms, leaving details to be explained by Holy Prophet. In the words of Quran, "and We have sent down unto Thee The Message that thou mayest explain clearly to men what is sent for them-"(16:44) Example: In the Quran we are commanded to pay zakat by all Muslims. But the percentage and exact amount is unspecified. All these details were learnt by the Prophet's deeds or words. The clarification of the Quran was provided by the Holy Prophet(PBUH) who himself participated in Shariah formation. "No sadaqa (zakat) is payable on less than five wasqs(of grain or dates) or less than five camel heads and on less than five uqiyas (of silver)." (Muslim).

There are three types of Sunnah.

- 1) The sayings of the Prophet – Sunnah Qawliyyah/Hadith.
- 2) The actions of the Prophet – Sunnah Al Filiyya.
- 3) Sunnah Taqrīriyyah, practices prevailing at the time of the Prophet which he did not oppose or prohibit.

A ḥadīth is a narration containing a report of what the Prophet said or did in a certain form as transmitted one of his companions, who in his turn would relate it to someone belonging to the following generation. Every ḥadīth has two parts. The first part (isnád) comprises a list of narrators that handed down accounts of the actions, sayings, teachings, decisions, overt or tacit views of Muḥammad or his immediate companions. This chain traces the sources through which the Prophetic practice had been reported with a view to attesting the historical authenticity of a particular ḥadīth. Isnád employs a classical formula along these lines: "It has been related to me by A on the authority of B on the authority of C on the authority of D that Muḥammad said [...]". The second part, on the other hand, contains the actual content or text (matn) of the ḥadīth that communicates what the Prophet had reportedly said or done. The report's main function is to shed light on a wide array of important matters in Islam.

The Six Books of Reliable Hadith

The six books of hadith compiled by the four great imams are usually consulted to formulate laws in Islam. They are, — Sahih Bukhari compiled by, Imam Muhammad ibn Ismail-al- Bukhari (194—256) A.H. — Sahih Muslim compiled by, Imam Muslim ibn Hajjaj (202— 261) A.H. — Al Jami compiled by , Al-Tirmizi (210—279 A.H.) — Kitab al Sunnah compiled by, Al-Nasai (215—303 A.H.) — Al Sunan compiled by, Abu Dawud (205—275 A.H.) — Kitab al Sunnah compiled by, Ibn Majah.

Hadith/Qawliyyah

Hadith/Qawliyyah are the sayings of the Prophet Muhammad. The following sample searches in a library catalog will yield many collections of hadith. Hadith – texts Hadith -- Criticism, interpretation, etc. The six major Hadith collections listed below were collected by Islamic scholars approximately 200 years after Prophet Muhammad's death. These are listed in order of authenticity.

1. Sahih Bukhari, collected by Imam Bukhari (d. 870), includes 7275 hadiths
 - a. Bukhari, Muhammad ibn Isma`il and Waheed-uz-Zaman. Sahih Bukhari Sharif. Lahore: Maktabah Rehmaniyah, 1900. 3 vols. in Urdu.
2. Sahih Muslim, collected by Muslim b. al-Hajjaj (d. 875), includes 9200
 - a. Muslim ibn al-Hajjaj al-Qushayri, Abdul Hameed Siddiqui.
3. Sunan al-Sughra, collected by al-Nasa'i (d. 915)
 - a. Bayhaqī, Aḥmad ibn al-Ḥusayn. [al-Sunan al-ṣaghīr](#). Karātshī, Bākistān : Jāmi'at al-Dirāsāt al-Islāmīyah, 1989. 4 vols. in Arabic.
4. Sunan Abu Dawood, collected by Abu Dawood (d. 888)
 - a. Abu Daud Sulayman ibn al-Ash`ath al-Sijistani, Muhammad Mahdi Sharif. Sunan Abu Dawud: the third correct tradition of the Prophetic Sunna = Sunan Abi Dawud. Beirut: Dar al-Kotob al-Ilmiyah, 2008. 5 vols. in English.
5. Sunan al-Tirmidhi, collected by al-Tirmidhi (d. 892)
 - a. Muhammad ibn `Isá Tirmidhi, `Abd al-Wahhab `Abd al-Latif, `Abd al-Rahman Muhammad `Uthman. [Sunan al-Tirmidhi wa-huwa al-Jami` al-sahih](#). al-Madīnah al-Munawwarah, al-Maktabah al-Salafīyah, 1965-67. 5 vols. in Arabic.
6. Sunan ibn Majah, collected by Ibn Majah
 - a. Ibn Mājah, Muḥammad ibn Yazīd. [Sunan Ibn Mājah](#). al-Qāhirah : Dār al-Ḥadīth, 1998. 4 vols. in Arabic.

Shi'a Collections

There are also Shi'a Collections of Hadith. A subject search in a library catalog, such as, WorldCat for Hadith (Shiites) will yield many sources. The prominent Shi'a collections include Twelver collections, Ismaili, and Mu'tazili. These can also be used as search terms to locate relevant collections.

Other Secondary Sources

The researches carried on previously and the interpretations put forth and the views expressed previously form the secondary source. In Islamic studies interpretations, translations, private opinions, and even the *ijtihad* can be classified as the secondary source. Furthermore, other sources based on human reason are secondary sources in the sense that, principles or rules or rulings that are extracted based on human experience called *Ijtihad* should not contradict any provision in the primary sources. Otherwise, any provision based on the human reason that contradicts with the provision in the primary sources must throw out of mind. **Secondary Sources of Law** which includes *Ijma*, *Ijtihad*, *Qiyas*, Local custom, Reason, Inference, Public interest, Juristic preference and *Urf* etc.

Ijma' (Consensus of Legal Opinion)

Word *Ijma'* has literal meanings as well as a technical meaning. Literally, it be used in two senses. The first is determination and resolution. The second sense is agreement upon a matter. However, in the technical sense, *ijma'* can be defined as the consensus of the *mujtahids* (independent jurist) from the ummah of the Muhammad (PBUH), after his death, in the determined period upon a rule of Islamic law (*hukm syar'i*). *Ijma* means the consensus among Islamic jurists on matters within the limits of Quran and Sunnah. Muslim jurists provide many verses of the Quran that legitimize *ijma* as a source of legislation. To illustrate, the institution of khilafat is established on the basis of *Ijma* among the Islamic jurists. There are two different types of *Ijma*. *Ijma al-ummah* is a consensus of the entire community, while *Ijma al-aimmah* is a consensus by religious authorities. The Prophet Muhammad once said that his community would never agree on an error.

Qiyas (Analogy)

Qiyas has a literal meaning as well as the technical sense. In its literal meaning the word *qiyas* means measuring or estimating one thing in terms of another. It also applies to making two things equal, that is comparing. This comparison maybe physical or it may rational. In the technical sense however, *qiyas* can be defined as the assignment of the *hukm* of the existing case found in the texts of the Qur'an, the Sunnah, or *Ijma'* to a new case whose *hukm* is not found in these sources on the basis of the common underlying attribute called the '*illah* of the *hukm*. *Qiyas* is also one of the secondary sources, means to conclude general principle from Quran and Sunnah to generalize the Versus or Hadith. For instance, from wine, the jurists concluded and generalized that all things causing unconsciousness are prohibited by Islam. According to Hadith, Muhammad said: "Where there is no revealed injunction, I will judge amongst you according to reason."