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Legislative Role Of Sources Of Islamic Law In Modern Islamic State: A Pakistani Perspective

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ABSTRACT:

Modern problems demand modern solutions, but within an Islamic state it is important to work for the solutions which correspond with the Islamic rules and principles. While, policy makers, interpreters and legislators, on daily basis face issues, they need to have knowledge and expertise regarding the sources of Islamic law, so that they may find solution under the light of Islamic dicta. Pakistan is an Islamic state and its constitution specifically declares that any law repugnant to injunctions of Quran and Sunnah can be declared invalid. Islamic scholars have elaborated different sources of Islamic law, which can be divided into primary, secondary and subsidiary. These sources have independently and collectively played a vital role in the development of Islamic law and principles. This short article will provide an introduction and brief overview of these sources to those who have no or very little knowledge of these and will further discuss the legislative importance of these sources when it comes to legislation and/ or interpretation of different laws in Pakistan.

Keywords: Islamic Law, legislation, Fiqh, Primary Source, Secondary Source, Islamic State

Introduction:

When we talk of Islamic law in the modern context, it becomes clear that it is interpreted differently in different jurisdictions. It is partially due to the divergent views of Islamic scholars and presence of different schools of thought including but not limited to Sunnis and Shias and partially due to customary practices of the territories where it spread over the

centuries. Islamic law is originally un-codified having its roots in primary and secondary sources. There have been efforts to legislate as per Sharia rules, in many states including Pakistan, yet the process of Islamization of laws has not been completed anywhere, as the human needs and requirements are ever changing and those need solutions which are also dynamic, hence newer interpretations of classical Islamic principles is always needed. Islam had its origin in Arabia so the main groundwork of Islamic Legal System was developed by Arab jurists. Islam denotes 'submission to the will of God', so all the laws within an Islamic state are bound to be formed under the teachings of Allah and His Prophet (pbuh). In Pakistan Article 227 of the 1973 Constitution, makes it incumbent that all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and the Sunnah of the Holy Prophet (PBUH). Moreover, Art 31 [Principles of Policy] is about Islamic way of life. Before elaborating the origin and development of Islamic law, it is necessary to understand the system developed by Muslim jurists, which is known as "Fiqh" which means, understanding or knowledge. It is used for law as a science. It is narrower and deals with legal aspects. On the other hand Shari'a is a course to watering place i.e. highway to be followed. Shari'a is the God's word while, fiqh is human attempt to interpret God's words. So, different schools primarily deal with fiqh.

Development of Islamic Law:

Imam Abu Hanifa (d 150 AH) has defined fiqh as, "a person's knowledge of his rights and duties". The term was later defined by Shafa'i jurists in a very narrow technical sense as, "it is the knowledge of the legal rules, pertaining to conduct, that have been derived from their specific evidences." So we can say that, fiqh is the knowledge or understanding of Islamic law; it is not the Law itself. Al-Ghazali states that fiqh is, "an expression for the knowledge of legal rules established specifically for human conduct". Schacht, J (1982) describes Islamic law as the example of sacred law, the phenomenon of which is different from all other forms of law. Muslim law is the result of a continuous process of development and this history of growth can be divided into following phases:-

(1) The Prophetic period also called as 'legislative period' which lasted only for a period of ten years till 632 AD. In this period legislation was made by Holy Prophet (pbuh) and He (pbuh) established a political organization called Umma.
(2) The second phase lasted for about 30 years from 632 till 661 AD. This was the age of Companions of the Prophet (pbuh). During this period Quran was compiled and Prophetic interpretations were recorded, also Caliphs (RA) made their own interpretations which are now used as source of guidance while interpreting Islamic law.
(3) During the third phase different schools were formed and even Shia and Sunnis got divided into sub-schools. The practical and systematic study of Islamic law was made during this phase

(4) In the modern period (1924 onwards) Ijtihad and Taqleed started to play vital role and the muftis, molvis, qazis and ulema have made their contributions in the development, hence this era is also known as 'age of codification and legislation' in which legislations/codes and statutes have been passed in many Muslim states and this era is still continuing.

Hammudah, A.A. (n.d.) is of the view that Islamic law is distinguished due to variety of its sources, and wide range of moral, religious and legal principles which are being covered by the Islamic law.

Role of Islamic Law in Legislation in Pakistan:

In Pakistan, there has been a wave for Islamization of laws, since inception. The Objectives Resolution 1949, talks of laws, freedoms, social justice and democracy according to Islamic teachings as well as, every Muslim to be free to lead his life as per Islamic principles. The constitution of Pakistan 1973 specifically promotes Islamic way of life (Article 31) and Federal Shariat Court can take up any matter where a question regarding any law's repugnancy as per Islamic injunctions is under examination (Article 203-D). The Parliamentarians need to have basic understanding regarding sources and principles of Islamic law while they are drafting any proposal for legislation despite the fact that there are committees in which ulema are members for the same purpose, yet the knowledge and understanding of those sitting at the helm of the affairs and whose vote plays a key role in enactments, is need of the time. The times have changed and Islamic law has also undergone changes, as it has changed from Mujtahid's law to statutory law enacted by state. Now ulemas are not the sole interpreters of Islamic law as the role of interpretation has been taken up by the judicial branch of the state and in Pakistan the Apex courts along with Federal Shariat Court have taken this responsibility. The changing times need changing and modern interpretations and the rules developed by the classical scholars and jurists through secondary and subsidiary sources of Islamic law become important and also need to be further modernized in order to cater the needs of modern state. The Islamization process has Islamized the customary practices as well as, modern aspects have been added into the classical principles such as Muslim Family Laws Ordinance, 1961 is an example of the then modern interpretation and application of Islamic principles. The rapid social, political, economical and family changes in the world have effected Pakistan too and with the conversion of world into a global village, where information travels within seconds and knowledge is available at a single click of the finger to anyone and everyone, there is a dire need for the preservation and progressive interpretation of different sources of Islamic law. Each and every source of Islamic law has played its role in the development of Islamic law and Pakistani courts as well as, parliament needs to apply these principles when it comes to legality of any question regarding Islam or Islamic way of life. It must further be remembered that Islamic law does not allow the ruler to formulate any law and any rule, rather it prescribes the limits within which the ruler or state can legislate and the thin line between the modernization and the limits prescribed by the Islam needs never be crossed. This is where the state

institutions need to work on through progressive interpretations and application of principles which can provide solutions to the modern day man. Pakistan can further get inspiration and guidance from the states which have opted modern interpretations and given broader meanings to the principles available in sources of Islamic law including but not limited to Quran, Sunnah, Ijma and Intihad. We will discuss each and every source of Islamic law as discussed by the classical jurists and then elaborate how our state can get benefit of these while formulating laws.

Sources of Islamic Law:

Nyazee (2000) is of the view that Islamic law's ahkam are discovered through evidences which are its sources, which are material as well as those constructed upon human mental process like analogy. The word dalil is used for source under Islamic law which means guide like a telephone directory leads to a number (Nyazee, p-143). The word dalil is also considered to be equal to usul-al-ahkam (roots of the ahkam) and al-masadir al shariyah li al-ahkam (legal roots of ahkam). There are many sources from which Islamic law derives its authority. These sources may be classified into (a) Primary (b) Secondary and (c) Subsidiary. Some jurists divide these into primary and secondary only and Sunni School treats Quran, Sunnah, Ijma and Qiyas as primary sources and all others as secondary. Rahim (n.d.) is of the view that the primary source of Islamic law is revelation, which is either manifest or internal. However in this paper following classification is made:-

- Quran and Sunnah (Primary sources)
- Ijma, Ijtihad and Qiyas (Secondary sources)
- Taqleed, Istihsan, Istidlal, Istislah and Fatawa (Subsidiary sources)
- Customs (Urf) as separate from all above

Nyazee (2000) while classifying and highlighting the characteristics and distinctions between primary and secondary sources states that primary sources are unanimously agreed upon, they are transmitted while secondary are mostly rational; primary are definitive while secondary are probable and laws discovered through primary sources are extended through secondary sources. Nyazee (2000) also states that first source to be approached to find ahkam is holy Quran, second is Sunnah and then comes Ijma. As per Sunni scholars after Ijma comes the analogy, they rely upon holy Quran 4:59. Dr. Nizami, M (2008) has also described precedents as an important source of Muslim law in the context of Sub-continent, where the interpretations given by judges, helped a lot in the progressive development of Islamic law. Iqbal in his famous book, the Reconstruction of Religious Thought in Islam, is of the view that religious thought in Islam has been stationary for the past more than five centuries and he emphasis on modern interpretations of classical texts in this regard. A brief overview, importance and role played by each of the above, is discussed below.

The Holy Quran:

This is the Book of God and contains the direct revelations from Almighty. As there are always two sorts of legislation i.e. formulative and interpretative; the former contains formation of new rules for the very first time and the latter introduces new rules either in the shape of modifications or newer interpretations of already existing rules. Quran is the main formulative source of Islamic law. Quran was revealed in about 23 years. This revelation was sometimes at once and sometimes gradual including manifest as well as internal. The Meccan period usually contains short suras, which are addressed to all and contain basics of Islam. The Madni period contains long suras, their address is Muslims and they formulate legal rules. Kamali (n.d.) is of the view that there are about 350 legal verses in Quran which came as a response to some problem in hand, whereas Abdur Rehman, D (1984) considers about 500 legal verses in Holy Quran. Dr. Nizami, M (2008) describes Quran as the final and ultimate source of Muslim law. Holy Quran contains following legislative modes:-

(a) Mandatory laws are given by the holy Quran either in the shape of positive ones i.e. the following of which is mandatory and in case of violation punishments are prescribed or negative ones, from which abstention is necessary and performance of which entails penal/ punitive action.
(b) Discretionary laws are also made by the Quran through which Muslims are given discretion to opt or they are free to discard as per their whims or needs, as the case may be.

Holy Quran plays following major legislative functions:-

(a) Permission is given to perform certain acts by declaring them halal/ permissible.
(b) There are certain acts which are categorically declared as haram / forbidden.
(c) Many of the Quranic orders are later on abrogated through new orders.
(d) Quran plays a repealing function too, whereby it repeals all such previous laws and customs which were repugnant to Islamic injunctions, like gambling, infanticide and usury were declared illegal.
(e) Through legislation Quran performs reformative function too by providing social reforms through raising status of women, protections to old and minors and prohibiting female infanticide.
(f) Quran also formulates different laws including but not limited to Hudood, Qisas and Diyat, law of war as well as, constitutional and administrative laws.
(g) Many family matters have also been resolved by Quran through legislation like marriage, divorce, dower, legitimacy and rules pertaining to inheritance.
(h) Further, Quran also elaborates detailed orders regarding prayers and devotions.

The rules contained in Quran are so elaborative and expressed in a way that humans can take guidance in every aspect of their lives. It can also be rightly described as ‘manual for human beings’. It contains different rules and codes. Sometimes it gives express directions and other

times gives examples through which one can derive law. There is a dire need for the state to look for modern interpretations of dicta available in Quran. The Quran is said to be the living book and the speech of Allah with the humans of all times, the state has to train the ulema and educationalists who are well versed in Quranic rulings and their application. There needs to be compulsory training of stake holders when it comes to the legislation as well as, interpretation. These stake holder include parliamentarians and judges at every level. At least what can be done is to disseminate the knowledge of those legal verses through which legal ahkam have been established and the madrassas and ulemas must be encouraged to apply those rulings in the daily life issues, so that progressive interpretations can be achieved.

The Sunnah (Traditions/ Ahadees**):**

Tradition of holy prophet (pbuh) is considered as second primary sources of Islamic law after holy Quran. It includes both Sunnah and Hadith i.e. acts and sayings of Prophet (pbuh) including practices, manner of life, all actions, tacit approvals as well as, path or way of prophet (pbuh). Sunnah's place is kept after holy Quran by the scholars, whereas these two are treated as part and parcel of each other and constitute one complete whole. Sunnah is classified into different heads (Rizvi, A 2021) i.e.

(a) <u>According to Legal Force</u>:
This classification divides Sunnah into (i) Obligatory and (b) Informative. According to which either we are bound to follow the dicta expressed in Sunnah or there is only information provided for us through which we can derive rules for our daily lives.

(b) <u>According to Number of Narrators</u>:
This classification divides Sunnah into (i) Continuous (ii) Famous and (iii) Isolated/ Solitary. This classification is based upon number of narrators connected with Sunnah. If number of narrators is many, it is continuous; if the narrator is one, it is isolated or solitary and where the number of narrators is more than one but less than required for continuous, it is famous.

(c) <u>According to Form</u>:
As per this classification, Sunnah reached us either, (i) Verbatim or (ii) Non-verbatim. Where it is quoted in the exact words of Holy Prophet (pbuh) it is verbatim and where words have been changed, but context and meaning is same, it is non-verbatim.

(d) <u>According to Mode of Narration</u>:
This classification divides Sunnah into (i) Connected and (ii) Disconnected, which is based upon connectivity in chain of narration starting from the first period till its compilation in the third period.

(e) Kinds through which Ahkam are Established:
This classification divides Sunnah as per establishment of ahkam. They include (i) Al Sunnah Al Qawliyah i.e. words of the Holy prophet (pbuh), (ii) Al Sunnah Al Failiya i.e. the acts/deeds of Holy Prophet (pbuh) and (iii) Al Sunnah Al Taqreeriah, which means the tacit approvals and/ or silence of the Holy Prophet (pbuh).

Jurists have devised many rules for the determination of authenticity of Hadith reaching us through narrators. Some of them may be stated as under:-

a) Traditions should be narrated in all the 3 periods i.e. the periods of Companions (RA), their followers and the followers of followers of the Companions.
b) Qualifications of Narrator are Muslim, of sound mind, major, adil etc.
c) Narration of jurists is preferred over one narrated by non-jurist/s.
d) Narration of well known people is preferred over unknown persons.
e) Traditions opposed to settled Islamic teachings are not accepted.

In Caliphate period it was not approved by the pious Caliphs RA to compile Sunnah, but in next period people started compiling it as Ibne Abbass RA did. Later Saha-e-Sittah came which include major compilations like (a) Sahih Bukhari; (b) Sahih Muslim; (c) Sunnan Ibne Majah; (d) Sunnan Abu Daood; (e) Jama-e-Tirmizi and (f) Al Nisai.

Sunnah plays following major legislative functions:-

- Both Quran and Sunnah constitute one complete whole. As, according to Quran, the relationship of Quran and Sunnah is that of a book and the light and a book cannot be read without light.
- Meaning of Quran is general, Sunnah makes it particular. As, Quran says, “And half of what your wives leave belongs to you if they have no children…” Here Prophet (pbuh) made it specific by saying that not all husbands can get, only those if parties have same religion (Islam) and are not murderers of their wives.
- Sunnah may add or supplement legal provisions of Quran. As Quran says that no two sisters can be brought in marriage at a time by the same husband. Sunnah adds aunts into the list.
- Sometimes Sunnah lays down general principles like, “no injury is to be caused or borne” (Nyazee, 2000).
- Sunnah also elaborates the words used in holy Quran like it does while elaborating the distinction between white and black thread in Ramzan, stating it as the light of day and darkness of night (Nyazee, p-179).

- Absolute declarations of Quran are qualified by Sunnah. As, Quran says, “Hands of thieves must be cut...” Sunnah says s/he must not be lunatic, child, stealing food under extreme hunger is not punishable and punishment should be suspended during wars.
- Sunnah makes certain exceptions to the general rules of Quran. Such as, “one can bequeath by will…” It is Sunnah which tells not to legal heirs.
- Sunnah is the commentary of Quran. As, Sunnah tells us what the actual meaning of Quran is, such as, timings of prayers etc.

It should be remembered that where Quranic injunctions are elaborated and explained by Sunnah, it becomes dependent upon Quran and only plays an explanatory legislative function, whereas, where Quran is silent having no rule mentioned therein, Sunnah becomes independent source and plays law making function as an independent source. State needs to understand that like Quran there is not a single authentic book on Ahadees. The different schools have different classical authentic books, yet Sahae Sitta in Sunni School and Al-Kafi and Tahzib al Ahkam in Shia School are mostly agreed upon among their scholars. There is a need to collect all the Ahadees pertaining to legal issues, at state level, and creation of a consensus among ulema of different sects on their application and interpretation, so that a unified manual can be achieved, which can be helpful for the legislators and judges while providing solution to the problem in hand.

Ijma (Consensus of Opinion)**:**

Literally Ijma means determination and resolution or deciding and determining a matter. Ijma technically means an agreement of the jurists among the followers of the Prophet (pbuh) in a particular age on question of law and fact, after the departure of Prophet (pbuh). Jurists provide following examples which show the authority of Ijma as a valid source of Islamic law i.e. “My followers shall never agree upon what is wrong”. (Hadith) and “It is incumbent upon you to follow the most numerous body”. Further, “Whoever separates himself (from the main body) will go to hell” and “If you yourself don’t know, then question those who do” (Quran 16:43).

A person in order to be competent to hold Ijma must have [minimum of] following qualifications:-

a) Scholar of Quran and Sunnah
b) Knowledge of Qiyas and other rules and doctrines
c) Thorough knowledge of Arabic language
d) Impartial thinking and inclination towards law making and problem solving
e) Up to date knowledge
f) Sound mind, adil and Muslim.
g) A man of sound judgment and piety should be able to go behind, wherever necessary and possible, the texts and the objectives of Shari’a.

Following are the main legislative functions played by Ijma:-

a) Enforcement of ordains of Quran and Sunnah
b) Interpretation of Shari'a according to changing conditions.
c) Solution of modern problems
d) Helps discovering and interpretation of laws
e) Makes further legislation possible by keeping laws up to date.

The decision will be binding, but according to Hanafi School it would be authoritative if no opinion should have been made by any Mujtahid before formation of Ijma and none of the jurists taking part in the Ijma should have later changed his decision. Further they are of the opinion that the Ijma must be regularly constituted, as per the procedure provided by fiqh, as well as, it must be based on Quran and Sunnah and the decision must be proved as being well known.

Following conditions are laid down by the jurists for the validity of Ijma:-

a) The persons reaching upon consensus must be Mujtahideen
b) There must be unanimous agreement
c) All jurists taking part in Ijma must be Muslim
d) Ijma cannot take place during the life time of Prophet (pbuh) i.e. death of Prophet (pbuh) is mandatory in this regard.
e) The Mujtahideen taking part in consensus must be of a single determined period.
f) It must be regarding a rule of law.
g) In order to reach on an opinion, Mujtahideen should have relied upon sanad (evidence/ authority).

It plays a vital role in ascertaining and ratifying legal rules. Rahim (n.d) quotes that an Ijma of a particular age can be reversed by subsequent Ijma of even same age as well as subsequent age except the one which was arrived by the Companions of holy Prophet (pbuh). Nyazee (2000) is of the view that in modern times it is important to examine the rules of Ijma more deeply in contemplation with modern laws in order to get proper benefit from this source. The principle behind this source or doctrine has been that the Muslims are united on some legal issue. There is need to institutionalize this practice at the state level. Muslim Family Laws Ordinance 1961 has been provided as an example of Ijma at the State level when it comes to Pakistan. More and more efforts are needed in this regard, so that the harmony and tranquility among Muslims living in Pakistan can prevail.

Ijtihad (Juristic Opinion)**:**

'Ijtihada', literally means to extract, is the word from which Ijtihad is derived. Under jurisprudence it is when a lawyer uses all the faculties of his mind in order to formulate an opinion pertaining to a question of law. A person who performs this function is called 'Mujtahid', as a unanimous view he must have the qualifications as stated above (in Ijma). Jurists divide Ijtihad into following:-

1. Ijtihad-e- Taa'm where process to be followed by the Mujtahid is completely followed
2. Ijtihad-e- Naqis where process is not followed, as described by fiqh
3. Ijtihad-e- Muqayyad where it is based on teachings of one imam only
4. Ijtihad-e-Muttaliq where it is based upon teachings of more than one imam

It should be noted that no Ijtihad is allowed if texts of Quran, Sunnah or Ijma are clear. The main goal of Mujtahid is to firstly find the intention of Almighty and then apply that for the derivation of rules of conduct, for this purpose he remains as close as possible, to the Texts through literal and implied meanings of the words used therein (Nyazee, 2000). In past Mujtahids and individual schools have played important role in legislation and development of Islamic law. In modern days, all legislative functions are held by the State so Mujhatid's opinions are not directly treated as law, unless adopted by the state legislature, however at individual level people resort to mujtahids for their personal matters. The role of Federal Shariat Court becomes important in this regard in Pakistan as the ulema sitting there have to play a vital role when the legality or illegality of a law is challenged in Islamic context. The state can also get help from OIC and can create a liaison regarding newer fatawa as well as, interpretations done through Ijtihad of modern scholars, so that the judges here can get benefit of their knowledge.

Qiyas (Analogy)**:**

Analogy is traced back from Imam Abu Hanifa (RA) and Sunni school accepts it as valid source, whereas, Shias are against this doctrine. It is technically measuring one thing in terms of another, where law is extended by comparing effective causes of two texts, one original and other newer, and applying a process to reach a decision which cannot be ascertained by simple interpretation. Rahim (n.d.) states that Zahiris, some Hanbalis and Ibne Hazm do not admit the authority of Qiyas as valid source of Islamic law except in matters pertaining to human rights ascertainable through our senses and reason. In order to show its validity many examples from Texts/ Nusoos are provided by Sunnis such as (a) Performance of Hujj by proxy and (b) Sending Hazrat Muaz bin Jabal RA to Yumun by the holy Prophet (pbuh). Extension of a legal rule to new problem coupled with, discovery of rule through comparison, are two of the major functions of analogy. Qiyas has following elements i.e.

1. ASL – analogy is drawn from this original case
2. FAR' – it is parallel or fresh case for which whole process is adopted

3. ILLAT – it is effective cause/ ratio legis behind the hukm in original case
4. HUKM – this is the law/order that applies to parallel text. Some scholars further divide it into Hukm-e Asli and Hukm-e-Far' where Hukm-e-Asli is already available and one has to find Hukm-e-Far' through Qiyas.

We can understand above mentioned elements through an example i.e. prohibition of wine, where effective cause (illat) was intoxication. Here other things causing effect of intoxication are also prohibited on the basis of Qiyas. Following conditions have been prescribed by the jurists for the validity of Qiyas:-

- The injunction in the original case must not be an exception to some rule.
- The law derived through original case should not be such which contradicts human reason.
- Law should be developed, extended and derived on legal grounds.
- The hukm in original case should not be specific for one person or some specific situation only.

Scholars further classify Qiyas into following types:-

- Qiyas-e-Jalli is where illat is clear for the person conducting Qiyas
- Qiyas-e-Khafi is where illat is not clear and hard work is needed to extract illat. It is also called Istehsan or Juristic Preference.

Imam Shafi'e treats Qiyas and Ijtihad interchangeably by saying that these are two separate terms but have same meaning. It must be remembered that deduction through analogy is to be distinguished from mere interpretation of a text (Rahim, p-113). As this doctrine is recognized by Sunnis only, there is a need to regularize this through help of madarassas and ulema when it comes to solutions as per Sunni School. It is important to understand and discuss the divergent views of different Sunni ulema on the point, in order to fully understand and get maximum benefit of this source.

Taqleed (To Follow**):**

This doctrine is recognized by Shia school. It is following the opinion of some expert in the matters pertaining to conduct. Qaladah is the word from which taqleed is derived. In Arabic qaladah is an ornament which is tied around neck of an animal to restrict its movement or it is the strap which is swung around shoulders to hold a sword. Technically Ibne Hujj defines taqleed as, "acting upon the words/opinion of another without hujjah". Hujjah is interpreted differently by jurists. Few are of the opinion that when someone follows the opinion of another where Sharia has not given permission, it is illegal; whereas, others are of the view that when

an opinion is taken on any matter from an expert/ jurist then such person should not ask for the basis of such opinion from that jurist and follow without asking any question. Taqleed is recommended for all those who do not have requisite skills or qualifications to perform Ijtihad. A Hanafi follows the opinion of Hanafi jurists and a Shafai follows Shafai scholars and even in Pakistan, lower courts are bound to follow the judgments of superior courts as enshrined in Articles 189 and 201 of Pakistan Constitution 1973 (Nyazee, 2000), where decisions of Supreme Court are declared binding upon all the courts in Pakistan and high court decisions are to be followed by subordinate courts in Pakistan respectively. Nyazee (p-332) further elaborates that as mufti or faqih is an expert in Islamic law, so a layman should not hesitate in accepting and acting upon his expert opinion. As this doctrine if only followed by Shia School, so when it comes to interpretation of Shia principles, help or guidance can be taken from Iranian or Irqi mujtahids rulings on modern issues.

Istihsan (Juristic Preference/Equity**):**

It literally means 'holding for better'. It is equitable principle of juristic preference. It is allowed by the Hanafi jurists when the text derived by the Qiyas is narrow and inadaptable and in the opinion of jurist it would create hardship, then he is at liberty to adopt a rule which in his opinion will cause welfare of people and which is nearer to the aims of justice. In short, leaving aside Qiyas in the presence of stronger evidence is commonly known as Istihsan. So, in case of two conflicting authorities, the jurist is always at liberty to give preference to one on the basis of equity. Shafi'e jurists opposed this doctrine (Rahim, p-133) and he refuted its validity and termed it as arbitrary exercise in law making (Kamali, M.H. p-15)

Maslaha Mursala and Istislah (Public Good):

As per this doctrine, one has to interpret the law in order to provide public good and considering public interest. Malikis follow this doctrine, where no clear cut rule is available and law maker formulates the law by considering public good. Introduced by Imam Malik, it relates to the matters which are in public welfare, but are not defined by the Sharia. This doctrine says that deduction of law must be based upon the public good and an injurious interpretation must be ignored. The only consideration in Istislah is general good of people. For Hanafi jurists it is too vague for making legal deductions (Rahim, p-134).

Istishab (Presumption of Continuity):

It relates to the presumption of things to continue unless proved to the contrary. Malikis and Shafais use it as a tool for law making. The example is to consider a missing person alive till the news of his death and stopping his wife from remarrying or distributing his wealth among his legal heirs.

Istidlal (Juristic Deductions**):**

It was also introduced by Maliki school and was supported by Shafi'e school. It ordinarily means inference of one thing from the other. Jurists further divide it into three kinds i.e.

(a) In the first case it means the connection existing between two propositions without illat
(b) In second case, it is based upon presumption of state of things not proved to be ceased
(c) In third case it consists of previous revealed laws and their authority

It may be stated that Istidlal covers both Istihsan and Istislah.

Fatawa (Precedents**):**

These are the opinion of judges and muftis. They are just opinions and Qazi is not bound to follow, but they have played a vital role in the development of Islamic law. There have been many collections of fatawa such as, (a) Fatawa-e-Alamgiri (b) Digest of Mohammedan Law (c) Fatawa-e-Abdul Hayya etc. These fatawas have played a vital role in the recording as well as development of Islamic law. These fatawas provide extensive information as to the opinions and interpretation of the scholars on specific issues and help the judges and decision makers to reach a just decision as per rules of Islamic law.

Customs (Urf**):**

Customs are also known as 'tamul' or 'aadat'. These form a vital part of the Islamic history and Islam did one of the following with already existing customs and usages:-

- Adopted the useful customs, which were not against the spirit of Islam
- Repealed many of those which were totally against the Islamic teachings and/or
- Amended or modified some of them in order to bring them in conformity of teachings and principles of Islam.

So, customs provided a basis for the development of Islamic law in many ways. Either laws were developed as per old customs or they were a modification of previous customs. Rahim (n.d.) is of the view that customs don't command any spiritual authority yet a practice coming through custom is legally operative, if it is not opposed to clear text. Schacht, J (1982) describes that Islamic law did not develop uniformly throughout the history; it has difference of opinions in the earlier schools due to geographical differences, where it spread in the earlier stages. Pearl, D & Menski, W (1998) are of the considered opinion that in South Asia the Islamic law did not develop on the basis of Sharia only, it incorporated to some extent different customs which were prevalent at that time.

Revealed Laws before Islam:

Rahim (n.d.) states that there is a difference of opinion on the previously revealed laws. One opinion is that the revealed laws before Islam are binding upon Muslims except those expressly abrogated, whereas others think that only those are binding which are expressly mentioned in Quran without disapproval and this is Hanafi point of view too.

Recommendations:

The sources of Islamic law have played a vital role in expanding the Islamic law. The dynamics of political, social and family life have drastically changed during the past two decades, partially due to technological advancements and partially due to flow of information, misinformation and disinformation. The Islamic law has also been affected due to these abrupt changes as it has come out of the juristic hands of ulema to the parliament. The role of Islamic scholars has changed from direct involvement to indirect one, when it comes to legislation at the state level. Pakistan needs to learn from other Islamic states like Egypt, Iran, Sudan and Bangladesh, when newer interpretations for classical principles as enshrined in these sources have been adopted to provide solutions to modern issues. The courts in Pakistan have till date played a positive role when it comes to women right of khula, child custody and inheritance, yet there are instances where courts do not go form "Judicial Ijtihad" and ask the legislature to firstly enact a law like the issue of post-divorce maintenance. It is recommended that the courts under public interest litigation or Federal Shariat Court under its power to take up matters relating to Islamic legislation must opt for modern solutions by applying newer interpretations to the classical rules. This would not mean leaving aside these sources, as the roots cannot be cut, yet tree can be trimmed and new shape can be given as per the requirements. These sources provide basics of Islamic law and set the principles for all times to come; now it is upto the modern ulema and the State to get maximum benefit from these. There has been a debate by Orientalists about whether Sharia can provide a complete legal system, as for them it only helps in personal life. Therefore it is expedient to disseminate the knowledge in this regard of these sources and the principles and doctrines formulated through these sources as majority of the Muslim states have in one shape or another Sharia based laws applicable on the private and public lives of their citizens. There is also a need to understand that many rules which are termed as Islamic are actually customary practices and these can be reformed through actual implementation of Islamic principles. The political systems usually tend to adopt and apply Sharia principles in one of the three capacities i.e. (a) by adopting dual legal system where secular laws and Sharia laws go side by side and Muslims can invoke their personal law in their personal matters like marriages, divorces, inheritance etc. (b) government under the name of Islam as the religion like Afghanistan, KSA etc. and (c) secular system like in Turkey, Azerbaijan etc. In Pakistan no law can be made which is against the injunctions of Islam yet non-Muslims are not obliged to follow Islamic principles when it comes to their family and personal life. The newer issues like Islamic banking, crypto currency, surrogacy, organ transplant, eating synthetic food etc need solutions, but those solutions which have roots in Islamic teachings and this can only be done when the state disseminates the knowledge of these

sources, the rules developed by these sources and opts modern interpretations when it comes to the application of these rules. It must be understood that the environment and time in which we are living today is totally different from the time of classical scholars and the classical scholars in their time opted for these sources and principles to provide solutions to the then newer problems, so the modern scholars need to apply the principles in their modern version without inventing something new, but by giving broader meanings to the classical jurisprudence in order to bring laws in conformity with modern requirements. The most important institutions in Pakistan in this regard are Supreme Court of Pakistan, Federal Shariat Court, Council of Islamic Ideology, Parliament and Ulema. There is a dire need at the state level to include these principles and sources in the curriculum especially legal education, judicial trainings and madarassas.

Conclusion:

Nevertheless, it can be said that Islamic law has been originated and developed as per the instructions provided by the primary sources, but other major sources have also helped a lot in the development of the structure of Islamic law. It is due to the contribution of these sources that we have been able to get a systematic theory of the Muslim Personal Law. The problems and issues being faced by the Muslims in this ever-changing world are many and unique, and need of the time, for the legislators and interpreters, is to look for the newer interpretations for the classical doctrines and rules, as enshrined in the primary and secondary sources of Islamic law. The subsidiary sources have also played an important role in the development of Islamic law although mainly within the specific fiqh, which acknowledge these individually. When it comes to role of Islamic law in the republic there have been three groups (a) traditionalists who go for autonomous muftis; (b) nationalists who go for autonomous state and (c) Islamists who go for non-autonomous state, each assigning different role to state when it comes to making law (Nelson, MJ, 235). Modern times need modern solutions, so it is pertinent to mention here that secondary as well as, subsidiary sources become important. The process of Islamization in a state needs consistent and systematic efforts towards formulating and interpreting the laws as per Islam. Hence, it is important to teach the basics and rules of these sources to the masses, especially lawyers, judges, policy makers and legislators so that positive results can be achieved in this regard. Further, different classical doctrines need to be interpreted and examined more deeply, progressively and broadly in the light of modern legal requirements, so that the amalgamation of classical and modern interpretations may produce results having solutions of modern problems with roots embedded into the classical rules.

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