

## SOURCES OF MUSLIM LAW: A COMPREHENSIVE VIEW

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### Abstract

*A holistic and overall observation of the whole corpus of Muslim law reveals that it is not a monolithic system. The sources of Muslim law can be broadly categorized into primary and secondary. The Primary sources are constituted of the holy "Quran" and prophetic traditions i.e. "sunnah" (what has been said by the prophet, what has been done by the prophet and what has been tacitly approved by the prophet broadly termed as sunnat-ul-qawl, sunnat-ul-fieel and sunnat-ul taqdir respectively) and "hadith" i.e. the news, report and narration (which "sanad" can stretch back to prophet, which "sanad" can stretch back to companions and which "sanad" can stretch back to students of companions-Tabayins i.e. Marfu'a hadith, Mawqoof hadith and Matoo'a hadith respectively). Secondary sources comprise "ijma", "ijtihad", "qiyas" and "urf" which broadly means consensus, independent exegesis or interpretation, analogical deduction and custom respectively.*

**Keywords:** Quran, ,sunnah, hadith ,ijma, qiyas, ijtihad, urf, istislah, istihsan.

### Introduction:

The holy "**Quran**" which is regarded as the finest piece of classical Arabic literature is a book of revelation which almighty revealed to the beloved Prophet Muhammad, through angel "Gabriel/jibril". It consists of 114 (one hundred fourteen) chapters containing 6236 (six thousand two hundred thirty six) "ayats" compiled over 23 (twenty three) years starting from 609 C.E to 632 C.E.

Most of the laws in the Muslim world and jurisprudence are derived directly or indirectly from the holy "Quran" like laws relating to marriage {sura-Al-Nisa-4(22-24)}, laws relating to Islamic inheritance {(sura Al-Nisa-4(11-14))}, laws with regard to "Talaq" {(sura Al-baqarah-2(228-232))} etc.

Respect and authority commanded by holy "Quran" is so much so that it is a common perception in the whole Muslim world (irrespective of sects) that this book is inimitable (the reason why it is also called "I'jaz" i.e. something which is incapable of being imitated).

The most important and noteworthy thing in this relation is that Quranic science is a sensitive science as even contextual things are there which if not taken into account may not be understood wholly. Quranic tradition is basically and predominantly an oral tradition and was transmitted by that mode only to the next generation.

Although the dominant theme of "Quran" is monotheism and eschatology i.e. the final fate of the universe and the judgement day on which almost one third of the Quranic verse/ayats are devoted yet with regard to almost all the aspects and matters pertaining to human's life Quran has ordained divinely what the correct course of procedure ought to be.

A very obvious question which comes to our mind with regard to Muslim law and jurisprudence is that when everything can be traced back to the holy Quran then what is the need and necessity of other sources of law which are there.

The answer to this question is given in the holy Quran itself in sura Al-Araf-(7/157) wherein the almighty reveals the very purpose and objective of sending Prophet Muhammad on this earth.

It says-

"Allazeena yattabi'oonar Rasoolan Nabiyyal lazee yajidoonahoo maktooban 'indahum fit Tawraati wal Injeeli yaa muruhum bilma'roofi wa yanhaahum 'anil munkari wa yuhillu lahumul taiyibaati wa yuharrimu 'alaihikul khabaaa'isa wa yada'u 'anhum israhum wal aghlaalal latee kaanat 'alaihim; fallazeena aamanoo bihee wa 'azzarooahu wa nnasarooahu wattaba'un nooral lazee unzila ma'ahoo ulaaa'ika humul muflihoon"

Meaning thereby that the almighty shall bestow special mercy for those who follow his Rasool/prophet Muhammad (who is also mentioned in "Torah" and "Gospel"), who enjoins upon them what is proper and good,

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who forbids for them everything which is evil in nature, who makes purity as “Halaal” and impurity as “Haraam”, who relaxes them of their burdens and so those believing in him, following him and honouring him will be successful in this life and thereafter.

Almighty says in sura Al-Nisa-4/65,-

“Falaa wa Rabbika laa yu'minoona hatta yuhakkimooka fe emaa shajara bainahum summa laa yajidoo fee anfusihim harajam mimmaa qadaita wa yusal limoo tasleemaa”

-ie I swear by myself that they have no faith until they make you the decision maker with regard to any existing or newer dispute sprouting amongst them

-meaning thereby that Prophet Muhammad shall be the final decision maker and thereafter they shall not find inside themselves any discomfort with respect to whatever he has decided and they entirely submit themselves wholly and continue to submit forever.

It is in the backdrop of these important and powerful messages that emergence of “Sunnah” and “Hadith” as two other most vital sources of Muslim law takes place.

“**Sunnah**” literally means “path” which connotes “path” of prophet Muhammad (peace be upon him) and the path of guidance.

The almighty has ordained in holy Quran in Sura Al-Nisa-4/80-“He who obeys the messenger, obeys me” and has ordained in ayat-4/59-that in case of any dispute one should refer to”Allah” and his messenger.

Sunnat can be broadly categorized into various types according to its source.

Sunnat emerging from the statements and instructions given by prophet Muhammad is called-“Sunnat-e-Qawli”, those emerging from the actions of prophet Muhammad is called-“Sunnat-e-Faili” and those emerging from the tacitly approved deeds are called-“Sunnat-e-Taqriri”.

The relevance of Sunnat as a source can be very well appreciated by the fact that the almighty has ordained in holy Quran itself (in Sura Al-Nisa-24/63) that those who disobey the messenger indeed will be doomed to eternal hell and some “fitnah” or affliction shall befall them and painful torment shall be inflicted upon them.

“**Hadith**” literally means “narration” or “report” and are the written records of what the preachings of prophet Muhammad.

It can be categorized into various types, depending upon different criterias.

On the basis of tracing their origin they can be categorized as-“Hadith-e-Marfu’a” ie whose origin can be traced back to the beloved prophet Muhammad, “Hadith-e-mawqoof” ie whose origin can be traced back to the companions/”sahabas” and “hadith-e-maqtoo’a” ie whose origin can be traced back to the disciples of the companions ie tabayins.

Similarly based on the criteria of reliability the “Hadith” can be divided into-“sahih” ie arising from unbroken chains of narrators having reliably good character and memory, “Hasan” ie whose reliability is doubtful and questionable, “Daif” ie whose reliability is highly questionable, “Mawdu” ie whose narration is forged and “maqlub” ie in which names of narrators have been changed in two narrations.

The most important and noteworthy thing in this regard is that the holy Quran itself makes the preachings, practice, statements, deeds and approved actions of prophet Muhammad inseparable from it by saying- “inna kala alla khulu kin azeem”-meaning thereby that your (prophet Muhammad) character itself is the proof of Quran.

Thereby making it obligatory for the adherents of the faith to look at Quran in the light of explanations and meanings attributed to it by life of the beloved prophet Muhammad.

Next most important source is “ijma” which literally means “consensus” or “unanimity”.

The most important authority which attributes sanctity to the “ijma” is- {Al-Tirmidhi -2167)} narrated by Ibn ‘Umar, that the Messenger of Allah said: “Almighty (Allah) will never cause my “umma” to come together and agree on falsehood thereby connoting towards the fact that consensus and unanimity of majority in ummaah is recognized as very big source of muslim law and jurisprudence.

The next source of law is “**ijtihad**” which keeps the reconstructive spirit of islam alive as it allows newer interpretation into it.

It literally means logical reasoning and etymologically it means to struggle within oneself through deep thought.

During the early time period of Islamic history when religious laws were being formulated “ijtihad” was a common process practiced and followed by the well trained jurists, in situations and circumstances where the holy Quran and Sunnat failed to provide a clear cut direction.

It was in fact the duty of educated jurists to come to a ruling that would be in the best interest of the community as a whole and at the same time promote the public good.

Person who is qualified to “ijtihād” is called “Mujtahid” (“Mujtahida”-female) and the qualifications include-

- Knowledge of Quran and Sunnat
- Utmost piety
- Understanding of the case
- Ability to exercise competence

-Technical training in the religious centre “Hawza” with regard to-Arabic grammar and literature, logic, knowledge of “Quran” and “Hadith”, juristic principles, comparative jurisprudence, science of narration.

Another important source of muslim law is “ijma”.

Literally the word “ijma” means “consensus” or “unanimity”.

The basis and foundation of it as an important and relevant source of muslim law is found in “Al-Tirmidhi-4/2167-in which the almighty ordains that all his followers cannot come together in falsehood.

By laying emphasis on “ijma” attention is being drawn towards the fact that the majority of “ummah” cannot be misguided with regard to any specific matter in issue at hand.

It is the accord of all “Mujtahideen” of a period/age in which it materializes.

An important aspect in this direction is that only the “Mujtahideen” can decide on juridical matters not any layman and “ijma” can appear at whatever point the “Mujtahideen” achieve a consistent understanding.

“Qiyas” is another form of source of muslim law in which the importance is laid on “analogical deduction” and it is through this that a concrete decision is reached at even when the other sources are explicitly silent on it and no injunction exists with regard to it.

For example-Quran forbids “khamr” because of its intoxicating nature which takes one away from the righteous path of the almighty.

But when in the current circumstances a decision with regard to “cocaine” has to be made, we find no clear cut explicit direction in relation to that but still with the help of analogical deduction ie “Qiyas” it has been decided that the logic behind the banning of intoxicant in Quran is fully applicable here as well and therefore “cocaine” and the similar stuffs are also banned in Islam.

Another very important source of muslim law is “Urf” which literally translates as “custom” ie something which is known for periods and something what majority stands upon.

It can be of various types like-(1) “Al-Qawly”-which means statements which a group of people are used to (2) “Al-Amaly”-which means the practices which the group of people are used to (3) “Al-Aamm”-which means customs that are generally believed in by people whether that is statement or practice (4) “Al-Khaas”-which means those customs which are common among a group of people in society (5) “Al-Fassid”-which means the customs which contradicts the sharia texts or objectives of sharia. (6) “As-Saheeh”-which means customs which fulfill sharia requirements by not contradicting any of the sharia objectives.

The various conditions of “urf” are-

- they should represent a common and recurrent phenomena.
- be in existence at the time of transaction when it ceases.
- it should not violate the sharia text.
- it should not contravene and contradict any clear stipulation of an agreement.

What makes it a unique source of muslim law is that it requires an element of continuity (existing over a period of time) and it does not rely on the assertion of “Mujtahideen”.

The holy Quran ordains about this in Sura- Al-Haj-22/78-saying-

“Wa jaahidoo fil laahi haqqa jihaadiah; Huwaj tabaakum wa maa ja'ala 'alaikum fid deeni min haraj; Millata abeekum Ibraaheem; Huwa sammaakumul muslimineena min qablu wa fee haaza li yakoonar Rasoolu shaheedan 'alaikum wa takoonoo shuhadaaa'a 'alan naas; fa aqemus salaata wa aatuz zakaata wa'tasimoo billaahi Huwa mawlaakum fani'mal mawlaa wa ni'man naseer”-

Meaning thereby that –“urf” should be applied to avoid hardships in matters of daily life.

Apart from these sources there are some independent justice principles which are very often found to be in use in the muslim jurisprudence like-principle of “istihsan”, principle of “istislah” and principle of “darura” which means principle of juristic preference, principle of public interest and principle of necessity respectively.

**Conclusion:**

There has always been a controversy between the traditionalists and the rationalists view with regard to the sources of Muslim law.

Few scholars of Islamic law prefer to literally interpret the Quran while others prefer to attribute to its fundamental characteristics the element of eternity.

Similarly various streams of thought differ with regard to “tawsiya” and “ikhtilaf” which means the basic variance in latitude of interpretation and divergence of opinion respectively.

Few accord more importance to “ijtihad” while others completely disregard it. In spite of all the above mentioned differences there exist a broader acceptability on the main sources of Muslim law as discussed above with regard to the holy Quran, Sunnah, Hadith, Ijma, Ijtihad, Qiyas, Urf, Istihsan, Istislah, Darura and others.

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