

Sources of Islamic Law

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Law is a body of definite rules and regulations which have the force and authority recognized socially, and which determine the rights, obligations, limits and responsibilities of everyone living in a particular territory. All, whether high or low, have to abide by these rules and regulations and to accept the consequences of violating them

Sources of Law

Who fixes these rights, obligations and limits?

In this respect all the laws of the world are not alike. Each one of them has been set forth by a particular source. From the point of view of its sources the law can be divided into four categories:

- (1) Individualistic despotic law,
- (2) Class despotic law,
- (3) National law; and
- (4) Ideological universal law.

(1) Individualistic despotic law: This kind of law normally originates from the will and desire of a powerful individual who according to his own views and whims formulates rules and regulations and, taking advantage of his position, enforces them. It is natural that such a law should normally aim at meeting the aspirations of that powerful individual and his close aides, and not at safeguarding the interests of the masses. In some exceptional circumstances, if that powerful man or any of his aides is endowed with a spirit of service or if their own interests demand so, they may consider the interests of the people also. It is also possible that in some cases their private interests may conform to those of the common people.

(2) Class despotic law: Sometimes the law originates not from the will of an individual or a group, but from that of a class, controlling the society, such as the land-lords, the capitalists or the workers.

This kind of law also usually tends to meet the aspirations of the class in power, except in the cases where its interests conform to those of others.

(3) National law: The law which originates from the will of a nation or at least the majority of it and not from that of an individual or a class, is called the National Law. The following points may be noted in regard to it.

a) The national law of an advanced society generally seeks to meet the maximum interests of that society or its majority. It is immaterial whether it is in keeping with the general interests of humanity or not.

Historical experience shows that the societies and the nations enjoying the so-called national government have practically become the natural pivots of the world and have harnessed everything in it for their own welfare and comfort. It is very seldom that at the time of framing a law or implementing it they may take the interests and the desires of the human society as a whole into consideration.

(b) The national law having its origin in the desire of the majority, naturally represents its views. Here the question arises:

Does the opinion of the majority always conform to the real interests of the nation?

Practical experience shows that if the law is based merely on the opinion of the majority, in many cases it causes irreparable damage to the majority itself and often drags the nation to social and moral decay.

Living examples of such decay can be found among many existing societies enjoying the so-called national government, especially among those which are industrially advanced. In these societies the governments usually try to follow the opinions of those segments by the votes of which they may come to power or may continue to be in power, howsoever harmful or vulgar these opinions may be.

(c) The claim of all or most of the societies which boast of having a national government and a national law is more or less hollow and misleading. A deeper analysis will show that it is only a class or individual despotism which is being displayed under the facade of national government and national law.

(4) Ideological and universal law: It originates from an ideology which is keen to look after the interests of all the people of the world and not those of any particular nation, class, group or individual. It attaches foremost importance to the clear and definite principles whose worth has been proved and which have been acknowledged as true by the people of the territories where it is enforced. It is not subservient to the will of any majority

Law and Its Sources in Islam

The law of Islam is ideological and universal. Its underlying principles are clear and definite and have been learnt through reason and revelation.

Islam considers only those rules and laws to be binding which have been formulated:

- Direct by Allah, or
- By the Prophet of Allah, or

• By a vicegerent of Prophet, or

• By those who have come to power in accordance with the Islamic standards.

‘Believers, obey Allah and obey the Messenger and those vested with authority among you. If you have a dispute about anything, refer it to Allah and the Messenger, if you believe in Allah and the Day of Resurrection. That is good and its outcome will be better’. (Surah al Nisa, 4:59).

A law which comes from Allah, His Prophet or an infallible Imam can easily be accepted and trusted by all those who believe in its coming from those sources, for they know fully well that the law-giver has complete knowledge of all the aspects of the questions involved, has no self-interest and gives heed to the interests of all. Anyhow the rules and regulations framed by the authorities-in-charge of social affairs are enforceable only if

- They are not repugnant to the laws and standards mentioned in the Qur'an and the Sunnah,
- Full consideration, as far as practicable, has been given to all the aspects of the questions involved, and
- They have been framed with total impartiality without showing any bias towards the interests of any particular individual, group or class.

Only such rules and regulations can have the sanction of the Qur'an and the Sunnah of the Prophet and the Imams, and can enjoy the whole-hearted support of the people

Right course towards this magnificent end

A very magnificent end of the course of human life has been planned by the Creator. The human history following the will of Allah is proceeding towards this end. That is what is called by others as ‘Compulsion of history’.

As we pointed out earlier, persistent human effort still plays no small part in reaching this bright and promising end. Generally speaking, the normal course of history consists of the events of conscientious human effort in the direction of righteousness, justice, Godliness and purity of heart and soul, accompanied by the defence of human rights and the observance of the rules of mutual human behaviour.

Whenever a deviation is found it is our duty to check it and divert human action to its normal course.

As the result of his effort, man, on the one hand, receives some immediate return. His deficiencies are somewhat reduced and the manifestation of justice and righteousness in his individual and social life is increased. And on the other hand he gets closer to his ideal end.

The pre-requisites of this effort are as under:

- Correct knowledge of Islam and the right course consistent with the needs of the time;

- Faith, self-making and preparedness for collective effort;
- Making individual efforts a part of persistent collective struggle under a proper leader.

Correct knowledge of Islam, keeping in mind the needs of the time What should be done to get such a knowledge? The reply to this question is evident. One should refer direct to the Qur'an

and to the holy Prophet, who is also the political and intellectual leader of the ummah.

However if a person is unable to have direct access to these sources, what should he do? The reply to this question is also evident. He should approach those who have enough knowledge of the Qur'an and the Sunnah of the Prophet, related to his position of being the intellectual and political leader of the Muslims.

This was the course which was being followed during the life time of the holy Prophet also. So long as the number of the Muslims was small and all of them lived in his company, they had direct access to their leader. They could gain enough knowledge of the Qur'an also direct.

But as Islam expanded, many people embraced it in far flung areas. Some of them could not get an opportunity even to see the face of the leader of Islam even once. Those, whose mother tongue was not Arabic or whose dialect was totally different from that of the Qur'an, were to a great extent unable to understand it also. At this stage of the movement it was found necessary to depute some Muslims to acquaint the newly-converted with the intellectual contents of Islam and the Qur'an.

It was necessary to do so because otherwise, it was feared, the movement could be distorted with the infiltration of the reactionary ideas into it. It was at this stage that the Qur'an gave the following instruction:

"It is not proper that all the believers should go out (to war). Why should not a party from among every section of them go out so that they (who are left behind) gain a sound knowledge of religion and admonish their men when they return to them, so that they may takeheed ".

(Surah al-Tawbah, 9:122).

After the demise of the holy Prophet nobody could have direct access to the first leader of Islam. From the Shi'ah point of view now the responsibility devolved on the leaders designated by the Prophet, that is, Ali (P) and the imams succeeding him. From the point of view of our other Muslim brethren, the responsibility rests with those who have enough knowledge of the Qur'an and the Sunnah of the Prophet.

In our time, that is, during the period of the occultation of the designated imam, (For details see: The Awaited Saviour, ISP 1979), the Shi'ah also do not have direct access to the leader appointed by Allah and His Prophet. They also, therefore, in order to obtain correct knowledge of Islam should approach those who adequately understand the Qur'an, and are aware of the

Sunnah of the Prophet and the imams, and can express an opinion derived from these sources regarding the questions of the day

Ijtihad

Ijtihad means to exert oneself to deduce precise rules of Islamic law from their sources in accordance with the special rules of research. The ability to make ijtihad or deduce laws is not the monopoly of any particular class, nor is it subject to any appointment or announcement. The way is open to everybody to acquire the necessary qualification and specialize in this field. Any one who does that, will automatically get the power to exercise ijtihad and will have the right to act according to his own findings and deductions and even to announce the results of his findings for the information of others

Formulation of law concerning the ruling system

Let us see under what conditions a juristic opinion or verdict can be regarded as authentic and enforceable.

In the case of a social or a governmental question, the individual or the council responsible for deducing and formulating a law, must be officially selected for this purpose, so that its decision may have the backing of the executive and may be enforced in a legal form on the level of society.

Formulation of law on individual matters

If the verdict is meant for the personal action of the individuals, then selection of the religious authority which may issue it, may be left free. In other words people may be allowed to accept and act upon the opinion of any religious authority whom they may deem fit for the purpose

Why should we adopt the doctrine of Taqlid?

Taqlid means to accept the juristic opinion and verdict of a mujtahid (a jurist capable of arriving at an independent judgement) and to act upon it.

We know that on principle Islam advocates freedom of thought and is opposed to the submission to any un-authorised opinion, custom, convention or order of any social authority.

The basis of this opposition is two fold:

- (a) We cannot always be sure that an opinion, custom or convention is sound and is not a sort of fraud or myth?
- (b) There is a possibility that an opinion or instruction may be aiming at self-aggrandizement or at protecting personal or class interests, in which case to accept it will be tantamount to submission to exploitation and subjugation. We know that Islam is as much against

acknowledging myths, as it is against submitting to injustice.

Anyhow, it is permissible to accept the view of someone else provided:

- (a) The person initiating the view has specialized in the subject concerned and has enough knowledge to be competent to express an opinion.
- (b) His purity, and veracity are above suspicion.

There also must be valid reasons to believe that the opinion in question is sound and proper in the prevailing circumstances and is not based on selfishness or superficial thinking. If these two conditions are fulfilled it is logical that we should accept such an opinion. If a man is unable to form his own opinion, he has no option but to follow that of someone else, who is .reliable and a specialist in his field

Qualifications of a competent religious authority

(whose opinion may be accepted without knowing the authority on which it is based).

From the traditions concerning taqlid the above-men-tioned two principles can easily be deduced. According to a well-known report Imam Hasan al Askari (P) clearly brought out this point, while explaining the verse which denounces the Jewish laymen for following their vicious rabbis blindly. The verse is as under:

"There are illiterate men among them who know nothing of the Scripture except vague fancies. They only guess". (Surah al-Baqarah, 2:78).

The Imam said: "If the laymen of our ummah also find that their jurists (faqihs) are biased, are openly indulging in misdeeds, are competing with each other in securing pelf and position, are trying to eliminate their opponents and supporting their own incompetent and mean adherents; and they still follow such jurists, they will be no better than the illiterate Jews, who followed their corrupt rabbis. But the case of those jurists, who do not go astray, do not sell themselves, are particular about protecting their religion, suppress their wild passions and obey the commandments of Allah is different. They should be followed by the common people. Of course, the number of such jurists is small. All jurists cannot be such".

First of all this report talks of faqihs. This term implies specialisation in understanding religious questions and under-taking learned research. Hence a competent religious authority must be a first rate faqih and mujtahid.

Secondly, the qualities of consciousness, piety, religious-ness, obedience to Allah and suppression of wild passions mentioned in the report, are the infrastructure of all human and moral virtues and mean keeping away from all sins and deviations.

Thus we can deduce the qualifications of a competent religious authority from this report.

Now let us discuss certain other points which are worth consideration in this connection.

(1) It is now clear that those who are not themselves specialists in cannon law should consult a mujtahid and follow his opinion. But in those cases in which the mujtahids differ and do not have a unanimous view, what should the muqallids (followers of a mujtahid) do? Normally when we face an important problem in life, for example if the specialists differ about the treatment of an acute disease, we accept the view of the best specialist. By analogy the view of the mujtahid 'most noted for his religious learning' should be accepted in cases of difference of opinion between the mujtahids also.

(2) There is one more important question worth consideration. As with the expansion in human knowledge, an increase in its ramifications and more and more specialisation, the field of skill in cannon law and the deduction of rules of religion has expanded, it is now difficult for any one individual to cope with the task. Will it not be better if this task is entrusted to a council and is carried out on the basis of co-operation or division of work?

(3) There are two basic aspects of skill in cannon law. If the practical ability of a scholar covers both of them, his deductions will certainly be closer to truth and worth being implemented.

These aspects are:

(a) A thorough knowledge of the sources of law, religious tests and the principles of jurisprudence.

(b) Acquaintance with the existing world situation, modern trends and social conditions.

In short a jurist should have the full knowledge of the sources of law and should also know how and where a particular rule is to be applied.

(4) As ijtiḥād is a continuous process and a living method of understanding religious law and goes on along with the emergence of new needs, new problems and new relations, it is necessary that in Muslim society broad-minded and efficient mujtahids should always be busy with the work of ijtiḥād and inquiry. By implication, the people should receive instructions regarding their religious duties from a living authority, except in those cases where the living authority allows them to continue to follow a past mujtahid. It is far more important to follow a living authority if the question involved concerns the ruling system. Obviously the leaders who are actually at the helm of affairs of a society should be alive and existing

Formulation of new provisions

We have seen that the mujtahids have a right to deduce and discover rules of law in accordance with the principles of jurisprudence. They interpret and explain them. If they have the necessary qualifications of a competent religious authority, their juristic verdict deserves to be accepted and followed by others also.

Another point in connection with Islamic laws is that the government authorities have a right to

issue rules, regulations, orders and instructions, on the basis of firm Islamic laws in the social and administrative fields. These rules and regulations are not of a permanent nature. They are subject to the requirements of the time. Anyhow, the issuance and promulgation of these rules and regulations, once an Islamic government is established, is the prerogative of those who are at the helm of the affairs of that government.

Evidently such matters cannot be left to individual discretion, for that will lead to chaos and disappearance of central authority

Sources of Cannon Law

For the purpose of juristic deduction a Muslim jurist uses various sources of law. The most well-known of them are the Qur'an, the Sunnah consensus of opinion and reason. We propose to explain them below:

Islam being a Divine religion, revelation is the basis of its legal system. Hence every rule must have Divine sanction.

The rules of law and other items of knowledge were revealed by Allah to the holy Prophet, who conveyed them verbatim to the people. The collection of these revelations was named the Qur'an. Besides that, with the help of the Divine knowledge that he had, the Prophet put forth Islamic teachings or explained and expanded what was contained in the Qur'an. But despite that he was very particular not to say anything which did not have Divine sanction ('We speak not of his desire' - Surah al-Najm, 53:3). Of course, special Divine vigilance always guided him to the right path.

Furthermore, Allah has expressly enjoined the obedience to His Prophet. Therefore, the injunctions issued by the Prophet are as obligatory as the commandments of Allah.

The Divinely designated and installed Imams, though they did not bring any new religion, were described by the holy Prophet as the interpreters of the Divine law and Islamic rules of conduct. They received the knowledge, which they had, either from the Prophet, or it was bestowed on them as a special favour by Allah. Hence what they have said is surely authoritative.

In view of their purity and infallibility and the existence of other definite evidence, not only the actions of the Prophet and the Imams themselves are authoritative, but the actions of others also become authoritative if approved and endorsed by them and can be cited in support of a Divine rule.

Hence the sayings and deeds of the Prophet and the Imams constitute a valuable source of knowing the teachings of Islam. This source, which is called Sunnah or Sirah, is authoritative next to the Qur'an

Authoritativeness of the Qur'an

The Qur'an will always be existing in its original form. With the precautions taken by the holy Prophet and the watchfulness and co-operation of the Muslims it has remained unaltered. Hence whatever it contains was no doubt revealed by Allah to the Prophet of Islam. Its being a legitimate source of law is unquestionable.

But to draw inferences from the Qur'anic verses requires a special study of them. Everyone cannot have access to all the contents of the Qur'an. To interpret the verses and to reconcile them keeping in mind all the explanations given in the Sunnah is a matter of specialization. Anyhow, it should not be forgotten that the Qur'an is a Book of clear guidance and all those who know its language can be benefited by it directly. Others can have access to it through its translations. All can be guided by its Light. Only juristic deduction with all its dimensions and .limits, anyway, requires a specialization in understanding the Qur'an and the Sunnah

Utilization of the Sunnah

In the case of the Sunnah the problem is twofold. First we have to sift the traditions to see which of them can be accepted as genuine. Next we have to look into their true import. There is no doubt that all over history many reports have been fabricated and imputed to the holy Prophet or an Imam. There are many other, traditions the text of which has been altered in one way or the other owing to careless-ness or lack of remembrance on the part of the transmitter of the tradition.

Hence it is necessary to ascertain the genuineness of each report, which in itself requires special skill and acquaintance with the personality of the transmitters and with the chains of authority.

If a report is found genuine, then there is the question of its true significance and meaning. For this purpose all relevant reports, which are sometimes conflicting, are to be collected, and their historical background and special language are to be studied. .As such the understanding of the Sunnah also requires specialization in various fields

Consensus of opinion

Sometimes consensus of opinion (Ijma`) is considered another source of law besides the Qur'an and the Sunnah, in the sense that if the jurists agree to an opinion, we should act upon it even if we do not find anything in the Qur'an and the Sunnah to support it. The Shi'ah jurists maintain that if some authority is found on a rule of law in the Qur'an or the Sunnah, the question of the consensus of opinion does not arise. A text should always be given

preference over a consensus. But if no authority is found and still the jurists have expressed an opinion, we regard it as authoritative, presuming that the jurists must have had some authority in support of their opinion, though we could not find it. In this way the validity of a rule of law .even in such cases is actually based on some authority in the Sunnah not known to us

Reason

Reason plays a basic role in ijtiḥād. Its role in ascertaining the rules of Islamic law has such an importance that it is said that reason and Islamic law are inseparable. There is a maxim which says:

"Whatever judgement is pronounced by reason is pro-nounced by Islamic law and whatever judgement is pro-nounced by Islamic law is pronounced by reason."

While dealing with the question of the Qur'an and the Sunnah we have seen that the deduction of the rules of religious law from these sources requires specialization, and has to be carried out in accordance with certain rules and standards. At all stages of juristic deduction thought and reason are to be applied to it. In one way or the other reason has to be used while restricting the application of a law, giving preference to one report over another or extending the application of a law to other cases on the basis of the generality of its effective cause.

This is the case with regard to those questions concerning which the Qur'anic verses or traditions have come down to us. But there are matters which have not been dealt with expressly by the Qur'an and the Sunnah. We know that Islam is an all-pervasive and everlasting religion. Then what should we do with regard to these matters? In such cases the Islamic cannon law has certain principles and general rules by the application of which and keeping in mind the contents of the Qur'an and the Sunnah, the problem of the new questions can be resolved. This is one of the most difficult stages of juristic deduction.

These principles and rules have either been derived direct from the religious texts and can be utilized only under the guidance of reason, or are basically the axioms which are applied to .juristic deduction of Islamic laws

Role of reason in determining the principles of religion

We already know that Islam wants the people to think for themselves and accept what is right. It does not want them to shut their eyes and ears, nor does it want to impose on them pre-arranged decisions.

Therefore the use of reason and thinking power is one of the preliminary principles of Islamic cosmology.

We must ascertain the truth and arrive at the fundamental doctrines of Islam with the help of

reason, thinking, inference and logic.

We know that as far as the fundamentals of religion are concerned, it is not permissible to follow anyone blindly.

Our belief in them should be based on our own reasoning and faith. Of course, there is no harm if we use the material supplied by revelation in moving forward our ideas. For example, we can be benefited by what the Qur'an has said about Allah in forming our belief about Him. Similarly we can ascertain the truth of revelation by pondering over its sublimity, its excellence, and the perfection of its teachings. By doing so we can arrive at the conclusion that it is really from .Allah

Role of reason in finding out the inimitability of the Qur'an

It is a fact that the inimitability of the Qur'an is implicit in the Qur'an itself and we can discover it by giving our thought to it. The striking style of the Qur'an, its expressions and its flow on the one hand and its firmness, its comprehensiveness and its valuable teachings on the other, bear witness to the fact that it is a Divine phenomenon and not the product of human effort. Especially when we take into consideration the fact that the Prophet for the first forty years of his life had no concern with any formal or informal education, and then suddenly on being raised to Prophethood he set forth verses which were not only matchless in their style and composition but their content was also very sublime and wonderful, we can have no doubt that the Quran has been revealed by Allah.

The study of the Qur'an and the circumstances in which it was revealed makes it clear that it is .the word of Allah

Philosophy of the rules of law

All those acts which Islam has ordered us to do, have certain advantages and all those acts from which it has restrained us, have certain disadvantages. No Islamic injunctions are without any valid reason behind them.

For example, the eatable and drinkable things, legal relations, etc. have some inherent advantages or disadvantages, whether there exists any law concerning them or not. The

Divine commandments are based on those very inherent advantages and disadvantages. For instance the alcoholic drinks and narcotic substances are harmful irrespective of what the Islamic law says about them. Similarly usury is a big trap used for economic exploitation. Adoration of Allah is purifying and invigorating. If intoxicants and usury are forbidden, that is because they are harmful. If prayers have been enjoined, that is because of its beneficial effect on human beings.

Thus all rules of Islamic law are based on advantages and disadvantages, which are to a certain extent comprehensible with the help of knowledge and experience, and that is why it is not forbidden to inquire about the advantage or philosophy of any rule. We find quite a number of traditions which give the reasons and philosophy of many religious injunctions. Such traditions have been collected by several authors in their books under the heading of the Philosophy of Islamic Law known as "Ilalush Shara'ih". Even in the Qur'an we find again and again that Allah, while enunciating a rule hints at its advantage and effect. For example, prayers have been described as preventing from indecent acts and fasting as impelling to piety. Now the question is whether we can extend a rule to other similar cases, if we definitely know its effective cause, that is, the advantages or disadvantages on which it is based. We can do so only if the cause, is expressly stated in the Qur'an or the Sunnah. Otherwise if we know only partly the considerations on which a rule of law is based, or only conjecture about them, we have no right to interpret a text according to our own whim, or make our personal opinion the basis of Divine law. We are not allowed to use defective analogy in juristic reasoning or to invent an extendible cause of any rule of Islamic law. Development of Islamic law does not mean the use of personal opinion in juristic deduction, nor does the big role of reason and thought in the deduction of religious injunctions justify the introduction of personal fancy in the sphere of religious law.

Connection between Ijtihad and finality of Islam

We have ample evidence in the Qur'an and the Sunnah to show that Islam is the last revealed religion. While discussing the characteristics of the 'Age of Appearance', we observed that it would be the period of the final victory of the right and justice and complete supremacy of the social system of Islam.

Now we propose to study some of those aspects of Islam which bear out its finality.

(1) In contrast with the books of other religions the Qur'an, which is replete with knowledge and the rules of law, has remained unaltered. The depth and dimensions of this intellectual and spiritual store of Divine guidance are unparalleled.

Concerning the Qur'an the holy Prophet has said: "Outwardly it is beautiful and inwardly it is deep. Every verse of it has an inner kernel and that kernel has another kernel. Its splendour will never never fade out". Imam al Sadiq (P) was asked: "Why does the Qur'an appear to be so new and fresh though it is read and taught so much". The Imam said: "It has not been revealed for any particular time or any particular people. So it is fresh at all times and looks glorious to every people".

(2) We possess the rich sources of the Sunnah and Sirah to which we have referred earlier. They contain the history and the life account of the Prophet of Islam and the Imams. There exists no such record of the life of any prophet of the past. Especially on the life of the holy Prophet there are hundreds of books in which even the minutest details of his personal and family life have been recorded. The fact that some of these books were compiled not long after the period of the holy Prophet adds to their reliability. The existence of such a record of the life of its leader is necessary for a living and ever-lasting movement.

(3) The doctrine of Ijtihad which we have described in detail, meets all the requirements presented by new problems, and keeps the way of the intellectual and social development of Islam and its teachings open. It guards the purity and original character of the religion and at the same time keeps it fresh and moving.

(4) The introduction of reason in the sphere of religious teachings helps the progress of thought in the discovery of hitherto unknown aspects of religion.

At the same time the existence of general, legal and intellectual rules and relevant principles facilitates the work of juristic research.

All these aspects preserve Islam's position as an ever-lasting, all-pervasive and universal religion.