

The Sources of Islamic Law

1. The holy *Qur'an*

The *Qur'an* was the first source of law and its passages were accepted unanimously as being authentic. However, there were some differences of opinion in interpretation of some of its passages. The legal or practical contents of the *Qur'an* (*al-ahkam al-'amaliyyah*) constitute the basis of what is known as *Fiqh al-Qur'an*, or the *Juris corpus* of the *Qur'an*.

There are close to 350 legal *ayat* in the *Qur'an*, most of which were revealed in response to problems that were encountered. Some were revealed with the aim of repealing objectionable customs such as infanticide, usury, gambling and unlimited polygamy. Others laid down penalties with which to enforce the reforms that the *Qur'an* had introduced. Overall, the *Qur'an* confirmed and upheld the existing customs and institutions of Arab society and only introduced changes that were deemed necessary.

There are an estimated 140 *ayat* in the *Qur'an* on devotional matters such as *Salah*, *Zakah* (legal alms), *Siyam* (fasting), the Pilgrimage of *hajj*, *jihad*, charities, the taking of oaths and *kaffarat* (penances). Another seventy *ayat* are devoted to marriage, divorce, *'iddah* (the waiting period), *rij'ah* (revocation), dower, and maintenance, custody of children, paternity, inheritance and bequest. Rules concerning *mu'amalat* (commercial transactions) such as sale, lease, loan and mortgage, constitute the subject of another seventy *ayat*.

There are about thirty *ayat* on crimes and penalties such as murder, *hirabah* (highway robbery), adultery and false accusation (*qadhf*). Another thirty *ayat* speak of justice, equality, evidence, consultation, and the rights and obligations of citizens. There are about ten *ayat* relating to economic matters regulating relations between the poor and the rich, workers' rights and so on. It will be noted; however, that the *fuqaha* do not agree over these figures, as calculations of this nature tend to differ according to one understands and approach to the contents of the *Qur'an*.

2. The *Sunnah*

Ahadith of the Muhammad (peace be upon him) are next in importance after *Qur'an*. However, scholars for their acceptance and application set various conditions. The *Sunnah* is considered the second source of revelation based on Allah's statement in the *Qur'an*.

وَمَا يَنْطِقُ عَنِ الْهَوَىٰ ۗ إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ

“He does not speak from his desires. Verily it is inspiration which has been revealed.”

(53:3, 4)

Muhammad (peace be upon him) was given the job of conveying the final message of Allah to humanity.

يَا أَيُّهَا الرَّسُولُ بَلِّغْ مَا أُنزِلَ إِلَيْكَ مِنْ رَبِّكَ

“Oh messenger, convey what has been revealed to you from your Lord.”(6:67)

Sometimes Muhammad (peace be upon him) would explain the intent of the Qur’anic texts by making a statement, at other times he would do so by an act, and yet other times he would do so by both. For example, the *Qur’an* commanded the believers to establish regular *Salah* (formal prayer) without describing how *Salah* should be performed, so Muhammad (peace be upon him) prayed among his followers then told them:

“Pray as you have seen me pray.”

3. Opinion of the *Sahabah*

The opinion of the *Sahabah* either as a group or individually was considered the third most important source of law. This source was divided into two parts according to the positions taken by the *Sahabah*.

(a) If they were united on an opinion it was referred to as *Ijma*.

(b) If they had different opinions on a single issue, each opinion was referred to as a *Ra’i* (personal opinion)

4. *Qiyas*

Ijtihad based on evidence found either in the *Qur’an*, *Sunnah* or *Ijma*’ was next in order of importance. The method of reasoning used was a form of analogical deduction called *Qiyas*. An example of *Qiyas* is the prohibition of marijuana based on the Prophet’s statement: “Every intoxicant is *Khamr* and every form of *Khamr* is abominable.” Since Marijuana has an intoxicating effect it can be classified as *Khamr* and thus abominable (prohibited).

5. *Istihsan* (Legal Preference)

This principle involves the preference of an opinion based on a circumstantial need over an opinion based on *Qiyas*. This principle, referred to by various names, scholars of most schools of thought used (e.g. *Istislah*). An application of *Istihsan* is seen in the treatment of a contract for the manufacture and sale of an item. According to *Qiyas*, based on the Prophet’s statement, “Whoever sells food should not do so until he has in his own possession”, contracts of this type

are invalid, since the item is nonexistent at the time of the contract. However, since people have universally accepted such contracts and the need for such contracts is obvious, the ruling by *Qiyas* was dropped and the contracts were allowed, based on the principle of preference (*Istihsan*).

6. 'Urf (Custom)

Local customs were accepted as a source of law in a given region as long as they did not challenge any of the principles of Islamic law; for example local marriage customs concerning dowry' payment. The dowry (*Mahr*) according to Islamic law must be agreed upon as part of the marriage contract but it has no set time to be paid.

It is the custom of Egyptians as well as others that a portion of it called the *Muqaddam* must be paid before the marriage ceremony while the reminder called the *Mu'akhkhar* is only required to be paid in the case of death or divorce, according to whichever occurs first. Although this process of organization and categorization was for the most part positive development; nevertheless, when coupled with the prevailing trends toward factionalism, it served to further amplify the gaps between the *Madhhabs*.

Thus, we find slight variations in the terminology given to the same principle become sources of resistance and opposition. For example, the Maliki Madhhab considered the Hanafi principle of *Istihsan* unacceptable yet applied the same principle under the name *Masalih Mursalah*. While the Shafa'i' Madhhab rejected both these terms and applied a similar principle calling it *Istishab*.