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Introduction

MUSLIM LAW

Sources of Muslim Law The main sources of Muslim Law are :

- (a) Quran (b) Ahadis and Sunna (c) Ijmaa (d) Qiyas (e) Custom * (f) Judicial Precedents
(g) Legislation.

(a)Koran (Quran):

The sacred Koran represents the communications addressed by Allah to the Prophet, through His messenger Gabriel It deals with the institutions of public prayer, fasting, pilgrimage, prohibition of wine and also topics on marriage, divorce, inheritance, etc.

Koran is the final authority. It has 110 chapters. 6237 verses.

For Allah's commandments, the technical name is "Shariat". It means the road to the watering place. Hence, this is the path to be followed. Shariat refers to all human actions, it is the code of duties and injunctions.

There are five categories:

- (i) Fard (shall be done) e.g., daily prayers.
(ii) Haram (Prohibited): e.g., Wine.
(iii) Mandub (advised to do): e.g., additional prayers. (iv) Makruh (advised not to do): e.g., Not to eat certain kinds of fish, (v) Jaiz : left to the individuals to do.

• Further, the name for Muslim law is Fiqh. Literally it means intelligence". It deals with legal questions. It includes the rights and duties derived from the Koran, Fiqh is the science of Muslim jurisprudence.

(b)Ahadis and Sunna:

Ahadis = Traditions. Sunna - the trodden path,
the practice of the Prophet.

During his own time, when the Prophet sat as judge, his rulings contained the 'revelation' of the Koran. After, his demise, his practices and sayings became the guiding star. Sunna

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was the practice of the Prophet; and Ahadis were the traditions and precepts. These Ahadis are recorded and are authoritative sources. Bukari has recorded about 7000 such traditions.

Sunna is also a source of law, In fact, it completes and explains the Koran, in cases of conflicts. Sunna is a record of the practices of the Prophet, His decisions and sayings. Even silent answers were Sunna.

He had said "**My words are not contrary to the words of God, but the word of God can contradict mine**". The Koran and the Sunna form the basic roots of Islamic law.

(c) *ijmaa* :

It is the "consensus of opinion" among the learned in the Muslim community. It is the majority view among the scholars. New problems of law were resolved by this process. Thus it became a communal legislation by the great authorities. When there was no principle on any point a special effort was made by scholars to solve the issue in individual cases this was Ijtihad, This was based on equity, public interest and sound precedent. Each school had its own "Ijtihads".

The Shia accept only the Ijmma i.e., practices of the family of the Prophet. But Hanafi's accept the Ijtihad also. (d) **Qiyas** •

'Means "analogical deduction". Here, conclusions are drawn from analogical reasoning. Opinions of judges and scholars were called fatawas. Fatawa Alamgiri is well known.

(e) **Custom:**

There were many customs during the pre-Islamic period.

The prophet had approved a number of them. Some of them continued with his tacit consent and these became part of Ijrna. These gained legal status in course of time. However, 1937 Shariat Act was made to apply only the Shariat and not the customs.

(f) **Judicial Precedents :**

Decisions of courts have to some extent contributed to Muslim law. (g)

Legislation

: The Prophet was the supreme maker of law; hence no one can make Muslim law. In case any change is made it is considered as an invasion. In spite of this there are a number of Acts.

1. The Mussaiman Wakf Validating Act 1913.
2. The Child Marriage Restraint Act 1929.
3. The Shariat Act 1937.
4. Dissolution of Muslim Marriage Act 1939.

(h) **Other Sources:**

Elements of Roman Law, Custom in other countries. Equitable doctrines etc., are also considered as minor sources of Muslim law.

Ch. 1.2 Shariat Act of 1937

This is the most important and a far reaching enactment of 1937 containing 6 sections. It became operative from 7th October 1937. It aims at restoring the law of (Islam to all Muslim communities residing in India. *All customs contrary to the Shariat are void.* The Shariat Act is applicable to both Shia and Sunni schools. It does not define the word Muslim. It is applicable to all kinds of

property except agricultural land, testamentary succession in certain communities, and charities other than Wakfs.

It declares that all questions relating to (a) interstate succession, (b) property obtained under a contract or gift, (c) marriage, (d) dissolution of marriage, (e) maintenance, (f) dower, (g) guardianship and (h) trusts, must be solved according to Muslim personal law. **Here all customs against the Shariat Act are abrogated. The exceptions are : Agricultural land.**

The Act provides that if a person belonging to a community whose custom regarding adoption, wills and legacies prevail; makes a declaration, he will thereafter be governed in all respects by Mohammedan law. To this category belong certain communities in Punjab and Khojas in Bombay.

E.g.: A Khoja can by custom will away the whole of his property, but if he makes a declaration as above he loses his right and is governed by Mohammedan law. It further provides that the District Judge may on a petition made by a Muslim married woman, dissolve a marriage on any ground recognised by Muslim personal law i.e., Shariat. The Shariat Act repeated a Calcutta decision, *Burham Vs. Khodaya*.

But this has been abrogated by the Muslim Dissolution of Marriage Act of 1939. Hence suit can be filed before the courts lower to District Court i.e., in the Munsiffs Courts.

In conclusion, Shariat is the word of Allah. The Shariat Act has increased the importance of "Shariat", as a divine source to Muslims in all their spheres of activities.

Ch, 1.3 'Shis' and 'Sunni' Schools

Shia means "faction."

After the death of the Prophet, in 632 A.D., the question of who is to be the successor came up. People who followed AH, the son-in-law of the Prophet, considering him as the successor in

temporal and religious matter, formed the school called as "Shia". Those who believed in election to the office of the Prophet formed a separate school called the "Sunni" school. Abu Baker, father of Prophets junior wife Ashaya Begam became the first Khalif. *Differences between the Schools*

The fundamental difference is the doctrine of imamat (leadership). According to Shia the imam is by divine right. He is the descendent of the Prophet. This spiritual headship marks the vital difference between the two schools. In using the different sources of Muslim law, there is a difference.

Koran is the original source for both schools. The Sunnis refer to the traditional interpretation (tafsir): the Shias use the Koran but rely on the imam for his revelations.

Sunnis refer to the decisions of Caliphs "Ijmaa" to supplement Koran. But, the Shias reject this source, -

The development of law gave birth to many Sunni schools. Hanafi, Maliki, Shafei, Hanabali etc.

The schools under Shia are : Ithna Ashari, ismailis, Zaidis. Majority in India are Sunni Muslims. Mostly they belong to Hanafi School.