



Basic Sources of Islamic law

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NO

ژماره

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Basic Sources

The basic sources of Islamic law are complex issues.

There are two basic or primary sources of Islamic law:

- 1- Quran.
- 2- Sunnah.

1- Quran:

The Quran is the first source of Islamic law and has the power to supersede and cancel customs and law, which contradict the verses of the Holy Quran. Nobody can make a law which clearly contradicts the injunctions of Quran.

Allah says, No one can give truths as eloquently as the Qur'an.

‘And if you (Arab pagans, Jews, and Christians) are in doubt concerning that which we have sent down (i.e. the Qur'an) to our slave (Muhammad

peace be upon him), then bring a Surah (chapter) of the like thereof and call you witnesses (supporters and helpers) besides Allah, if you are truthful.’’¹

2- SUNNAH:

This is the second source of Islamic law and has the same power to cancel laws and commands, which are not in accordance with Islam.

The importance of hadith, therefore, is by no means less than of the Quran. The only difference is that we do not have the same implacable proof that of accuracy in the case Hadith as indeed we have for the Holy Quran.

We must have to follow the Hadith because there are verses in the Quran which in struct us to accept the Hadith.

‘‘What Allah gave as booty (Fai’) to His Messenger (Muhammad peace be upon him) from the people of the townships – it is for Allah

¹ - The Noble Qur’an. Surah Al- Baqarah verse 23

, His Messenger (Muhammad peace be upon him), the kindred (of Messenger Muhammad peace be upon him), the orphans, Al-Masakin (the needy), and the wayfarer, in order that it may not become a fortune used by the rich among you And whatsoever the Messenger (Muhammad peace be upon him) gives you, take it; and whatsoever he forbids you, abstain (from it), 1 And fear Allah; verily, Allah is Severe in punishment²

SECONDARY SOURCES OF ISLAMIC LAW

The secondary sources of Islamic law are the following.

- 1- Consensus.
- 2- Analogy.
- 3- Ijtihad and Taqleed.

1- CONSENSUS

² - Ibid. Surah Al-Hashr verse 7

Consensus of “ALUMMA” on a given issue is referred to as “Ijma”. This was not necessary during the period of the Holy Prophet (peace be upon him) for he was there to attend personally to every problem that arose, and his decision was binding and final. At that time this did not arise after the death of the Holy Prophet (peace be upon him) Alumma made such decisions.

DIFFERENCE BETWEEN CONSENSUS AND PRECEDENT

We divide precedent into:

- 1- Binding precedent.
- 2- Persuasive precedent.

We also divide consensus similarly.

- 1- Binding consensus.
- 2- Persuasive consensus.

1- BINDING CONSENSUS:

The purpose of binding consensus is to determine that the Muslims codified their law after the demise of the Holy Prophet (peace be upon him)

In same ways has not preserved for posterity but has ensured that it remains practicable through the ages.

It is a universally recognized principle that the lawmaker can change a law himself or on authority higher than this. No one of a lower status can change the law. If God has given a command, He alone can change it. If a prophet (peace be upon him) has pronounced a verdict, he or another prophet can change it and indeed Allah can, but no authority lower than that of a prophet e.g. jurist, can change the law laid down by a prophet.

Thus, it is clear that this kind of Ijtihad in other word 'consensus' is bound on all people and can not be refused by anyone.

2- PERSUASIVE CONSENSUS:

The opinion of a jurist can, however, be rejected by another jurist who can offer his own opinion instead. This applies to not only individual opinion but also covers collective opinion.

OPINION OF HANAFI SCHOOL OF LAW

(1)

At least the HANAFI school of law accepts that a new consensus can cancel an old consensus. Suppose there is a consensus on a certain issue. We accept its authority but it does not mean that no one can oppose it till eternity, if some one has the courage to oppose it with due respect and reason, and if he can persuade the jurist to accept his opinion of view, a new consensus come into being. (2)

The new consensus abrogates the old one. The famous HANAFI Jurist, Abu al usr al-Bazdawi in his book Usul al-Fiqh (principles of jurisprudence), has propounded this particular issue.

Al-Bazdawi belongs to the fourth and fifth centuries of the Hijra, This work great contribution to Islamic jurisprudence. It is because his statement that we can say that consensus cannot become a source of difficulty

for us. If a consensus reached on some issue and it is found unsuitable, the possibility remains that we may change through reasoning and creates a new one canceling the old consensus.

2- ANALOGY:

Analogy is one secondary source of Islamic law and its dictionary is to guess or estimate.

In the language of law, it signifies a process of deduction by which the law a text is applied to cases, which, though not covered by the language, are governed by the reason of the text.

Analogy is also similar to precedent.

KINDS OF ANALOGY

We divide the analogy into two kinds similar to precedent.

- 1- Binding Analogy.
- 2- Persuasive Analogy.

1- BINDING ANALOGY

Illustration: explicit provisions in the Quran and Sunnah prohibit strong drink. The cause for the prohibition is the intoxicating effect. According to the example, strong drinking was the original subject, wine was the tributary or the subject for solution, and intoxicating or khamr was the cause or Illah and the result as prohibition of all things intoxicating, was the rule of Shariah established such as. So the decision is bound on all the Muslims and jurists in all things intoxicating when the effective cause is found. No one can refuse to follow it and it appears that it is a binding analogy.

2- PERSUASIVE ANALOGY:

Illustration: in the Holy Quran, there is one verse as:

وَالْمُطَلَّاقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ (مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبِعَوَلْتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ)

And divorced women shall wait (as regards, their

marriage) for three menstrual periods, and it is not lawful for them to conceal what Allah has created in their wombs, if they believe in Allah and the better right to take them back in that period, if they wish for reconciliation. And they (women) have right (over their husband as regards living expenses) similar (to those of their husbands) over them (as regards obedience and respect) to what is responsibility) over them. And Allah is All-Mighty, All-wise”³.

There is difference between HANAFI school of law and SHAFI school of law.

OPINION OF HANAFI SCHOOL OF LAW:

In this verse the meaning of the word (قُرُوءٍ) is menses.

OPINION OF SHAFI SCHOOL OF LAW:

³ -Ibid. .Surah Al-Baqarah verse 228.

In this verse the meaning of the word (****) is purity and cleanliness.

When one person accepts the opinion of one *school of law* and refuses to follow the second opinion, he will not be unbeliever because of his refusal in accordance with an opinion.

We can conclude from this discussion that this is a persuasive analogy.

SCOPES OF IJTEHAD AND TAQLEED (3)

We agree with the opinion of Shah Wail Ullah Muhaddith Dehlvi and other religious scholars that we should not launch such a new wave of ijtehad against the recognised schools of Islamic jurisprudence that may bring into existence a new school of law, this kind of new Ijtehad is most likely to create intellectual disorder and speculative disarray in the minds of the Muslims. The Muslims community, which is already splintered, is badly in need of a fresh dose of unity.

The intellectual sanity and stability of the Muslims lies in the fact that they should tag themselves to any one school of Islamic jurisprudence and practise the ijtehad formulated by its respective founder. If each Muslim in the present world follows his own whim or bent of mind, the sheer variety of opinion may lead to religious licentiousness, it is like opening Panadora's box, as it will accelerate the peace of fragmentation of a community, which is already torn by internal strife and wrangles. At present an attitude of moderation can best serve the cause of Islam and give a positive twist to the speculation of our religious scholars who are goaded by the laudable motives and incentives to modernize Islam and adjust its tenets to the fluctuating imperatives of contemporary settings, this in our opinion is called 'TAQLEED' .

It doesn't imply a blind and irrational pursuit of the principles devised by the four or famous law-making authorities because it would be equivalent to shuttering the door of discussion

and purchasing intellectual paralysis in utter defiance of the dictates of the present world which is marked by an instable curiosity to explore the mysteries of the universe and is getting increasingly closer to sources and spring of ultimate reality.

Taqleed does not apply the intellectual death of Muslim community but a sane and balanced attitude towards all research that is conducted in the name of intellectual discovery. Thus, taqleed engenders a positive attitude towards religion and discourages negative associations that may be evoked in relation to the overused and much abused word Taqleed.

In order to understand the concept, the following explanatory pointers must be kept in mind.

IJTEHAD OF IMAMS AND TAQLEED (4)

The ijtehad of the imams comprises two categories:

- 1- Fundamental Ijtehad:
- 2- Auxiliary Ijtehad:

1- FUNDAMENTAL IJTEHAD:

It is the type of Ijtehad, which shaped the basic structure of investigation and research of Islamic Fiqh.

2- AUXILIARY IJTEHAD:

It relates to the detailed application and implementation of the laws devised through the fundamental Ijtehad, it is more practical than theoretical and is more concerned with the consequences of an act rather than with principles those govern evolution of an act.

AUTHORITY OF IJTEHAD AND TAQLEED

When one jurist derives one decision for the problem and fulfils all the requirements of Ijtehad, he can represent his opinion before the jurists. If they agree with him, then it may have authority.

People, who cannot distinguish the problem, will follow that decision. They also can refuse to follow it if they find a better decision than it. This decision can be revoked by the new decision. Therefore, we can divide Ijtehad only in one kind and that is persuasive Ijtehad.

PURSUASIVE IJTEHAD AND TAQLEED:

Illustration: when one follower takes one opinion and leaves the other, is not an unbeliever because of this. He is not bound to follow the one specific opinion. He is free in this matter.

After the passing of time, a new decision can come into being, he likes to follow that and leave the first one; he can do it but with some restrictions.

We agree with the opinion of Shah Wail Ullah Muhaddith Dehlvi and other religious scholars that we should not launch such a new wave of Ijtehad against the recognized schools of Islamic jurisprudence that may bring into existence a new

school of law, this kind of new Ijtihad is most likely to create intellectual disorder and speculative disarray in the minds of the Muslims. The Muslim community, which is already splintered, is badly in need of a fresh dose of unity.

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**The basic sources of Islamic
law are complex issues.**

- 1 Quran.**
- 2 Sunnah.**
- 3 Consensus.**
- 4 Analogy.**
- 5 Ijtehad and Taqleed.**

قبيله

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