

# **LAW**

**B.A.LL.B. IV-SEM**

**MUSLIM LAW**

**BY**

**Dr. JAVED AHMED QURESHI**

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# SECONDARY SOURCES OF ISLAMIC LAW

Dear Students, In last lecture we had studied about primary sources of Islamic law. Now today we will discuss on secondary sources of Islamic law.

Apart from the above primary sources, the following secondary sources also govern Muslim law to a limited extent:

The secondary sources of Islamic law are following;-

1. Urf (Custom)
2. Judicial Decisions
3. Legislation
4. Equity, Justice and Good Conscience

## Fiqh

Before the understanding the secondary sources of Islamic Law, We should understand , What is “Fiqh”?

The word fiqh is an Arabic word meaning "deep understanding" or "full understanding". Technically it refers to the body of Islamic law extracted from detailed Islamic sources (which are studied in the principles of Islamic jurisprudence) and the process of acquiring knowledge of Islam through jurisprudence.

Fiqh is often described as a human understanding of the Shariah, a human understanding of the Islamic law described in the Quran and Sunnah (teachings and practices of Islamic Prophet Muhammad and his companions). Fiqh expands and develops Sharia through the Islamic Quran (ulama) through the interpretation (ijtihad) of the Quran and Sunnah and is implemented by the rulers (fatwas) of jurists on the questions presented to them. Thus, while the Shari'a is considered irreversible and infallible by Muslims, Fiqh is considered decadent and changeable. Fiqh deals with the observance of ritual, morality and social law in Islam as well as the political system. In the modern era,

Fiqh has four major schools (madhub) within Sunni practice, plus two (or three) within Shia practice. A person trained in Fiqh is known as Fiqh (plural Fuqaha).

## **Ijtehad (Juristic Exposition)**

Literary Ijtehad means striving or searching. But in the technical language of Fiqah or Shariah, it means striving to interpret the verses of the Holy Quran and Sunnah in order them to the new conditions of Muslims life and society but within the precedents laid down by the early Mujtahids and Fuqaha especially of the four schools or Muslims of the Figah. Ijtehad is of two types, i.e. Ijtehad Mutlaq and Ijtehad

## **Urf (Customs)**

Customs are basically practices that people follow continuously for a long period of time. In fact, they follow them for so long that they obtain the status of law in some cases. Muslim law contains various customs regulating practices of people.

Urf is one of the secondary sources of Islamic law. Urf is the common practice among the Muslim community as their common habit or a'ada. The Quran on several occasions has asked the Muslims to decide the cases in accordance with the usage of their age if they are not against the Quran and Sunnah. The Ulama of the Arabs have applied this method in evolution of Islamic Law in their countries e.g. in Egypt, Syria etc.

Uruf or custom is a matter on which a community of people agrees during their daily life. Custom is also a common use to refer to specific tasks that are performed repeatedly by individuals and communities. Maliki Fiqh and Hanafi Fiqh use the practice and consider it to be a legal doctrine in respect of matters about which there is no definite action. Apparently, Maliki Fik has an even deeper respect for 'alias because the Malikis put public interest and general benefit to come up with decisions as a foundation in Fiqh studies. Malik also abandons the analogy when the custom opposes it. Malik claims that specif uruf specifies normal and disqualifies. On the other hand, Hanfis claim that makes uruf distinguishes the general, qualifies the unworthy, similar to the Malikis, also put the Hanafis, which is put forward of theology. Shafiites take custom into account when there is no text. Because people are subject to it and do it according to familiarity and habit, thus, the said custom is acted upon when nothing is contrary to a text or suggested by it.

## **Legislation**

Although Muslim law in India is uncodified, the Parliament has made some laws to regulate some Islamic practices. For example, the Muslim Personal Law (Shariat) Application Act, 1937 governs marriage, succession, and inheritance. The Dissolution of Muslim Marriages Act, 1939 is another law regulating certain divorce cases amongst Muslims.

## **Judicial decisions**

Courts in India have at several instances interpreted Muslim law in many cases. All these interpretations generally rely on primary sources, legislation and opinions of jurists. Courts have settled many important legal anomalies using judicial interpretations.

Muqayyid. In the first case the interpretation of Quran and: Sunnah is independent of the opinions or judgments of the early jurists and their precedents while in the later the scope of interpretation is within the, decisions of the opinions of the founding Fuqaha. When Ijtihad is personal opinion of the Mujtahid, it is called as Rai.

## **Equity, Justice and Good Conscience**

In most systems of law, there is something similar to the English doctrine of equity, justice and good conscience. Muslim law is no exception to this universal phenomenon. Itihasan of the Hanafi School, and Maslihul Mursala's doctrine of Malik are close to the English doctrine of equity, justice and good conscience.

Istihsan is used to override the qiyas. In the words of Abdul Rahim: "It may happen that the laws bitten by the law itself fail to appreciate the jurist, it is likely to be caused by narrowness and people's habits and worthlessness, and by hardships and inconveniences. . Even in that even. According to Hanafis, a jurist is to deny freedom to adopt a law that indicates analogy, and to accept it rather than a rule that in his opinion better advances the welfare and justice interests of men will increase. "Thus, istihsan means equity or judicial preference. Schacht states that itihasan came to indicate a violation of a strict analogy for public interest, convenience or similar consideration.

## References

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Dr. Javed Ahmed Qureshi