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## **ISLAMIC JURISPRUDENCE**

Islamic jurisprudence may be defined as a process by means of which jurists derive sets guidelines, rules and regulations (the Shari'ah) from the principles of the Qur'an and the Sunnah. Over the centuries, these have been formulated and elaborated upon by successive generations of learned jurists, through interpretation, analogy, consensus and disciplined research.

While the principles of the Qur'an and the Sunnah are permanent, it is the nature of Islamic jurisprudence to facilitate for human beings the application of those principles to their activities and dealings.

The universality and permanence of Islam as a civilization are intrinsically linked to the fact that the Qur'an and the Sunnah have introduced general principles and guidelines. These give Muslims the opportunity to develop practical solutions in order to regulate their continuous changing environment. Besides the Qur'an and the Sunnah, the sources of law in Islam are Qiyas (analogy), Ijma' (consensus) and ijtihad (disciplined, academic research).

### **Early Shari'ah**

Early shariah had a much more flexible character, and many modern Muslim scholars believe that it should be renewed, and that the classical jurists should lose special status. This would require formulating a new fiqh suitable for the modern world, e.g. as proposed by advocates of the Islamisation of knowledge, and would deal with the modern context.

## **Basic Terms in Fiqh [Islamic Jurisprudence]**

Extracts from 'studies in usul ul fiqh' by iyad hilal

### **FIQAH**

Linguistically, Fiqah implies having knowledge in depth.

As a juristic term, Fiqah has two meanings:

A. Having the knowledge of the rulings of Shariah (Islamic Law) which are extracted from the legislative sources. As an example, a Fiqah would know the ruling for the issue of abortion; in addition, he would know how and from where this ruling was extracted.

B. All the Islamic laws. This definition is synonymous to the term Shariah.

### **SHARIAH**

The linguistic meaning of the word Shariah is a non-exhaustive source of water from which people satisfy their thirst. Thus, the linguistic significance of Shariah is that the Islamic laws are effectively a source of guidance. As water is the fundamental basis for life, the Islamic laws are an essential source for guiding human life. Shariah is composed of all the laws derived from the legislative sources of Islam. These laws are not just limited to areas covering marriage or divorce; rather, the Islamic laws cover every action performed by an individual or a society. The term Shariah is also a synonym for Fiqah.

The Application of Shariah is not only limited to areas covering divorce or marriage. It covers the relationship between Man and Allah (swt), Man and Himself, and Man and

Man. In addition, to the method for applying these rules, implementing any rule requires having the knowledge of the situation, the rule, and the method. As an example, there is a general principal in Islam that a thief's hand should be cut off. However, if the individual steals food while hungry, then this general principal is not applied in this particular situation. Consequently, the knowledge of how and when to apply a rule is obligatory.

A misapplication of the Shariah is applying the Islamic laws related to Hudud while at the same time implementing an economic system based on capitalism. Islamic laws related to punishment were revealed to protect the society in which Islam is being applied.

The implementation of the Islamic rules related to the economy necessitates the implementation of the rules of Zakah, Nafaqah, and Al-Jizyah, which in turn means the implementation of the economic system. The execution of the economic system requires the implementation of the Ibadaah, social system, rules related to the People of the Book, Islamic foreign policy, and rules related to the Khalifah altogether. The Islamic system is inter-connected; one part helps the implementation of the other part.

## **DALEEL**

Linguistically, Daleel means a proof, indication, or an evidence. As a term, Daleel means the source or evidence for a thought, concept, or a ruling. Any law or ruling must have a Daleel, which can be from Quran, Sunnah, or a source, which Quran and Sunnah directed us to adopt.

## Structure of a Daleel

A Daleel is an evidence for an opinion, concept, ruling, or a thought from Islam. There are two aspects related to any Daleel, Riwayah (reportage) and Dalalah (meaning). The Riwayah covers issues related to how the information was relayed to us, which includes the number and the integrity of reporters. The Dalalah is related to the meaning of the text in the Daleel.

Any Ayah from the Quran or Hadith Mutawatir is considered Qatai (conclusive) in its Riwayah (report). The Qatai in Riwayah implies that the evidence is authentic without any shadow of doubt. If the text of Quran, Hadith Mutawatir or Hadith Ahad is clear, specific, and has only one meaning, then it is considered Qatai. The text of a Qatai Daleel has to have only one meaning and cannot be open to any other interpretation.

## **QURAN**

Quran is derived from the word Qara'a, which means to read or recite. The term "in Arabic" refers to the language of the Quran, not to its scope or its ideas because Quran addresses all Arabs and non -Arabs. The rules of Quran are universal and not restricted to one ethnic group or a specific area or time.

## **SUNNAH**

Sunnah, linguistically, means a path or a way. As a juristic term "Sunnah" has different meanings to various disciplines of the Islamic culture. Sunnah refers to all that is narrated from the Prophet (saaw), his acts, his sayings, whatever he has tacitly

approved, and all the reports which describe his physical attributes and character.

Sunnah thus refers to another source of Shariah along with the Quran.

## **HADITH or AHADITH**

Ahadith is the record of the Sunnah conveying the sayings, actions (deeds and practices), or the approvals of the Prophet (saaw). Different types of Ahadith exist due to the method of transmission, number of reporters in each class, and the authenticity of the Hadith.

## **RELATIONSHIP BETWEEN QURAN AND SUNNAH**

Hukm Sharii are the rulings of Allah (swt) addressing our actions. These rulings are derived from certain sources. The sources which are used to extract rulings have to be based on Adilla Qataiya (Decisive evidences). As an example, to have Ijma as Sahabah (Consensus of the Companions) as a source to extract laws, the concept of Ijma as Sahabah must be based upon Qatai Daleel. Thus, even though not all the laws extracted from Ijma as Sahabah have to be Qatai, the concept itself must be. The four sources of Hukm Sharii, Quran, Sunnah, Ijma as Sahabah, and Qiyas will be discussed respectively. These sources are agreed upon by the majority of the scholars.

## **Quran**

Using Quran to extract rulings indicates adherence to the Message. There are many Ayah in the Quran which state that the Quran is a source of ruling, guidance and knowledge.

We have sent down to you the book in truth, that you may rule between men, as guided by Allah, so be not (used) as an advocate by those who betray their trust.' [An-Nisa: 105]

## **Sunnah**

Sunnah is a legislative source along with the Quran, and the Quran cannot be understood without the application of Sunnah.

## **Ijma**

Ijma is the verbal noun of the Arabic word Ajmaa, which has two meanings:

- 1) to determine
- 2) to agree upon something.

There are many types of Ijma discussed in the books of Usul al Fiqh. Some of these being, Ijma al Ummah, Ijma al Mujtahideen, Ijma ahial Bayet, Ijma al Madinah and Ijma as Sahabah.

## **Qiyas**

The linguistic meaning of Qiyas is measurement. As a juristic term Qiyas is the extension of a Shariah ruling from an original case to a new case because of the equivalence of the causes underlying them (Iila).

There are specific guidelines and requirements for Qiyas explained in the books of Usul al Fiqh. One such guideline is that there should be no existing ruling from the Quran, Sunnah, and Ijma as Sahabah for the new case.

Some of the other requirements for Qiyas are that the original ruling has to be from Quran, Sunnah, and Ijma as Sahabah, not from another Qiyas. In addition, the texts of the Quran, Sunnah, and Ijma as Sahabah must contain the justification for the ruling. We cannot use our Aql (intellect) to come up with a cause (lila).

## **IJTIHAD**

Ijtihad is derived from the root word Jahada. Linguistically, it means striving or self-exertion in any activity which entails a measure of hardship. As a juristic term, Ijtihad means exhausting all of one's efforts in studying a problem thoroughly and seeking a solution for it from the sources of Shariah.

A person who performs Ijtihad is a Mujtahid (pl. mujtahideen); whereas, a person who knows the rules of Shariah in detail, but is unable to extract rules directly from their sources, is not a Mujtahid but rather a Faqih, Mufti, or a Qaadi.

The text of Quran and Sunnah which are Qatai (conclusive) in meaning provide only one understanding. Any Ijtihad on these types of text will render only one meaning. The texts related to issues such as Riba or murder are clear in their prohibition of these things.

No Mujtahid can claim that Riba or murder is allowed because the text only offers one meaning. Finally, he must have a comprehensive knowledge of the issue on which Ijtihad is being performed. To extract any ruling one has to understand the subject thoroughly. If the Mujtahid doesn't understand an issue, he is not allowed to do Ijtihad regardless of where he lives. To understand the issue, the Mujtahid can go to experts.

For instance, there might be an issue in genetic engineering. To understand the process of genetic engineering, the Mujtahid can go to an expert in this field. Therefore, these criteria are enough to qualify one to do Ijtihad, and it is incorrect to say that each issue requires the Mujtahid to reside in that environment. The Mujtahid can reside anywhere and do Ijtihad as long as he is familiar with the issue being dealt with. If the Mujtahid is not familiar with the issue, he is not allowed to do Ijtihad, even if the issue occurs in the same environment that the Mujtahid is residing in.

The penal laws of Islam are called Hudud in the Hadith and Fiqh. This word is the plural of Hadd, which means prevention, hindrance, restraint, prohibition, and hence a restrictive ordinance or statute of God, respecting things lawful and unlawful.

Punishments are divided into two classes, one of which is called Hadd and the other Ta'zir. The Hadd is a measure of punishment defined by the Qur'an and the Sunnah. In Ta'zir, the court is allowed to use its discretion in regard to the form and measure in which such punishment is to be inflicted.

Punishments by way of Hadd are of the following forms: death by stoning, amputation of a limb or limbs, flogging by one hundred or eighty strokes. They are prescribed respectively for the following offences: adultery committed by married persons, theft, highway robbery, drunkenness and slander imputing un-chastity to women.

The punishments described above are the maximum punishments for the above mentioned crimes. These can be reduced keeping in view the circumstances in which the crimes were committed, the nature of the evidence, and the motive of the criminal with which he committed the crime.



## Q2

### MAIN SCHOOLS OF ISLAMIC JURISPRUDENCE

The schools originated in different places and it had some impact on their decisions and methods.

In the early Islamic periods the Governors would appoint qadis to judge the subjects of their newly acquired territories. They had to base their decisions on the Qur'an and act according to what they knew to be the Sunnah (sayings, teachings and practices of the Prophet Muhammad), but when none of these sources were available, they had to judge themselves, whatever seemed right to them personally. This usually included considerations of what was customary in the area. Judgment based on own opinion became common practice of the early jurists, and a system of logic to support the decisions was being formed. There are different approaches to the methodology used in fiqh to derive sharia from the Islamic sources. The main methodologies are:

- The four classical Sunni schools are, in chronological order: the Hanafi school, the Maliki school, the Shafi'i school and the Hanbali school. They represent the generally accepted Sunni authority for Islamic jurisprudence.

- Other schools are the Zaidi, Jafari, Zahiri, Sufian Al'thawree, Sufian bin O'yayna, Layth bin Sa'ad, Tabari and Qurtubi.
- Jafari fiqh, or the Shi'ah fiqh

The four classical schools of Sunni Islam

The four schools (or Mahdab) of Sunni Islam are each named by students of the classical jurist who taught them. The Sunni schools (and where they are commonly found) are

- Hanafi (Turkey, Pakistan, the Balkans, Central Asia, Indian subcontinent, Afghanistan, China and Egypt)
- Maliki (North Africa, the Muslim areas of West Africa, and several of the Arab states of the Persian Gulf)
- Shafi'i (Arabia, Indonesia, Malaysia, Maldives, Egypt, Somalia, Eritrea, Ethiopia, Yemen and southern parts of India)
- Hanbali (Arabia).

These four schools share most of their rulings, but differ on the particular hadiths they accept as authentic and the weight they give to analogy or reason (qiyas) in deciding difficulties.

## **The Hanafi School**

It was the earliest founded under the jurist Imam Abu Hanifa (700-768), whose real name was Nu'man ibn Thabit, was born in the city of Kufa (modern day Iraq). The Hanafi school based its rulings largely on the results of logic deduction of its scholars.

## **The Maliki School**

It was founded under Imam Malik (713-797), whose real name was Abu Abdullah Malik bin Anas, in Madinah which reflects the origin in its decisions too. The Maliki school ruled heavily in favour of the practice of the local community of Madinah, where the immediate descendants of the Prophet Muhammad's followers lived.

## **The Shafi'i school**

It was founded under Imam Ash-Shafi'i ((767-820) who was the first one to systematise Islamic law. Originally, he studied both in Iraq and in Madinah, but disagreed with the methodology of those older schools, in favour of the Traditionists, but did not fully accept their ideas either. In his tractate, the "Risala", balancing the two trends, he laid down the sources of Law, Usul al-Fiqh and his system had become the basis of Islamic jurisprudence that was subsequently used by all the schools. He fixed the four components (in order of priority) to be:

A. The Qur'an

B. The Sunnah of the Prophet Muhammad

C. Ijma (consensus of the Umma - Muslim community)

D. Qiyas, (reasoning by analogy), but also istihsan.

### **The Hanbali school**

It was founded under Imam Ahmad Ibn Hanbal (781-856), who had followed Shafi'i school method with ever greater emphasis on the ahadith, avoiding reasoning as far as possible, but not completely denying it. The difference between the schools is primarily.

### **The school of Shi'ah Islam**

The Jaferi or Ja'fari school (Iran, Iraq, Azerbaijan, Lebanon, Bahrain, Pakistan, India and parts of Afghanistan and Saudi Arabia) is associated with Shi'ah Islam. Though the Shi'ah Imamia is also called Jafariah, this does not mean that the sole source of the Shi'ah Fiqh is Imam Jafar (700-768). It is mixed with others. The Jafariah Madhab is composed of Fiqh from other people such as Qumi, Tousi and Qulani.

Imam Jafar also made great contributions to Fiqh and Hadith. The Fiqh of Imam Jafar is considered to be one of the Fiqh from the Sunnah.

The *fatwas*, or time and space bound rulings of early jurists, are taken rather more seriously in this school, due to the more hierarchical structure of Shi'ah Islam, which is ruled by the *Imams*. But they are also more flexible, in that every jurist has considerable power to alter a decision according to his opinion. The Jafari School uses 'aql "intellect" instead of qiyas in the Sunni schools, when establishing Islamic laws.

## **STRANGE SCHOOL OF ISLAM**

Vietnam. The Chams are one of 54 state recognized ethnic groups living in Vietnam. Their current population is approximately 130,000. They speak a language which belongs to the Malayo-Polynesian language family. In the past, they had a country called, Champa, along the central coast of Vietnam, which was once prosperous through its involvement in maritime trade. While the largest concentration of the Chams in Vietnam is found in a part of the former territory of Champa, that is Ninh Thuan and Binh Thuan provinces, there is another group of Cham people living in the Mekong Delta, mostly in An Giang province near the border with Cambodia. There are differences in ethnic self-identification between these two groups of Chams living in the different localities. In general, the Chams living in the former territory of Champa equate being Cham as being descendants of Champa while the Chams of the Mekong Delta view being Cham as being Muslim.

### **CHAMPS MUSLIMS**

The earliest records of existence of Muslim communities in South Central Vietnam are around the 8th century. Two Arabic inscriptions found in the former territories of Champa indicate that a Muslim community existed in modern Southern Vietnam in the latter half of the 10th century to the 11th century. It seems that the Muslim merchant communities existed in Champa as early as the 10th century along the coast line of central Vietnam. They were merchants from the Middle East trading along the silk road of the sea to China. Significant numbers of Chams, whom were indigenous populations of Champa, converted to Islam in the latter half of the 15th century (P-Y Manguin,

1985). During the 19th century, during the French colonization (1867-1954), there were various Muslim ethnic communities from French colonies, for example, the Indian people from Pondicherry had a prominent presence in Ho Chi Minh City. There are 2 major beautiful mosques in Ho Chi Minh City built by the Indian Muslim community. In cities such as Nha Trang, Da Nang and Hai Phong along the coastal areas, the mosques built by the Indian communities during this time still can be seen. However, the first mosque in Ho Chi Minh City called Masjidir Rahim was built by a Malaysian and Indonesian Muslim community. Hence, the Muslim population in Vietnam has different origins, and the most numerous and prominent group in contemporary Vietnam being the Cham people.

According to the most recent National census, the population of the Cham in Vietnam was 132,827 in 1999. In terms of population, the Cham was ranked 13th largest of the 54 ethnic groups of Vietnam. There are 2 distinct groups of Cham people in Vietnam, when taken into consideration their place of residence, historical background and religion. The first group lives in the south central region of Vietnam, particularly Ninh Thuan and Binh Thuan provinces. These two provinces once formed a large province, called Thuan Hai, which covered a similar area to the part of the kingdom of Champa known as Panduranga. This is where the largest concentration of Cham people in Vietnam are said to be found with about 86,000 Cham living here.

The second group lives in the Mekong Delta, most of them around Chau Doc city in An Giang Province, near the border with Cambodia. About 12,000 Cham people live in this region, and almost all are Sunni Muslims. The Mekong Delta Cham also live in Ho Chi

Minh City and surrounding provinces such as Dong Nai and Tay Ninh. In addition to this, approximately 20,000 Cham live in Phu Yen and Binh Dinh provinces, north of Ninh Thuan and Binh Thuan. This particular group is called Cham Hroi, which is classified as a sub-group of the Cham ethnic group. It is believed that the Cham Hroi were members of the population of the kingdom of Champa, whom were left alone without contact with other Cham communities and developed different cultural traditions from the Cham living in Ninh Thuan and Binh Thuan<sup>4</sup> .

Chams are also found in various parts of Southeast Asia, the most numerous communities being in Cambodia, where the estimated population is somewhat between 300,000 and 700,000. After the reunification of Vietnam in 1975, a number of Cham people left Vietnam for Australia, Canada, and France, USA, and other parts of the world.

