

Unit:7

Introduction to Islamic law & jurisprudence

What are Islamic Sharia Laws (Islamic Fiqh)? - Sources of Islamic Law – Islamic Jurisprudence

The root of the word '**Sharia**' is *Shara'a*; and some other names of it are *Shari'ah*, *Shir'ah* and *Tashri*. In Islam the total and unqualified submission to the will of Allah (God) is the fundamental tenet. Islamic Sharia laws and Islamic jurisprudence are therefore the expression of Allah's command for Muslim society and in application, constitutes a system of duties that are must upon a Muslim by virtue of his religious belief. Known as the Shari'ah (literally, "*the path leading to the watering place*"), the law constitutes a divinely ordained path of conduct that guides the Muslim toward a practically expression of his religious conviction in this world and the goal of divine favour in the world to come. This hub is aimed to illustrate the sources of this divinely Islamic law.

Sharia deals with many issues of day-to-day life, including politics, economics, banking, business, family, sexuality, hygiene etc.

Sources of Islamic Law

Islamic doctrine, law and thinking in general are based upon four sources or fundamental principles:

Quran:

The Quran is the fundamental source of Islamic law and teaching (literally, reading or Recitation) is the Word or Speech, of God delivered to Prophet Muhammad (S.A.W) by the angel Gabriel. Divided into 114 surahs (chapters) of unequal length, it is the fundamental source of Islamic teachings. The surahs revealed at Mecca during the earliest part of Prophet Muhammad's career are concerned with ethical and spiritual teachings and are about the Day of Judgement. While the surahs revealed at Medina at a later period in the life of Prophet are concerned with social legislation and the political and moral principles for constituting and ordering the community.

Sunnah:

The second source is Sunnah. Many verses of the [Holy Quran](#) deal with questions of law but not all the injunctions of the Shari'ah are clearly stated in it. There are many statements which needed further explanations before they could become guides for human actions. This explanations and clarification was provided by the [Holy Prophet \(PBUH\)](#) who himself participated in the formation of the Shari'ah.

When the Islamic commonwealth was founded in Madina in 622 A.D. , the Holy Prophet (*Peace be upon him*) was not only the spiritual leader but also the supreme judge of the Islamic community. A number of cases would be referred by his followers to the Prophet for his judgement. The underlying principle was that the word of Allah was in the Quran but if the Quran was silent, or needed interpretation, the Prophet as the messenger of Allah would be the authority for reaching a decision.

Ijma (“*consensus*”):

Ijma is the third source of Islamic law. Literally, ijma means agreeing upon or uniting in opinion. It is the consensus of the Islamic community on some point of law. It can operate only where the Quran and the Hadith have not clarified a certain aspect of the law as our understanding is.

Qiyas (“*individual thought based upon underlying cause*”)

Qiyas is the fourth source of Islamic law which literally means “judging or comparing with a thing”. Qiyas means essentially to use human reasoning to compare an existing situation with one for which legislation already exists. If the Quran banned wine, it means that by reasoning, it has also banned all forms of alcoholic drinks, whose effect is like wine or something that causes intoxication.

Fiqh – The Islamic Jurisprudence

The meaning of the word **fiqh** is understanding, comprehension, knowledge and jurisprudence in Islam. A jurist is called a faqih who is an expert in Islamic legal matters. A *Faqih* is to pass verdicts within the rules of the Islamic law namely Shari’ah. The most famous scholars of fiqh in the history of Muslims are the founders of the four schools of thought in Islam:

- **Imam Abu Hanifah**
- **Imam Malik**
- **Imam Ash-Shafi’i**
- **Imam Ahmad**

Everything in Islam falls within the following five categories of Fiqh:

Fardh (Must): This category is a must for the Muslim to do such as the five daily prayers. Doing the Fardh counts is a good deed, and not doing it is considered a bad deed or a sin. It is also called **Wajib** except for Imam Abu Hanifah who makes **Wajib** a separate category between Fardh and the Mubah.

Mandub (Recommended): This category is recommended for the Muslim to do such as extra prayers after Zohar and Maghrib. Doing the Mandub counts is a good deed and not doing it does not count as a bad deed or a sin.

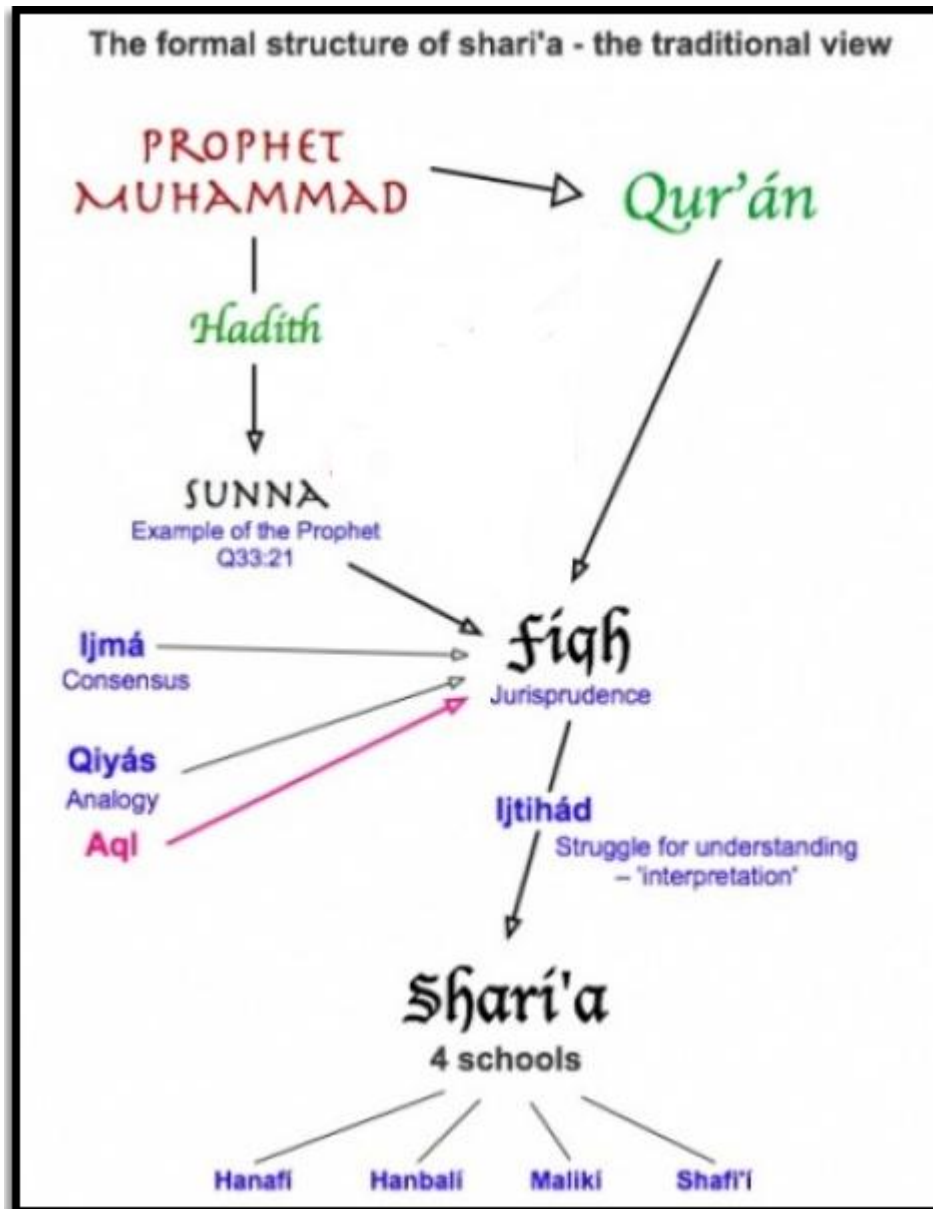
Mubah (Allowed): This category is left undecided and left for the person, such as eating apples or oranges. Doing or not doing the Mubah does not count as a good or bad deed. Intention of the person can change Mubah to Fardh, Mandub, Makruh or Haram. Other things could also change the status of the Mubah. For example, any Mubah becomes Haram if it is proven harmful and any necessary thing to fulfil a Fardh is also a Fardh.

Makruh (Hated): This category is a detested and hated such as growing fingernails or sleeping on the stomach. Not doing the Makruh counts as a good deed but doing it does not count as a bad deed.

Haram (Prohibited): This category is prohibited for the Muslim to do, such as stealing and lying. Doing the Haram counts as a bad deed and not doing it counts as a good deed.

Imam Abu Hanifah also puts another category between the Makruh and the Haram. It is called **Karahah Tahrimiyyah** which means hated almost to the level of Haram.

Formal Structure of Sharia



Four Schools of Thought

1. The Hanafī Shool of thought
2. The Mālikī Shool of thought
3. The Shāfi'ī Shool of thought
4. The Hanbalī Shool of thought

Each of these jurisprudential sects will be described:

1.The Hanafī School of thought

This Shool of thought is called the The Hanafī Shool of thought because of its imām, Abī Hanīfah.Imam Abu Hanifah was born in Kufa, Iraq in the year 80A.H. He was the son of a Persian merchant and his full name is Nu'man bin Thabit ibn Zauti (more famously known in Islamic History as 'Imam Abu Hanifah' and 'Imam A'zam').

His father – Thabit – was privileged to meet Hazrat Ali (R.A.) who had at the time, made Kufa his capital. Kufa, at the time of Imam Abu Hanifah was one the most important learning centres in the Islamic world and was blessed with the presence of over a thousand sahabah at one stage in its history.

Imam Abu Hanifah is himself also a Tabi'ee (One who saw and benefited from at least one Sahabi).

At the age of 20, Imam Abu Hanifah turned his attention towards the pursuit of advancing his Islamic knowledge.

Imam Abu Hanifah benefited from nearly 4,000 Sheikhs. Among his 1st and the most important tutors was Imam Hammad (Died 120 A.H.) whose educational lineage is linked with Hadhrat Abdullah Ibn Mas'ood (R.A.). Such was his respect for his tutor, Imam Hammad that Imam Abu Hanifah says; whilst in my home I never even stretched my legs towards the house of my tutor, despite living 7 streets away.

Imam Abu Hanifah (R.A.) had joined his father's business wherein he showed scrupulous honesty and fairness. Once his agent had sold a consignment of silk cloth on his behalf but forgot to mention a slight defect to the customers. When Imam Abu Hanifah learnt of this, he was greatly distressed because he had no means of the refunding the customers; so he immediately ordered the entire proceeds of the sale (30,000 Dirhams) to be given in charity.

Imam Abu Hanifah was also keenly interested in education. He established a school at Kufa, which later became a famous College of Theology. Here he delivered lectures on Islamic Law and related subjects.

Fiqah or Islamic Law was systematically studied by his students under his expert guidance. A large number of his devoted and highly intelligent students worked under him for 30 years, and it is the labour of these students that gave us the Hanafī School of thought.

Imam Abu Hanifah (R.A.) was the 1st of the Imams to advocate the use of “reason” in the consideration of religious questions based on the Qur'an and Sunnah. He was also the 1st Imam to arrange all the subjects of Islamic Law systematically.

His most important work is the Kitab-ul-Aasaar which was compiled by his students – Imam Abu Yusuf and Imam Muhammad. He has said: “If there is a prophetic tradition in opposition to my view, throw my view against the wall.”

In {146 A.H.} 763 A.C. Al-Mansoor – the Banu Abbas Khalifa of the Muslim Empire at Baghdad whose capital was Baghdad – offered Imam Sahib the post of Chief Justice (Qadhi ul

Qudhat)of the state, but Imam Abu Hanifah declined to accept the post and chose to remain independent. In his reply to Al-Mansoor, Imam Abu Hanifah excused himself by saying that he did not regard himself fit for the post offered. Al-Mansoor, who had his own ideas and reasons for offering the post, lost his temper and accused Imam Abu Hanifah of lying.

“If I am lying,” the Imam said, “then my statement is doubly correct. “How can you appoint a liar to the exalted post of a Chief Qazi?”

Incensed by this reply, Al-Mansoor charged the Imam with contempt, had him arrested and locked in prison. Al-Mansoor ordered him to be lashed 120 times which resulted in his death

Even in prison, Imam Abu Hanifah continued to teach those who were permitted to come to him. Some narrators say

“It was here in prison that Imam Abu Hanifah was administered a dose of poison in 150 A.H. Realizing that the end was near, the Imam prostrated in prayer and passed away in this condition in the month of Rajab, 150 A.H.

The news of his death soon spread throughout Baghdad. The whole town came out to pay their last homage to the greatest Imam of Islamic Law. More than 50,000 people participated in the first Janaza Salaat. People continued to flock and before the Janaza could be finally taken for burial, the Salaatul Janaza was offered 6 times in all. For days, people came in large numbers to pay their respects at the grave side.

2.The Mālikī Shool of thought

Mālik bin Anas was born in Medina in the 93 A.H. His famous book on Hadith is “ Moatta Imam Malik”. Imam Malik's chain of narrators was considered the most authentic and called *Silsilat ul-Zhahab* or "The Golden Chain of Narrators" by notable hadith scholars including Imam Bukhari. The 'Golden Chain' of narration (i.e., that considered by the scholars of Hadith to be the most authentic) consists of Malik, who narrated from Nafi', who narrated from ibn Umar, who narrated from Muhammad.. As a traditional he occupies a unique place in the galaxy of talented scholars like Imam Bukhari and Imam Muslim who are well-known for collecting the Traditions of the Holy Prophet (sws) of Islam. He is said to have always avoided the company of a person who was not highly learned. According of Imam Hanbal, he was the only person to have such a distinction that he never reported a Tradition from a person unless he had fully satisfied himself. He was held in such high esteem by the later scholars that once someone enquired from Imam Hanbal about a certain reporter. He replied that the reporter must be reliable because Imam Malik had reported from him. Imam Malik experienced great hardship in quest for knowledge. Like Imam Bukhari, who had once to live on herbs and roots for three days, he too, had to sell the beams of his house in order to pay his education dues. He used to say that one cannot attain the heights of intellectual glory, unless faced with poverty. Poverty is the real test of man; it awakens in him the hidden energies and enables him to surmount all difficulties. Imam Malik was known for his integrity and peity. He always lived up to his convictions. Neither fear nor favour could ever deflect him from the right path. He was among the members of the glorious society of early Islam who could not be purchased and whose undaunted courage always proved as a guiding star for the freedom fighters.

When he was aged twenty-five, the Caliphate passed into the hands of the Abbasids caliph Mansur who was his colleague. Mansur highly respected him for his deep learning. The Imam however, favoured the Fatimid Nafs Zakriya for the exalted office of the Caliph. When he

learned that the people had taken the oath of fealty of Mansur, he said that since Mansur had forced people to do so, the oath was not binding them. He quoted a Tradition of the Prophet (sww) to the effect that a divorce by force is not legal. When Jafar, a cousin of Mansur, was posted as Governor of Medina, he induced the inhabitants of the Holy city to renew their oath of allegiance to Mansur. The Governor forbade him not to publicise his Fatwa in respect of forced divorce. Highly principled and fearless as he was, he defied the Governor's orders and courageously persisted in his course. This infuriated the Governor, who ordered that the Imam be awarded 70 stripes, as punishment. Accordingly, seventy stripes were inflicted on the naked back of the Imam which began to bleed. Mounted on a camel in his bloodstained clothes, he was paraded through the streets of Medina. This brutality of the Governor failed to cow down or unnerve the noble Imam. Caliph Mansur, when apprised of the matter, punished the Governor and apologised to the Imam.

Once, Caliph Mansur sent him three thousand Dinars as his travelling expenses of Baghdad, but he returned the money and refused to leave Medina, the resting place of the Prophet (sww)

In 174 A.H Caliph Harun-ar-Rashid, arrived in Medina with his two sons Amin and Mamun. He summoned Imam Malik to his durbar for delivering a lecture on Muwatta. The Imam refused to comply with his orders. Arriving in the durbar, he told the Caliph, 'Rashid! Traditions in a learning cultivated and patronised by your ancestors, if you don't pay it due respect, no one else would.' This argument convinced the Caliph, who, along with his two sons, then chose to attend the class taken by the Imam.

He died in the 179 A.H.

3. The Shāfi'ī School of thought

This sect was named after its founder Imām Muhammad bin Idrīs al-Shāfi'ī whose lineage traced back to Hāshim, the son of 'Abd al-Muttalib, the Prophet's (s) grandfather.

Imām Shāfi'ī was born in the 150th A.H., the same year that Abī Hanīfah died. He was an orphan and his mother raised him in Yemen. When he reached 10 years of age he went to Mecca to learn reading and writing. He then lived in the desert for 17 years before becoming a religious student. He studied under the scholars of his time such as Muslim bin Khālid al-Makhzūmī and Mālik bin Anas (the founder of the Mālikī sect and the author of al-Mūattā'.) When Imām Mālik passed away he returned to Yemen.

He then migrated to Egypt and preached his sect there. His sect was also spread by his students in other parts of the Islamic world. Imām Shāfi'ī died in the 198th A.H.

4. The Hanbalī School of thought

The Hanbalī School of thought was named after its founder Ahmad bin Muhammad bin Hanbal who was an Arab. He was born in Baghdād in 164 A.H. He started his studies there at the age of 15. He studied under both Imam al-Shāfi'ī's and 'Ali Abī Yusuf al-Qādī (Abī Hanīfah's student.)

His famous book of Hadith is "Musnad e Imam Ahmad". This school of thought was spread like the other schools. This school is still practiced in the Arabian Peninsula and other parts of the Islamic world. Ahmad bin Hanbal died in Baghdād in 241 A.H.

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