

## Sources Of Shariah

Qur'an Sunnah, Ijma as-Sahaba and Qiyas

The basis of all actions is to be restricted by the ahkam shariah (divine rules).

The Quran says:

Follow what has been sent down to you from your Lord, and follow no masters other than Him; little do you remember. [al-Araf 7:3]

Say: Have you considered that of what God has sent down for you as sustenance, you have made some unlawful, and some lawful?

Say has God given you leave(to do this),or do you forge lies against God? [Yunus 10:59]

Whoso judges not according to what God has sent down - they are the disbelievers.... they are the wrongdoers... they are the transgressors. [al-Maidah 5:44-47]

It is not for any believing man or believing woman when God and His Messenger have decided a matter, to have any choice for themselves in their affairs. For whoever rebels against God and His Messenger has gone astray into manifest error. [al-Ahzhab 33:36]

But no!, By thy Lord, they will not become believers until they make thee judge in whatever matters arise between them, and then they find not in their hearts any impediment regarding what you have decided; but surrender in full submission. [al-Nisa' 4:65]

Whatever the Messenger gives you, take it and wherever he forbids you of, abstain from it; and fear God [al-Hashr 59:7]

### THE IDEOLOGY OF ISLAM

The ideology of Islam consists of two aspects:-

1. A set of beliefs (i.e. the creed)&
2. A system of rules regulating man's actions emanating from the creed.

The number of actions in life are many. Likewise the number of rules governing these actions are also numerous. The derivation of laws is therefore a massive subject on its own, and is beyond the scope of most individuals. It is the responsibility of the mujtahideen (those who make exertion to extract the law).

However the source of Islamic law is a topic related to the creed and not with the actions. As we say that the system emanates from the creed, there must be some link between the beliefs and actions, i.e. the criteria for actions must be based on aspects of the creed. The reference points for this criteria are only two, the Quran and Sunnah.

There have been various 'sources' of Islamic law discussed by various scholars, some of which are not based on definite (Qatai) evidences. As the question of adoption of the sources of law is related to creed, these sources must be based on Qatai (definite) texts. As stated, the sources of law are two, the Quran and Sunnah, but the derivatives of these are Ijma as-Sahaba (consensus of the companions) and Qiyas (divine analogy). Ijma as-Sahaba and Qiyas are not to be viewed as additional sources of law or even secondary sources. On face value they may seem to be slightly different in origin to Quran and Sunnah but in actuality they are the same as Quran and Sunnah and carry equal weight in terms of authenticity. This is discussed later.

### Quran

The Quran is the direct speech of Allah to Mohammad (saw) and to the believers of the Arabic language. The versatility of the law is due to the versatility Arabic by its nature as a language, and also in the miraculous sentence and verse construction found the Quran. The comprehensiveness of the Quran is expressed in the intricacies, subtleties and eloquence (balaghah) of the verses. The issue of Arabic is paramount to the issue of Islamic Law.

Alif, lam ra. These are the symbols of the perspicuous book We have sent it down as an Arabic Quran in order that ye may understand.. [Yusuf 12:1-2]

Verily it is the revelation of the Lord of the worlds. Brought down by the Faithful Spirit. Upon thy heart that thou mayest be of those who warn, in a clear Arabic tongue. [Ash-Shuaraa 26:192-195]

And so We have revealed to thee an Arabic Quran in order that thou mayest warn the mother of the towns and the people of its vicinity. [Ash-Shura 42:7]

Ha' Mim. By the clear Book. Behold We have made it an Arabic Quran, perchance ye will understand.[Az-Zukhruf 43:1-3]

An Arabic Quran with no crookedness in it perchance they will be God-fearing. [Az-Zumror 39:28]

There are many things discussed in the Quran, e.g. stories of the Prophets, explanations of the unseen. But also the Quran itself, states that it is a source of a divine legal system.

We sent aforetime our apostles with clear signs and sent down with them the Book and the Balance (of right and Wrong), that men may stand forth in Justice. [AI-Hadeed 57:25]

Allah commands justice, the doing of good, and charity to kith and kin, and He forbids all shameful deeds, and injustice and rebellion. He instructs you that ye may receive admonition. [An-Nahl 16:90]

Allah Commanded you to render back your trusts to those to whom they are due, and when you judge between man and man, that you judge with justice. [An-Nisaa 4:58]

We have sent down to thee the book in truth that you might judge between men, as guided by Allah: so be not (used) as an advocate by those who betray their trust. [An-Nisa'a 4:105]

Thus the Quran is the primary source of divine law.

Sunnah (Sirah)

The terms Sunnah and Sirah in the context of a source of law are synonymous. They mean a path or a way that was laid down by Mohammad (saw) from direct revelation to him. Sunnah is not initiated by Mohammed (saw) but is an instruction from Allah.

The Quran (which is Qatai - definite) explicitly states that as-Sunnah is a source of law.

Nor does he speak of his own desires. It is not save an inspiration sent on to him. [An-Najm 53:3-4]

Whatever the Messenger brought to you take it, and whatever he forbids you of, abstain from it. [AI-Hashr 59:7]

Verily, those who swear allegiance to thee swear allegiance really to God; the hand of God is above their hands. So whoever breaks his oath, breaks it only to his own hurt and to him who fulfils what he has pledged to God, He will grant a great reward. [A1-Fath 48:10]

But no! By thy Lord, they will not become believers until they make thee judge in their disputes and do not afterwards find any difficulty in Thy decisions, but surrender in full submission. [An-Nisaa 4:65]

It is not for any believing man or believing woman, when God and His Messenger have decided a matter, to have any choice for themselves in their affairs. [AI-Ahzab 33:36]

O you who believe, obey God and obey the Apostle and those in authority among you. If you should have a dispute over anything, refer it to God and the apostle, if you believe in God and the Last Day. That is better and fairer in the issue. [An-Nisaa 4:59]

And verily, this is my straight path, so follow it, and do not follow others, lest they take you away from His path. This He has ordered for you that you may become pious. [Al-Anam 6:153]

Sunnah can be of three categories:-

1. Actions of the Prophet (saw) for example when Mohammed (saw) said "pray as you see me offering prayers" (Bukhari ch 18) and then proceeded to perform salat.
2. Words of commandment or prohibition, e.g. the forbidding of men to wear gold, or the commandment to wash thoroughly a plate which a dog has licked.
3. An attitude or comment on a situation, e.g. on the appointment of the daughter of Kisrah as Queen of Persia, Mohammad (saw) said "People who make a woman their ruler will never succeed". Although this may seem only to be a political statement on a current affair, it is a legal induction forbidding a woman from holding a position of ruling in Islam.

There are many hadith which state that it is necessary for us to follow the Prophet as a source of law.

'Abdul-Aziz reported from Amr b. Abi Amr - the freed slave of Al-Muttalib from al-Muttalib b. Hantab that the Apostle of God said:

I have left nothing concerning which God has given you an order without giving you that order; nor have I neglected anything concerning which He has given you prohibition without giving you that prohibition. Imam Shafii's Kitab Ul- Um.

Sufyan (b. Uyayna) told us from Salim Abu an-Nadr - a freed slave of Umar b. Ubayd-Allah - who heard Ubayd-Allah b. Abi Rafi relate from his father that the Apostle had said:

Let me find no one of you reclining on his couch, and when confronted with an order of permission or prohibition from me, say, "I do not know (whether this is obligatory or not); we will follow only what we find in the Book of God." Abu Dawud vol. 4

After the death of the Prophet (saw) both Quran and hadith were referred to as a source of law to settle various problems. These were discussed, then as they may be discussed today, by scholars, in relation to novel situations; e.g. Fatimah, the daughter of the Prophet (saw) claimed that she was entitled to inheritance. It was not until Abu Bakr quoted the hadith:

We prophets do not inherit nor leave an estate for inheritance. Whatever we leave is a charity. Bukhari Ch.85, That matter was resolved. The truth of the hadith was not questioned and the issue was settled on its weighting.

Another strong example from the generation after the Prophet which clarifies the issue is the following event:

A lady came to Abdullah Ibn Masud and said:

I have learnt that you preach certain things, and you say that those who tattoo and have themselves tattooed have been cursed by Allah Ta'ala, whereas I have read the Quran from cover to cover and did not find therein what you are saying.

Ibn Mas'ud said: Go and read the Quran again.

After carrying out the order of Ibn Mas'ud she presented herself again and said:

Even now I have not yet discovered in the Quran what you say.

Ibn Mas'ud replied:

What? Have, you not recited, 'Whatever the Messenger brought to you hold of it and whatever he forbids you of, abstain from it.'

When the lady replied in the affirmative, Abdullah Ibn Masud said:

That is it (what I have said).

In other words, whatever is in the Ahadith is covered by the Ayah of the Quran mentioned by Ibn Mas'ud.

Ijma As-Sahaba (Consensus of the Companions)

There are many types of ijma (consensus) mentioned in books of Islamic jurisprudence (fiqh). Ijma as-Sahaba is the only one that is acceptable as an actual basis of law. Ijma as-Sahaba is not a source of law in itself, it is rather an evidence for Sunnah. Ijma as-Sahaba is a means by which Sunnah is transmitted to us, used as an alternative to hadith and narration.

If the Sahabah after the death of the Prophet (saw) were to agree unanimously upon something without any dissent which is not justified on the basis of the text that has otherwise reached us, then this agreement is not considered incorrect. It must have been based upon some teaching of Muhammad (saw) of which they all knew, but which did not reach us directly in the form of a hadith. Therefore Ijma as-Sahaba is an evidence of Sunnah itself. The Sahaba were the community who had the best access to the original revelation. They were the best interpreters of the revelation, and they were the most mindful of holding fast to the revelation in their actions.

“But those who make a breach with the Messenger after the guidance has become clear to him and follows a way other than that becoming to men of faith; We shall leave him over to what he has chosen and We shall land him in the fire of hell - an evil refuge.” [AI-Nisaa 4:115]

Despite the fact that there were previous communities in history who limited themselves to the divine law, the Sahabah are specifically singled out from all the communities in regards to their adherence to the revelation, due to various reasons:-

Firstly, because this community of Sahaba were, as a whole, praised directly in the Quran:

The vanguard (of Islam) - the first of those who forsook (their homes) and those who gave them aid (i.e. the Muhajireen and the Ansar) and also those who follow them in good deeds, Allah is well pleased with them and they with Allah. And Allah has made ready for them gardens underneath which rivers flow and there will be their abode forever eternally, this is their supreme triumph. [At-Taubah 9:100]

Allah in this verse praises them as a community, not as individuals. Also these people were the original narrators of hadith and commentators on both Quran and Sunnah. Thus all opinions about Quran and Sunnah, are based directly or indirectly on opinions, comments and actions associated with this community. Thus, our entire religion has been conveyed to us through the vehicle of this community. Any argument against the validity of their consensus is an argument against the whole of the religion itself.

Moreover, this community (by the tawatur method) were the means by which Allah chose the Quran to be compiled and preserved. Allah promised to preserve this scripture.

Falsehood cannot come at it (i.e. al-Quran) from before it or from behind it. (It is) a revelation from the wise, the owner of praise. [Ha Mim 41:42]

We verily are its guardian. [Hijr 15:9]

These were the people who actually fulfilled this promise, by preserving the Quran in a bound book. If there is any failure or falsehood in their collective consensus, then this means there is also failure and falsehood in the Quran, as it was this scripture, the book, the ultimate source of revelations, that they agreed upon collectively. Thus those who reject Ijma as-Sahaba based on logic should also by the same measure, reject the Quran (God forbid).

It should be clear that Ijma as-Sahaba is not the actions or thoughts initiated by the Sahaba themselves, but rather it is an evidence of Sunnah just as are the hadith. Accordingly Ijma as-Sahaba is not an additional source to Quran and Sunnah.

The process of consensus may have been of two types:

1. Where they all agreed to implement a particular law.
2. Where a certain action was adopted or performed and none of the Sahaba spoke out against it.

This is different from the opinion of a Khalifah or scholar from among them which was reached by the process of ijihad.

Qiyas (Divine Analogy)

The linguistic meaning of the term Qiyas is measurement. The definition of divine analogy is to carry a certain known thing (i.e. well established from divine law) on to another (novel) thing, in giving or fixing a certain judgement, or cancelling a certain judgement based on a theme common between these two things.

This means that if a new issue arises which does not have a clear legal rule about it, it can be measured against a well established law in the Quran or Sunnah. A common factor must be sought between the novel issue and an issue in the Quran and Sunnah. An example is the issue of narcotics or psychotic drugs such as heroin. The underlying factor (illah) with heroin, is that it is an intoxicant which befogs the mind. By analogy, this can be measured (Qiyas) against khamr (wine), a word now used to signify any intoxicant. Khamr is prohibited by Quranic law, thus heroin is also prohibited.

Again, this is not a source supplementary to Quran and Sunnah. The measurement is always made against an issue well established from Quran and Sunnah. Qiyas is the main process by which a law is derived for a new issue. Imam Shafai said, "On all matters touching the life of a Muslim there is either a binding decision or indication as to the right answer. If there is a decision, it should be followed, if there is no indication as to the right answer, it should be sought by ijihad, and ijihad is qiyas, i.e. , analogy."

Rasool Allah (saw) indicated to the Muslims that Qiyas is used in establishing law for new issues.

"The Prophet sent Muadh bin Jabal to Yemen as their judge and governor. Before Muadh left the Prophet, he was asked by the latter on what basis would he judge if he was confronted with a problem. Muadh said that he would judge on the basis of the contents of the Quran. The Prophet asked him: "assuming that you do not find it in the Quran, on what basis would you judge", Mu'adh said he would judge on the basis of the Sunnah of the Prophet. The Prophet also asked him: "assuming you do not find it in both the Quran and Sunnah of the Prophets, on what basis would you judge", Muadh bin Jabal replied that he would use his own individual judgement. And the Prophet Mohammad was very happy to hear this statement".

Sayyidina Omar, the second Khalifah, asked the Prophet (saw) whether a kiss during the fast violates the fast even though no orgasm is reached. The Prophet posed the question:

Does rinsing one's mouth violate the fast?

Omar replied:

No, it is alright to do so.

So the Prophet indicated that the fast is similarly not violated by a kiss if it is not accompanied by an orgasm.

A woman came to the Prophet (saw) and said that her mother had given a pledge to fast for a certain period, but she died before she completed all the days of fasting. The daughter then

enquired whether it would be acceptable for her to fast, to make up for the days missed by her mother.

The Prophet (saw) answered the woman by making an analogy. He questioned if it was acceptable for the daughter to repay a financial debt of the mother. The woman replied in the affirmative. Rasool Allah (saw) then confirmed that likewise the debt to Allah is more important to be repaid.

A similar incident occurred when a woman asked the Prophet (saw) whether she could perform the Hajj on behalf of her aged father. The Prophet again explained its permissibility by making an analogy to discharging a financial debt on behalf of another.

Another example of Qiyas is provided in the case of a Bedouin who had sexual intercourse with his wife during the period of fasting. He went to the Prophet and confessed his sin. The Prophet told him that he should give a kaffarah (expiation). The illah (basis of this analogy) was deliberate breaking of the fast, and therefore since the sexual intercourse violates the fast, kaffarah becomes incumbent upon the defaulter.

An example of Qiyas performed after the death of the Prophet was when Ali ibn Abi-Talib said:

He who drinks gets drunk, he who gets drunk raves, he who raves accuses people falsely, and he who accuses people falsely should be given eighty lashes of cane according to the injunction of the Holy Quran. Almighty Allah has said:

Those that accuse the innocent women falsely, and they do not bring forth four witnesses, flog them eighty lashes of cane and do not accept their witnesses, they are the wrong doers.

Thus the opinion from Ali ibn Abi Talib was that the punishment be eighty lashes.

Qiyas is one of the processes by which laws are derived from the Quran. All new subjects that have arisen or will arise until the day of judgement must be assigned a legal rule from the divine revelation.

We have neglected nothing in the Book (of Our decrees), then surely, unto your Lord shall you return. [AI-An'am 6:38]

This day I have perfected for you your religion and completed my favour unto you and have chosen for you as religion al-Islam. [AI-Maida 5:3]

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