

Sources of Muslim law

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- **Primary Sources** – Prophet Mohammad directed them. These are to be followed in their respective order of priority. They are- Quran, Sunnat & Ahadis , Ijma , Qiyas
- **Secondary Sources** – These sources explain or modify the primary sources. They deal with the needs of the Islamic society in the modern era.
They are - Urf/Custom; Judicial decisions; Legislations; Justice, equity & good conscience.

- **Primary sources**

a). Quran – It is paramount and universal authority of Muslim law. It is first source of Muslim law. It contains revelations of God to his prophet Mohammad through angel Gabriel. It wasn't codified at once rather was given to world in fragments during a period of 23 years. It was written on leaves and was later codified. It was codified during times of Abu Bakr Sunni Muslims believe that Abu Bakr was the proper successor of Prophet Mohammad) and third Khalifa Osman.

It consists of 114 chapter(suras) The suras contain 6237 verses (Ayats) and the total number of 77, 934 words

- But only 200 verses deal with legal principles and about 80 are concerned with personal law matters eg marriage, dower, divorce, inheritance. Hence, we say that it is not a complete code of Muslim personal law and secondly that's why it's not just religious book but also a book of law.
- Therefore, it is mixture of religion, law and morality: It is believed that the verses relating to law were revealed at Medina while the ones relating to religion and mortality were revealed at Mecca.
- It can be in no way altered or changed, thus, even the courts of law have no authority to change the apparent meaning of the verses as it does not have an earthly origin.

- A b). Sunnat or Hadis(Traditions) – second important in time
- Sunnat – Model behavior of Prophet. What was said,done upheld in silence by Prophet is technically called Sunnat. Where the words of Allah could not supply an authority for a given rule of law, Prophet’s words were treated as an authority because it is believed that even his sayings derived inspiration from Allah.
- According to Muslim law, there are two types of revelations i.e. manifest (Zahir) and internal (Batin). Manifest or express revelations were the very words of Allah and came to the Prophet through the angel Gabriel. Such revelations became part of the Quran. On the other hand, the internal revelations were those which were the ‘Prophet’s words’ & did not come through Gabriel, but Allah inspired the ideas in his sayings.

- Such internal revelations formed part of Sunna. Traditions, therefore, differ from Quran in the sense that Quran consists of the very words of God whereas a Sunna is in the language of Prophet
- They weren't written during time of Prophet.
- Sunnat is classified into –
 - Sunnat-ul-fail – This is behaviour/practices of Prophet .Prophet did it himself.
 - Sunnat-ul-qaul – This is sayings of Prophet. What he instructed or urged to do something by words.
 - Sunnat-ul-tuqrir – Things done in his presence without his disapproval. Here, silence of Prophet was taken as his implied authority.

- c). Ijma – It is consensus of opinion of jurists of particular era on question of law or fact where Quran, Sunnat or Ahadis was silent for resolution of a question. Then that question was resolved with a consensus of opinion of jurists.

A major chunk of the fiqh or actual Muslim law came through Ijma. It explained the Quran and traditions in terms of actual applicability as well as laid down new principles of law so as to help the society to cope up with growth and progress.

There are 3 kinds of Ijma – Ijma of companionship of Prophet.

- . - Ijma of jurists
- Ijma of the people.

Ijma of Prophet/companionship – universal, unrepealable. Based on Quran. Some branches recognise only this Ijma. According to Abdul Rahim, great weight is attached to such Ijma as the companionship were appointed with view point of Prophet and remaining close to Prophet they had almost adopted same way of reasoning as prophet.

- Ijma of jurists – Accepted as legal power. However, different contentions are in vogue in different schools. Some give preference to unanimous opinions of jurists whereas some believe in majority decision how many judges to sit etc.
- Ijma of people – With regard to legal matter – there is no value but for religion, prayers, fasting great weight is attached. Appointment of Abu Bakr as Caliph after Prophet's death is a good example.
- d). Qiyas – Last & lowest primary source. When any question or problem not solved by Quran, Sunnat Ahadis and Ijma, then problem is solved by comparative study of above 3 and problem is solved by exercise of reason, logical deductions.
- They were based on already existing principles .A similarity was established between the new problem (for which the law was required) and an identical problem given in the text. Qiyas is a process of deduction, which helps in discovering law and not to establish a new law

- Eg - : alcohol is forbidden. So if a thing has same effect as alcohol, it's is also forbidden.
- This method of analogy is called "Qiyaas"

- **Secondary sources –**
- a). Urf/Custom – Before Islam, customary law governed Arabia. Prophet also kept existing Arabian customs, as long as they did not contradict Muslim law. They are recognised as an addition to Muslim law. Muslim law includes many rules of pre-Islamic customary law. Those customs and usages not expressly repealed during Prophet's lifetime are held to have been sanctioned by law giver

- Requirements of valid custom – General prevalence in country i.e. universal and not limited number, territorial, existing time immemorial, continuous, certain, invariable, not opposed to public policy or Quran and Ijma.

Present position is that The Shariat act, 1937 has abolished most of the customs. Section 2 lists ten matters including inheritance, marriage, divorce, wakf and, maintenance wherein customs and usages cannot be applied anymore. But following are still governed by customary law i.e. agricultural land, testamentary succession in certain communities, charities other than waqf.

- b). Legislation – Though Muslim law is mainly uncodified as God is the Supreme legislator as per Islam still they are governed by various legislations passed either by Parliament or by State legislature. Eg – Waqf Act 1954, Dissolution of Muslim marriage Act 1939, Muslim Waqf Validating Act 1913, Shariat Act 1937, Muslim woman (Protection of Rights on divorce) Act 1986.
- c). Judicial decisions – In deciding particular case, judges enunciate what the law is. These decisions are regarded as precedents in future cases. They become authority for subsequent cases arising in subsequent courts. Thus, decisions of Supreme Court are binding upon subordinate courts and decisions of Privy Council are binding upon High Courts if they are not modified by Supreme Court. The Privy Council decided many a case related to Muslim law. These cases continue to have a binding force on all the High courts and the lower courts of India and a persuasive value in the Supreme Court of India

- d). Principles of equity, justice, good conscience –When no law is available on a subject matter, then judicial decisions are being taken on basis of these principles. They are based on natural justice. In Muslim law – it is called Istihasan. According to Abu Hanifa, the man has been endowed with intelligence to use his common sense to do what he thinks fit. Several portions of Muslim law have been modified so as to meet the changing conditions in India.

- Sources of Shias – Only recognises Primary sources.
- A). Quran
- b). Ahadis – Only that one authentic which came down from Prophet/his family members and are very strict in their respect. Hence, Shias have got very few Ahadis.
- C). Ijma – In absence of above two sources regarding any matter, Ijmas is preferred.
- D). Qiyas – not accepted as valid source. Shia reject qiyas as in fiqh/Islamic jurisprudence the mujtahid (clergyman practicing religious jurisprudence) must have certainty, qiyas can never lead to certainty, therefore useless.