ISL 231
INTRODUCTION TO *SHARĪᶜAH*

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NATIONAL OPEN UNIVERSITY OF NIGERIA

MAIN COURSE

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Introduction

ISL231: Introduction to *Sharīᶜah* is a two – credit unit compulsory course available in the Department of Religious Studies of NOUN programme. The course gives you a clear picture of meaning and scope of the *Sharīᶜah*, relation between Islam, *Sharīᶜah* and *fiqh* (sources of Islamic *Sharīᶜah*), the development of *Sharīᶜah*, i.e. the emergence of the Hanafī, Maliki, Shafiᶜi, *Hanbalī* and *Jaᶜfarī* schools of Islamic law. And Modern trends in *Sharīᶜah*, among others.

What You Will Learn in this Course

The general aim of this course is to introduce you to *Sharīᶜah*. It points out the technical terms and terminologies some of which it shares with some other legal systems while others are peculiar to it. Other issues contained in this course are; the concept and scope of *Sharīᶜah,* relation between Islam, *Sharīᶜah* and *Fiqh* (Islamic Jurisprudence), the sources of *Sharīᶜah* (the Qur'an, *Ḥadīth*, *Ijmāᶜ*, and *Qiyāṣ*). It also deals with *al-Ijtihād* (exercise of reasoning) as well as the emergency of four Schools of Islamic Thought and their various Imams, such as Imams Abū Ḥanīfah, Mālik, Ash-Shāfiᶜi and Hnbal. The course also discusses the *Sharīᶜah* in respect of Shīᶜah.

Course Aims

1

There are fifteen Units in the course and each unit has its objectives. You should read the objectives of each Unit and bear them in mind as you go through the Unit. In addition to the objectives of each Unit, the overall aims of this course include:

(i)   To introduce you to the meaning and importance of *Sharī'ah*.
(ii)   To familiarize you with the concept, scope of *Sharī'ah* as well as the relation between Islam, *Sharī'ah* and *Fiqh*.
(iii)   To acquaint you with the reforms brought by Islam on pre-Islamic Arab customs.
(iv)   To expose you to the four major sources of Law in the Islamic *Sharī'ah*.
(v)   To discover the *Ijtihād* in Islam.
(vi)   To trace the origin of Islamic Schools of thought.
(vii)   To introduce you to the four Imams of the Schools of Islamic thought.
(viii) To explain the Shī'ah and their *Sharī'ah* system.

Course Objectives

Based on the general aims of this course, some objectives of the course as a whole are set out. These are the things you should be able to do by the time you complete the course. If you are able to meet the objectives, you would have achieved the aims of the course. Therefore, on your successful completion of this course, you should be able to:

a)   explain both the lexical and technical significance of *Sharĩ'ah*

b)   relate the importance of the *Sharĩ'ah* in the life of Muslims

c)   discuss the indispensable roles that *Sharĩ'ah* plays in the practice of Islãm as a religion.

d)   Establish that *Sharĩ'ah* cannot be separated from Islam in any aspect of life.

e)   Discuss with appropriate examples, the issues involved in the comparative study of Islam, *Sharĩ'ah* and *Fiqh*.

f)   Highlight and define the sources of Islamic law.

g)   Explain the concept of *al-Ijtihād* and *Ijmā'*.

h)   Identify the four Schools of Islamic thought and account for the circumstances surrounding their emergency.

i)   Narrate the biography of each of the Imams of the Schools of thought in Islam.

j)   Highlight the contributions of Shī'ah group to the development of *Sharĩ'ah*.

Working Through This Course

You have to work through the study units in the course. There are fifteen units in all.

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Course Materials

Major components of the course are:

1.   Course Guide
2.   Study Units
3.   Textbooks
4.   Assignments File
5.   Presentation Schedule

Study Units

There are fifteen units (of three modules) in this course. They are listed below:

MODULE 1

Unit 1   Meaning and Importance of *Sharĩ'ah*

Unit 2   Concept and Scope of *Sharĩ'ah*

Unit 3   Relationship between Islãm, *Sharĩ'ah* and *Fiqh*

Unit 4   Pre-Islãmic Arab customs and reforms introduced by Islãm

MODULE 2   SOURCES OF *SHARĨ'AH*

Unit 1   The *Qur'ān* as a Source of *Sharĩ'ah.*

Unit 2   The *Sunnah* as a Source of *Sharĩ'ah.*

Unit 3   *Ijmā^c* as a Source of *Sharĩ'ah.*

Unit 4   *Qiyās* as a Source of *Sharī^{c}ah.*

Unit 5   *Al-Ijtihād* (Exercise of Reasoning).

MODULE 3

Unit 1   The Beginning of the Schools of Thought

Unit 2   Imãm Abū Ḥanīfah and His School

Unit 3   Imãm Mālik and His School

Unit 4   Imãm A`sh-Shāfi^{c}i and His School

Unit 5   Imãm Ḥambal and School

Unit 6   The *Shĩ'ah* and *Sharĩ'ah*

References and Other Resources
Every unit contains a list of references and further reading which are meant to deepen your knowledge of the course. We hereby provide a list containing some of them. Try to get as many as possible of those textbooks and materials.

Abu-Zahra, Muhammad (2008). *Usūluᶜl-Fiqh,* n.p., n.p.

Abdu-Raheem, M. A. (2009). *A Primer of Islãmic Fundamentals*, Deen Lat Publishers, Ado-Ekiti.

Cowan, J. M. (ed), (1976). *A Dictionary of Modern Written Arabic,* New York, Spoken Languages Services, Inc.

Khallāf, A. (2003/1423 A.H.). *ᶜIlm Usūli'l-Fiqh*, Cairo, *Dāru'l-Hadīth*

Penrice, J. A. (1976). *Dictionary of and Glossary of the Koran,* Great Britain, Curson Press Ltd.

Abdu‑Raheem, M.A. (1990) "The Ideal Islãmic State in Shaykh Alikinla's *Mustaqb al Ilorin al-Zāhir*", (1990) an unpublished Ph.D. thesis, University of Ibadan, Ibadan.

Hughes, T. P.*Dictionary of Islãm* (1977) New Dalhi, Cosmo Publications.

Mawdudi, A.A. (1963). "Abū Hanīfah and Abū Yūsuf' in M.M. Sharif (ed) *A History of Muslim Philosophy* (Wiesbaden, Otto Harrassowitz.

Al-Dawālibi, M. M. (1963/1383). *Al-Madhkal ilā ᶜilm Uşūl al-Fiqh*, Damascus, Matbaᶜat Jamiᶜat Dimashq.

Aghnides, N.P. (N.D.). *Mohammedan Theories,* Pakistan, The Premier Book House.

'Ali, M. M. (1973). *The Religion of Islãm,* Lahore, Ahmadiyyah Anjuman Ishaat Islãm.

Doi, A. R. I. (1984/14040). *Sharĩ'ah: the Islãmic Law*, London, Ta Ha Publishers.

Faruki, K. A. (1962). *Islãmic Jurisprudence,* Karachi, Pakistan Publishing House. Hasan, A. (1970). *The Early Development of Islãmic Jurisprudence,* Islãmabad, Islãmic Research Institute Publishers.

Khan, M.Z. (1962). *Islãm: Its Meaning to Modern Man*, London, Routledge and Kegan Paul Ltd.

Nasr, S. H. (1972). *Ideals and Realities of Islãm,* London, George Allen & Unwin Ltd. Schacht, J. (1975) *The Origins of* Muhammad*an Jurisprudence* (Oxford, Claredon Press.

Maţlūb, A. M. (2008/1429 A.H.). *Mabāhith fī ᶜUlūmi'l-Qur'ān wa'l-Hadīth*, Cairo, *Mu'assasat al-Mukhtār*

Qadri, A.A. (1986). *Islãmic Jurisprudence in the Modern World,* New Delhi, Taj Printers.

http//www.duhaine.org/LegalDictionary/s/Sharia),(Retrieved Wednesday, 22/7/09. (Wikipedia, the free encyclopedia Http. llen.wikipedia.org/wiki/sharia. (Retrieved Wednesday 22/7/09)

Hamidullah,M.A. "Jurisprudence" in Sharif, M.M. *History of Muslim Philosophy* (1966), Weisbaden, Otto Harrassowitz

Abdul, M. O. A. (1982). *The Holy Book of Islãm* , Lagos, Islãmic Publications Bureau. 'Ali, M. M. (1973). *The Religion of Islãm,* Lahore, Ahmadiyyah Anjuman Ishaat Islãm. Bell & Watt (1970). *Introduction to the Qur'ān*, Edimburgh, Edinhurgh University Press. Hussain, S. A. (1978). *The Message of the Qur'ān*, Lagos, Islãmic Publications Bureau. Sharif, M. M. (ed. 1963). *A History of Muslim Philosophy,*Wiesbaden, Otto Harrassowitz.

Assignment File
In this file, you will find all the details of the work you must submit to your tutor for marking. The marks you obtain from these assignments will count towards the final mark you obtain for this course. Further information on assignments will be found in the Assignment File itself and later in this *Course Guide* in the section on assessment.

Assignment
Your assessment will be based on tutor-marked assignments (TMAs) and a final examination which you will write at the end of the course.

Tutor - Marked Assignments (TMA)

Every unit contains at least one or two assignments. You are advised to work through all the assignments and submit them for assessment. Your tutor will assess the assignments and select four, which will constitute the 30% of your final grade. The tutor-marked assignments may be presented to you in a separate file. Just know that for every unit there are some tutor-marked assignments for you. It is important you do them and submit for assessment.

Final Examination and Grading
At the end of the course, you will write a final examination, which will constitute 70% of your final grade. In the examination, which shall last for two hours, you will be requested to answer three questions out of at least five questions.

Course Marking Scheme
This table shows how the actual course marking is broken down.

Assessment	Marks
Assignments	Four assignments, best three marks of the four count at 30% of course marks
Final Examination	70% of overall course marks
Total	100% of course marks

Presentation Schedule

The Presentation Schedule included in your course materials gives you the important dates for the completion of tutor-marked assignments and attending tutorials. Remember, you are required to submit all your assignments by the due date. You should guard against falling behind in your work.

Course Overview and Presentation Schedule

Unit	Title of Work	Weeks Activity	
Module 1: The Preliminaries			
Unit 1	Meaning and Importance of *Sharīᶜah*	Week 1	Assignment 1
Unit 2	Concept and Scope of *Sharīᶜah*	Week 2	Assignment 2
Unit 3	Relation between Islam, *Shariᶜah* and *Fiqh*	Week 3	Assignment 3
Unit 4	Pre-Islamic Arab Customs and Reforms introduced by Islam	Week 4	Assignment 4
Module 2			**Sources of *Sharīᶜah***
Unit 1	The *Qur'ān* as a Source of *Sharĩ'ah.*	Week 5	Assignment 1
Unit 2	The *Sunnah* as a Source of *Sharĩ'ah.*	Week 6	Assignment 2
Unit 3	*Ijmāᶜ* as a Source of *Sharĩ'ah.*	Week 7	Assignment 3
Unit 4	*Qiyãs as* a Source of *Sharĩ'ah.*	Week 8	Assignment 4
Unit 5	*Al-Ijtihad* (Exercise of Reasoning)	Week 9	Assignment 5

Module 3				
Unit 1	The Beginning of the Schools of Thought		Week 9	Assignment 1
Unit 2	Imãm Abū Ḥanīfah and His School		Week 10	Assignment 2
Unit 3	Imãm Mālik and His School		Week 11	Assignment 3
Unit 4	Imãm A`sh-Shāfiᶜī and His School		Week 12	Assignment 4
Unit 5	Imãm Ḥambal and School		Week 13	Assignment 5
Unit 6	The *Shĩ'ah* and *Sharĩ'ah*		Week 14	Assignment 6
Revision				
Examination				
Total				

How to Get The Most From This Course

In distance learning, the study units replace the university lecture. This is one of its great advantages. You can read and work through specially designed study materials at your own pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way a lecturer might give you some reading to do, the study units tell you when to read, and which are your text materials or set books. You are provided exercises to do at appropriate points, just as a lecturer might give you an in-class exercise. Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your chances of passing the course. The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a Reading section. The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutor. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.

1.   Read this Course Guide thoroughly, it is your first assignment.
2.   Organize a Study Schedule. Design a 'Course Overview' to guide you through the Course. Note the time you are expected to spend on each unit and how the assignments relate to the units. Important information, e.g. details of your tutorials, and the date of the first day of the Semester is available from the study centre. You need to gather all the information into one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates and schedule of work for each unit.
3.   Once you have created your own study schedule, do everything to stay faithful to it. The major reason that students fail is that they get behind with their course work. If you get into difficulties with your schedule, please, let your tutor know before it is too late for help.
4.   Turn to Unit 1, and read the introduction and the objectives for the unit.
5.   Assemble the study materials. You will need your set books and the unit you are studying at any point in time.
6.   Work through the unit. As you work through the unit, you will know what sources to consult for further information.
7.   Keep in touch with your Study Centre. Up-to-date course information will be continuously available there.
8.   Well before the relevant due dates (about 4 weeks before the dates), keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due date.
9.   Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study materials or consult your tutor.
10.   When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.
11.   When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the Assignment is returned, pay particular attention to your tutor's comments, both on the Tutor-Marked Assignment form and also the written comments on the ordinary assignments.
12.   After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the Course Guide).

Tutors and Tutorials

The dates, times and locations of these tutorials will be made available to you, together with the name, telephone number and address of your tutor. Your tutor will mark each assignment. Pay close attention to the comments your tutor might make on your assignments as these will help in your progress. Make sure that assignments reach your tutor on or before the due date. Your tutorials are important, therefore try not to skip any. It is an opportunity to meet your tutor and your fellow students. It is also an opportunity to get the help of your tutor and discuss any difficulties encountered on your reading.

Conclusion

Much as I cannot promise you a too-easy ride on this course, I equally do not envisage much difficulty as long as you play the roles assigned to you in the whole exercise.

Summary

In this Course Guide, we have provided you a general overview of *ISL231: Introduction to Sharĩᶜah* in which students pursuing BA Diploma in Arabic and Islamic Studies programme must earn two credit Units. The Course Aims and Objectives and what learners will gain working through the Course Material and its Study Units are stated clearly at the onset. We have also provided you a list of textbooks and references for your further reading. As an inference in the Guide, to develop an active interest in the Course is a prerequisite for its successful completion. Assess yourself through the Self Assessment Exercises (SAEs). You will equally be assessed for grading purposes through the Tutor-Marked Assignments (TMAs). Thus to do well in the course, you must get yourself organized and try to conform to the presentation schedule.

We wish you success in the course.

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MODULE 1

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Unit 2   Concept and Scope of *Sharĩ'ah*
Unit 3   Relationship between Islãm, *Sharĩ'ah* and *Fiqh*
Unit 4   Pre-Islãmic Arab customs and reforms introduced by Islãm

UNIT 1   MEANING AND IMPORTANCE OF SHARĨ'AH

CONTENTS

1.0   Introduction
2.0   Objectives
3.0   Main Contents
       3.1   The lexical significance of "*Sharĩ'ah*"
       3.2   The technical definition of the word "*Sharĩ'ah*"
       3.3   The Importance of *Sharĩ'ah*
4.0   Conclusion
5.0   Summary
6.0   Tutor-Marked Assignment
7.0   References/Further Reading

1.0   INTRODUCTION

The Islãmic Law, just like any other legal system, has technical terms and terminologies some of which it shares with some other legal systems while others are peculiar to it. In this Unit, attempts will be made to explain *Sharĩ'ah* as a word in Arabic and a technical term. Light will also be shed on its importance as the body of the rules and regulations guiding the practice of Islãm not only as a religion but as a complete way of life. Your attention will be drawn as well to the importance of *Sharĩ'ah* in the life of Muslims and the society at large.

2.0   OBJECTIVES

By the end of this unit, you will be able to:

- explain both the lexical and technical significance of *Sharĩ'ah*
- relate the importance of the *Sharĩ'ah* in the life of Muslims
- discuss the indispensable roles that *Sharĩ'ah* plays in the practice of Islãm as a religion.

3.0   MAIN CONTENTS

3.1   The lexical significance of "Sharĩ'ah":

The word *Sharĩ'ah* (شَرِيعَة) is from the three letter verb *shara'a* (شَـرَ عَ) which, among other things, signifies "to begin (to do)" "to collect water", "to be close to the road", "to appear manifestly", "to prescribe", "to lay down a law", "to legislate" just to mention a few. Therefore, *Sharĩ'ah* means a water hole, a drinking place, "the road to water" or "a place where one can get water directly". (Cowan ed. 1974).

Look closely at the various connotations of the word "*Sharĩ'ah*" as used in Arabic for communication in everyday language as shown above. Is there any way you can relate them to the Islãmic Law? Let us narrow down the various shades of the meaning to "a place where one can get water directly". In short, this means a regular source of water where there is assurance of regular supplies any time without any let or hindrance.

The meaning above is applicable to the use of the word "*Sharĩ'ah*" for the Islãmic Law. In the first instance, consider the importance of water as the source of life and its necessity to sustain life. You know that every living being - human, animal or plant - cannot do without water to keep on living. The meaning is applicable to the Islãmic Law because it is indispensable in the life of man to enable him to achieve the purpose of his existence in this world and in the hereafter.

For water to sustain life, it must be free from pollution and mixture with substances dangerous to life. This is the reason why people are been sensitized on the importance of drinking only neat and safe water; as contaminated water definitely leads to infections which may lead to death of infected individual. In the same vain, the Islãmic Law is kept sacrosanct, pure and undiluted. It is not tampered with or fabricated. As such, the *Qur'ān* which is the primary source of the Law is jealously protected against such pollution (*Qur'ān* 41: 42). Have you ever heard of any old or new edition of the *Qur'ān*?

The word "*Sharĩ'ah*" meaning "the road" is significant in the sense that it is widely used in Arab countries as "*Shãri'*" to mean "Road" or "Street" especially a major one in the city. In this sense, *Sharĩ'ah* or the Islãmic Law means the way through which one can reach unto Almighty Allah by living his/her life according to His guidance and directives.

Of course, there is no being that has the right, according to Islãm, to make laws for man because Allah alone is the Creator of the universe and man whom He has made His representative on earth are all among His creatures. He alone knows the purpose for the creation, the way to achieve it and the specific roles expected of man in that context.

The purpose for the creation is to prove the existence of the Creator, Almighty Allah, so that all creatures will worship Him in recognition and appreciation of His divine attributes (*Qur'ān* 51:56). The way to achieve the purpose is to follow the way He has recommended in form of the *Sharĩ'ah*. Failure to keep to it leads one to go astray (*Qur'ān* 3:153). The general principle of maintaining law and order and avoidance of chaos and corruption constitutes the role expected of man (*Qur'ān* 3:110). Thus, the way is the only need of man to lead a successful life in this world and achieve felicity in the life after death. Yielding to the temptation by seeking a short cut is to succumb to the negative influence of Satan and forfeiting the glory and pleasure of being obedient to Almighty Allah. Being guided to the straight way and keeping to it is so important that every Muslim makes supplication to that effect at least seventeen times a day when reciting *Suratu'l Fãtihah* in his/her *Salāt* (Abdu-Raheem: 2009).

SELF-ASSESSMENT EXERCISE

Elaborate on the lexical meaning of the word "*Sharĩ'ah*".

3.2   The Technical Definition of the Term "*Sharĩ'ah*"

Sharĩ'ah has been defined by many scholars in various ways. Let us consider the following definitions bearing similarities and differences between them in mind:

"*Sharĩ'ah* is the Divine Law by virtue of accepting which a person becomes a Muslim. It is the embodiment of the Divine Will in terms of specific teachings whose acceptance and application guarantees man a harmonious life in this world and felicity in the hereafter" (Naṣr, 1972:93).

"Sharĩ'ah is the path not only leading into Allah, the Most High, but the path believed by all Muslims to be the path shown by Allah, the Creator Himself, through His Messenger, Prophet Muhammad (P.B.U.H). In Islãm, Allah alone is the sovereign and it is He who has the right to ordain a path for the guidance of mankind". (Doi, 1404 A.H/1984:3).

"The word *Sharĩ'ah* is used in the *Qur'ān* itself when Allah says: (Then We put thee on the right way of religion: so follow it…)). (*Qur'ān* 45:18) The religion or *Sharĩ'ah* given by God is the same in essence, as revealed, for example, to Noah, Abraham, Moses or Jesus, or to Muhammad, the Prophet of Islãm". (Qadri, 1986:15).

"A law or institution prescribed by God, the right way or mode of action" (Penrise 1976, 15).

"Sharĩ'ah (**شريعة** *Sharĩ'ah*) is the body of Islãmic religious law. The term means "way" or "path" to the water source. It is the legal framework within which the public and private aspects of life are regulated for those living in a legal system based on Islãmic principles of jurisprudence and for Muslims living outside the domain. *Sharĩ'ah* deals with many aspects of day-to-day life including politics, economics, banking, business, contracts, family, sexuality, hygiene and social issues". (Wikipedia, the free encyclopedia Httpllen.wikipedia.org/wiki/sharia. (Retrieved Wednesday 22/7/09

If you look closely at the definitions given above, you will find out that they have certain things in common. The features common to them include the following:

i.   **Divine source of the law**: They all agree that the *Sharĩ'ah* is based on the *Qur'ān* as revealed by Almighty Allah to Prophet Muhammad, (P.B.U.H.). Therefore, *Sharĩ'ah* is not the product of any person or group of persons. It is from Allah, the Creator of man and Author of the holy *Qur'ān* which is the fountainhead of the IslãmicLaw.

ii.   **Comprehensiveness of the law**: The definitions identified the fact that *Sharĩ'ah* covers all aspects of life without exception of any area. It provides guidance on the private and public, spiritual and material aspects of life. With this, Muslims are expected to live the whole life bearing the divine guidance in mind. The *Sharĩ'ah* recognizes no dichotomy between moral and legal aspects of life.

iii.   **Balancing the pleasure of this life with that of the hereafter**: The definitions largely acknowledged the fact that the ultimate goal of Islãmic *Sharĩ'ah* is to enable Muslims to strike a balance

between life in this world and life after death. This is based on the teaching of Islãm that there is life after death during which the results of all deeds in this world will be seen. The righteous will be admitted into *Al- Jannah* (Paradise) while the evil-doers will be condemned to *An-Nãr* (the Hell Fire).

- **Allah alone has the authority to make law**: The definitions stipulated that in Islãmic Law Allah alone has the right to make law for man. This is based on the fact that He is the sole Creator and Sustainer of the world as well as every creature in it including man. His knowledge is encompassing; as He knows everything, which enables Him to provide comprehensive guidance for man to live successfully and happily.

- **The need to submit oneself to the law**: Since *Sharῖ'ah* extends beyond inter- personal activities to cover the private life, it is beyond the power of any law- enforcement agent to enforce it *in toto*. It is every individual that readily submits and makes his mind to live according to the law. This is in view of the personal realization of the importance and effectiveness of the *Sharῖ'ah* in guaranteeing felicity and joy for him in this world and in the hereafter.

Now that you have an idea of what the word "*Sharῖ'ah*" means, both as an ordinary word and a technical term, let us consider its importance in the life of Muslims as far as the practice of Islãm is concerned.

SELF-ASSESSMENT EXERCISE

Give a detailed explanation of the terminology "*Sharῖ'ah*"

Importance of *Sharῖ'ah*

Sharῖ'ah is so interwoven with Islãm in such a way that you cannot talk of one without relating it to the other. Islãm is the house which one has to enter to attain prosperity, salvation, protection and more importantly, the pleasure of Almighty Allah who has brought one to life for a purpose. *Sharῖ'ah* is the only road that leads to the house. Any other path leads one astray and deprives one of the beautiful things one is going to attain in the house. Without the road, you cannot get access to the house, and without the house in mind, there is no need or motivation to follow the road. Thus, both the road and the house, (i.e. Islãm and *Sharῖ'ah*) are important and indispensable for man's success in this world and in the hereafter.

The following points account for the importance of *Sharĩ'ah* in the life of
Muslims:

i.   Prescription in the *Qur'ān*:

Many verses of the *Qur'ān* emphasize the importance of *Sharĩ'ah*
for the practice of Islãm. Some of those verses are as follows:

**((ثّم جعلناك على شريعة من الأمر فاتبّ﮲ْﮬها،ولا
تتبْع أهواء الذين لا يعلمون)) الجاثية/18**

(And now have We set you (O Muhammad) on a clear road
(*Sharĩ'ah*) of our commandment; so follow it, and follow not the
whims of those who know not).

(*Qur'ān* 45:18)

**((إنّآ أنزلنا إليك الكتاب بالحق لتحكم بين الناس بما أراك الله،ولا تكن
للخائنين خصيما)) النساء/105**

(Lo! We reveal unto you the scripture (the *Qur'ān*) with the truth that you
may judge between mankind by that which Allah showed you. And be not
you a pleader for the treacherous).

(*Qur'ān* 4:105)

**((إنا أنزلنا التوراة فيها هدى ونور، يحكم بها النبيّون
الذين أسلموا للذين هادوا والربّانيون والأحبار بنا استحفظوا من
كتاب اللهوكانوا عليه شهداء، ومن لم يحكم بما أنزل الله فأولئك هُمُ
الكافرون))**

(Lo! We did reveal Torah, wherein is guidance and a light, by which the
Prophets who surrendered (unto Allah) judged the Jews and the rabbis and
the priests (judged) by such of Allah's scripture as they were bidden
to observe, and thereunto were they witnesses. So fear not mankind, but
fear Me. And barter not My revelations for a little gain. Whoso judged not
by that which Allah has revealed such are disbelievers … such are wrong-
doers … such are evil-livers). (*Qur'ān* 5:44)

**((وما كان لمؤمن ولا مؤمنة إذا قضى الله ورسوله أمرا ،أن يكون لهم
الخيرة من أمرهم ،ومن يعص الله ورسوله فقد ضّلّ ضلالا مبينا))**

(And it becomes not a believing man or a believing woman, when Allah
and His messenger have decided an affair (for them), that they should
(after that) claim any say in their affair; and whose is rebellious to Allah
and His messenger, he verily goes astray in error manifest). (*Qur'ān*
33:36)

((فلا وربّكَ لا يؤمنون حتى يحّكموك فيما شجر بينهم
،ثم لا يجدوا في أنفسهم حرجا مّمّ ا قضيت ويسلّموا
تسليما))

(But say, by thy Lord, they will not believe (in truth) until they make you judge of what is in dispute between them and find within themselves no dislike of that which you decide, and submit with full submission).

(*Qur'ān* 4:65)

The first quotation from the *Qur'ān* above gives the information that it was Allah that revealed *SharῙ'ah* to Prophet Muhammad (P.B.U.H) to implement and that he should avoid replacing it with any other system that people who know far less than Allah may fabricate or sponsor. The second quotation also affirms the divine source of *SharῙ'ah* and goes further to mention that it is for the purpose of guiding people and administering all their affairs in accordance with the will of Almighty Allah.

The third quotation establishes the fact that *SharῙ'ah* as revealed to Prophet Muhammad (P.B.O.H.) is a continuation of the same code revealed to the previous Prophets especially those sent to the Jews. Then the stern warning follows against failure to put *SharῙ'ah* to practice in private and public life for whatever reason. Persons or groups who fail to comply with this injunction are condemned as (*Kãfirũn*) "evil doers" (*Zõlimũn*) "wrong-doers" and (*Fãsiqũn*) sinners. The last two quotations stipulate that no Muslim has any right to take chances with the *SharῙ'ah* by deliberately refusing to obey and act according to it. Any person who falls into this mistake has gone outside the fold of Islãm. He is a rebel against Allah, the Creator and Sustainer of the world.

Relate the importance of the *SharῙ'ah* in Islãm.

4.0   CONCLUSION

SharῙ'ah as an Arabic word means the place where water is sourced or the road or path to it. As water is indispensable to life, so also *SharῙ'ah* is necessary to enable man to live a fulfilled life. In its technical sense, *SharῙ'ah* is the code of conduct covering the legal as well as other aspects of man's life which Allah revealed as guidance to make man achieve felicity in this world and in the hereafter. The *Qur'ān* lays emphasis on the importance of *SharῙ'ah*. It commands the Prophet and his followers to comply with it, using it to judge cases of disagreement among them. It gives a stern warning against failure or refusal to keep to the law as

instructed in the *Qur'ān* and the great danger of failure or refusal to keep the commandment of Allah in this regard. Those who are guilty of this face the risk of losing their identity as Muslims.

5.0   SUMMARY

This Unit defines *Sharῖ'ah* as a word in Arabic Language and a technical term standing for the Islãmic Law. It also gives a comprehensive discussion of the importance of putting the *Sharῖ'ah* to practice in one's life as prescribed in the *Qur'ān* and the great danger of failure or refusal to keep the commandment of Allah in this regard.

6.0   TUTOR-MARKED ASSIGNMENT

1.   Elaborate on the terminology *Sharῖ'ah*.
2.   Based on the relevant quotations from the *Qur'ān*, discuss the importance of *Sharῖ'ah*.

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UNIT 2   CONCEPT AND SCOPE OF *SHARĨ'AH*

CONTENTS

1.0   INTRODUCTION

The concept and scope of law as applicable to *Sharĩ'ah* are different from those of other legal systems in many areas. In this Unit, you are to learn the characteristics of *Sharĩ'ah* as conceived in Islãm and the various aspects of life it covers. Your attention will be drawn to experiences in the contemporary life in Nigeria to drive home the points discussed.

2.0   OBJECTIVES

By the end of this unit, you will be able to:

- discuss the concept and scope of *Sharĩ'ah*
- differentiate between *Sharĩ'ah* and other legal systems with particular reference to their areas of concept and scope
- establish the fact that *Sharĩ'ah* cannot be separated from Islãm in any aspect of life.

3.0   MAIN CONTENTS

3.1   The Concept of *Sharĩ'ah*

Sharĩ'ah, the Islãmic law, has some distinctive features that clearly differentiate it from other legal system known to man. Such features are as follows:

i.   A complete or total code of conduct

Sharĩ'ah covers, as said earlier, all aspects of human life. It regulates his religious, moral, spiritual, social, economic, political and intellectual activities. It provides guidelines on what to do in any aspect of life such as when and how to pray, trade or sleep. The mundane and spiritual aspects of life as well as other issues relating to them are taken as a single unit. It has regulations on one's relationship with one's parents, wife, children, brothers and sisters. It touches on moral questions such as truthfulness, sincerity, good neighbourliness, courage and love. It tells Muslims what to do to earn their livelihood legitimately with adequate attention given to lawful and unlawful enterprises such as hoarding, interest, bribery and corruption. Politics and issues relating to it are well articulated in such a way that every Muslim has enough information to guide him to succeed if he has chosen politics as his career. All this shows conclusively that the *Sharĩ'ah* takes the totality of man's life as a single unit with the consciousness of Allah serving as the foundation permeating everything he does. The question of dividing man's life into the spiritual or moral aspects under the aegis of religion and the socio-political aspect under the mundane authority is not accommodated in Islãm. **ii. Perfection**

Man is naturally imperfect; which makes all he does to be incomplete and imperfect. This explains why laws are reviewed, repealed or amended all over the world. The case of *Sharĩ'ah* is different; as it originated from Allah, the Perfect, and there is no doubt whatsoever that it is perfect. The limitedness of man's knowledge does not, at times, allow him to understand and appreciate the lofty aims of *Sharĩ'ah*. This makes some people criticize certain Islãmic criminal laws as being too harsh. The laws are not too harsh. They are just realistic and resultoriented. The tendency is often to suggest or even attempt to amend the Law so as to make it conform to man's wishes. This is absolutely wrong because of its negative effects on the effectiveness of the Law to achieve its purpose which is to make man conform to the divine legislation instead of making the Law conform to his wishes. Some people criticize *Sharĩ'ah* criminal previsions on stealing and adultery as being too harsh but none of their alternatives has been able to check the menace of these sinful and criminal acts which now threaten the existence of man itself. Cases of theft and infidelity are

on the increase, assuming more alarming proportions with each day passing. The situation is as bad as this owing mainly to undue emphasis on compassion to criminals with little or no attention given to the victims of their iniquities. The only way out is to adopt the perfect code of conduct which has been proved to be effective in solving these problems and others faced by man.

iii.   A means of integrating man's activities into a single unit:

The human body is made up of many component parts such as blood, water, flesh, bone and sense organs. Man's actions result from various feelings that may be classified as animalistic, sentimental, rational or spiritual. When man does anything that may satisfy his immediate urge without thinking of the long-term effects, he is said to be acting according to his low or animal desires. In other words, he is behaving like an animal. It may happen also that one becomes angry, moody, defiant or unruly without any apparent reason. All these kinds of behaviour affect man in one way or the other and may present him as being inconsistent and unpredictable. *Sharĩ'ah* is a sure way of avoiding this unfortunate situation of behavioural disequilibrium. It integrates all human actions into the spiritual unity which enables him to have a firm control over his passions and base feelings. The ultimate aim is to make man not to grieve when in adversity nor exult in success as enunciated in the *Qur'ān* 57:23.

The importance of the noble role of *Sharĩ'ah* in man's life as mentioned above cannot be over-emphasized. To explain this further, let me draw your attention to the various arms of Government which, to some extent, can be likened to the various parts of the body. Let us take the issue of alcohol consumption for instance. The Ministry of Finance, in an effort to increase the State revenues, takes steps to encourage breweries to increase production. Ministry of Health and Social Development calls for a reduction in the production and consumption of alcohol in view of the adverse effects on the citizens. The Road Safety Corps enforces the legislation against selling alcohol in motor parks and petrol filling stations and forbids drivers to drink, at least, while driving or about to drive. Advertisers, Chambers of Commerce and Trade and distributors of beer see such steps as counter-productive and un-economical. This conflict of interests is certainly not in the interest of the Government and citizens as it brings about confusion and inconsistency in the public life. Hardly can such Government make any headway in curbing the consumption of alcohol or any other social problem for that matter. The same thing happens in the case of man. Uniformity of thought brings about consistency in action. Thus, for instance, the virtues of selflessness and compassion as demanded by *Sharĩ'ah* influence the domestic, social, economic and political activities of Muslims. He is therefore seen as an

epitome of the ideals of *Sharĩ'ah* as a member of "the best community ever raised for mankind" (*Qur'ān* 3:110).

iv.   Allah's blue-print for Man:

Allah is the Creator of the world and everything in it. All this creation, as far as Islãm is concerned, is with a purpose. In the case of man, the *Qur'ān* specifically mentions that he has been created solely for the purpose of worshipping Allah as His vicegerent on earth (*Qur'ān* 51: 56-58). Unless this purpose is explained and the way to achieve it is clearly enunciated with necessary guidance, man will find himself in confusion and frustration. To avoid this unfortunate situation, Allah, out of His infinite mercy and grace, has revealed *Sharĩ'ah* explaining the purpose and providing guidance in detail to achieve it. Allah's unique

position as Creator and Law – Giver enables Him to put everything man needs in consideration to achieve success, not only here but also in the life to come.

v.   A veritable means of guaranteeing felicity for man:

Man's life, devoid of happiness, success and satisfaction is miserable.
This accounts, to a large extent, for the reasons why many people commit suicide out of frustration Islãm has adequate guidelines in form of *Sharĩ'ah* to ensure that man is happy throughout his life. In terms of health, for example, *Sharĩ'ah* tells him what to do to avoid diseases. It compels him to observe the rules of hygiene in eating, drinking, social, political, economic, religious and other activities. All things being equal, any person who allows *Sharĩ'ah* to guide him should be contented and happy even if he does not have much wealth. On the other hand, it forbids all forms of exploitation such as interest, cheating, dishonesty and theft. Politically, it explains that leadership positions belong exclusively to Allah and He bestows them on and withholds them from whomsoever He wishes. Furthermore, any person who holds any leadership position does so as a trustee for which he is accountable to Allah. Thus, politics is not a do-or- die affair according to the *Sharĩ'ah*. Any person who avails himself of these provisions not minding the unfavourable circumstances that usually prevail will be happy, contented and prosperous. **vi. Universal:**

Unlike any other legal system in the world, *Sharĩ'ah* is designed for all times and places. It does not have any limitation of time and place. Its provisions are in such a way that they can easily be adapted to meet any exigency. This is due to the fact that reasons that usually necessitate restricting other laws to a particular time or place do not apply to *Sharĩ'ah*. Allah, its Sole Legislator is everywhere at all times. The question of not

taking into consideration future occurrences and the peculiarities of geographical locations do not arise at all. Although geographical locations and socio-linguistic differences may mark out one person from another, the fact remains that man is essentially the same all over the world. Enhanced communication and interaction between various peoples in the fields of education, commerce, sports, just to mention a few, have brought them closer and improved mutual understanding between them. The general impression so far is that the basic needs of man as well as his yearnings are largely the same. It is in view of this fact that the integration of members of the Muslim community which is world-wide under the authority of *Sharĩ'ah* should be understood. Therefore, *Sharĩ'ah* transcends tribal or racial boundaries to cover the various parts of the world.

SELF-ASSESSMENT EXERCISE

Discuss the concept of *Sharĩ'ah* in some details.

The Scope of the *Sharĩ'ah*

As Islãm is not only a religion but a complete way of life, so also the *Sharĩ'ah* covers the whole of man's life. The following are some of the various aspects of life covered by the *Sharĩ'ah.*

i.   Religious:

The relationship between man and his Creator, Allah, receives adequate attention in the *Sharĩ'ah*. Two major aspects of the Law are – '*Aqīdah*

(Creed) and '*Ibādat* (Worship or Acts of Worship). The '*Aqīdah* is mainly on the Articles of Faith constituting the first Fundamental Pillar of Islãm. It consists of belief in Allah, Angels, Divine Scriptures, Prophets, life after Death and Destiny. All these are to give man a proper orientation and to lay a solid foundation, psychologically, for all his actions. The consciousness of Allah, thus, permeates everything he does. The fear of God, as commonly said, is the beginning of wisdom. The aspect of '*Ibādāt* covers the other four Pillars of Islãm which are practical forms of worship. They are the institutions of *Salāt* (Ritual

Prayer), *Zakāt* (Obligatory Charity), *Sawm* (Fasting in the month of Ramadãn) and *Hajj* (Holy Pilgrimage). *Sharĩ'ah* gives the details of how each of these should be performed and what should be avoided in doing so. As they are not empty rituals or meaningless physical exercises, their relevance to life in terms of the influence they exert on reforming and

developing character is emphasized. In fact, failure to allow them to influence one positively in practical life attracts the wrath of Allah.

Qur'ān 107:4-7, for instance, says:

((فويل للمصلّين
،الذين هم عن صلاتهم
ساهون ،الذين هم يراؤون
،ويمنعون الماعون))

Woe unto those who observe *Salāt*, Who are heedless of their Prayer Who would be seen (at worship) Yet refuse acts of kindness.

Salāt is meant to inculcate the consciousness of Allah at all times in the mind of the worshipper. Bearing Allah always in mind will encourage one to be virtuous, righteous and self-restrained. This is because one knows that Allah is always present, witnessing all acts and deeds to give appropriate rewards on the Last Day. With this at the back of one's mind, one is constantly protected from committing acts of lewdness, indecency, iniquity and immorality as said in the *Qur'ān* 29:45. Owing to the various advantages derived from it, *Salāt* is the prop or the cornerstone of Islãm distinguishing Muslims from non-Muslims. As a way of showing that Islãm is not only a religion that concerns itself with man's private life in relation to Allah alone, there is the institution of *Zakāt* which makes it compulsory for the rich to relinquish part of their wealth mostly to take care of the poor and the needy. Of course, there are other forms of charity such as *Sadaqah* (voluntary charity) and *Zakātu'l-Fitr* (Charity towards the end of Ramadãn), but *Zakāt* is the only one that can be enforced by the Law. The ultimate aim is to ensure even distribution of wealth. Those who have more than enough are required to give the excess, so to say, to those whose income is too low to meet their needs. In effect, over-concentration of wealth in few hands with the larger majority of citizens wallowing in poverty cannot arise in any society where *Sharĩ'ah* is appropriately operated. It is the duty of State to ensure that every citizen has the basic needs or necessities of life. In such an ideal society envisaged by Islãm, social problems arising from lop-sided distribution of resources such as robbery, armed or not, bribery, corruption, swindling, and fraud are totally eradicated or reduced to the barest minimum. Instead, there is peace, love, harmony and stability.

Experience, they say, is the best teacher; the more reason why *Sharĩ'ah* stipulates that fasting in the month of *Ramadãn* should be undertaken by every able-bodied Muslim every year. This affords the rare opportunity to share from the experience of the pangs of hunger and thirst which are part and parcel of the daily life of the poor. This will enable one to be better

disposed to render assistance to ameliorate the suffering of others. Leaving off food, drink and sexual inter-course in the day, and sleep in the night at least for the time of taking *Sahūr* (the early-morning meal) teaches that one can successfully do without things one often acquires illegitimately with a view to living better. If one voluntarily abstains from legitimate food lawfully belonging to one from sunrise to sunset when one is usually in need of food, it is easier to avoid stealing things of lesser importance such as clothes, books, just to mention a few. The same thing goes for adultery. Ability to refrain from sex in the day throughout Ramadān even with one's legitimate wife proves that one can do that especially with illegitimate women, for the rest of one's life.

H*ajj*, the last principle, is the Holy Pilgrimage to Makkah expected to be performed by every Muslim that has the means at least once in his life time. It teaches the universal brotherhood of Islãm regarding differences in the complexion, language, culture and social standing of various peoples as merely accidental and artificial. Putting on the *Iḥrām* (special uniform for pilgrims) and standing altogether on the plain of '*Arafāt* teach asceticism in its purity and inculcate in the mind the remembrance of the Day of Judgment. Any pilgrim who bears these and other lessons of *Ḥajj* in mind after returning home is bound to be of better behaviour than he has been before it. Failure to imbibe the lessons means that such a person has just went on a pleasure or businesstrip.

SELF-ASSESSMENT EXERCISE

Highlight the religious life of a Muslim as covered by *Sharĩ'ah*.

**ii.	Social:**

Sharĩ'ah takes into consideration everything necessary to ensure peace, stability and progress in the community. It takes the family as the smallest Unit of the society or, in other words, as the society in its micro form. The father, the mother and children have rights and obligations to keep the family together. The stability of each family leads to the stability of the society at large. All forms of anti-social behaviour are forbidden. To ensure the effectiveness of this, all practices such as drinking of alcohol, unrestricted intermingling of members of both sexes, gambling and discrimination that may and do encourage social disharmony are prohibited. Prevention, they say, is better than cure.

Care of children receives adequate attention under *Sharĩ'ah*. The father is charged with the responsibility of providing food, cloth and accommodation but the woman can assist if she has the means so wishes voluntarily. Her primary assignment is to take care of the home and make it a haven for all the family members. Of course, she has the right and freedom to work and own property as an individual. The point is that her responsibility at home should not be sacrificed for material gains. This is mainly to guide against social malaise that delinquents unleash on the society. Unless women are made to appreciate their importance as home-makers and the society shows satisfactory appreciation for that, countries like Nigeria may not be able to get over social problems that confront them.

Using the family as the launching-pad, *Sharĩ'ah* addresses the rights and responsibilities of every member of the society. Issues that one may consider to be very minute such as greetings, deriding, calling one another names and other forms of anti- social behaviour are addressed. It also has provisions on crimes like stealing, robbery, rumour mongering, prostitution, drunkenness and other social crimes. The ultimate aim is to have a society where there will be peace without rancour and wranglings.

With the prohibition of alcohol and restriction on inter-mingling between men and women, some feel that social life in an Islãmic society will be very dull. Such people see drinking and sex as the only means of enjoyment and relaxation. One fact that even such people cannot dispute is that health, social and economic problems resulting from such a perverted sense of judgment are devastating. One of the greatest problems confronting most of the developed countries is either alcoholism or sexual promiscuity. The *Sharĩ'ah* does not want to create a problem and then look for its solution. It prevents the problem from cropping up at all. As prevention is always better and cheaper than cure, it saves a lot of resources, time and man-power that may be dissipated in finding the solution.

SELF-ASSESSMENT EXERCISE

"*Sharĩ'ah* is also concerned with what will bring about an ideal society". Elaborate on this statement. **iii.**

Political:

The political system recognized by *Sharĩ'ah* is that which sees Allah as the Sovereign Law-Giver and the Real Owner of all authority. To Him belongs everything in the heavens and earth and He has absolute control

over all creatures. He who holds authority under *Sharĩ'ah* does so as a trustee. He is *Khalīfat Allah* (vicegerent of Allah) by doing the divine will as stipulated in *Sharĩ'ah*. This post has been inherited from Ādam, our

prime-progenitor. Man's responsibility, in this case, is to harness all resources to improve the quality of life and not to destroy it. Politically, one wields the power with the full sense of being accountable to Allah. The citizens have rights and obligations to defend and sustain their nation. Unpatriotic activities are condemned in strong terms and punishable. Obedience to the lawfully constituted authorities is compulsory for every Muslim. He should do everything possible to help those at the helm of State affairs to succeed. Although the Western concept of democracy is not totally accommodated by Islãm, there should be *Shūrā* (consultation) before taking decisions. *Sharĩ'ah* abhors autocracy. State resources are to be used to promote what is good (*Ma^crūf*) and to forbid what is wrong (*Munkar*). The leader owes it a responsibility to obey Allah always. Should be fail to do this, obedience to him is no more compulsory for the citizens. In fact, all efforts should be made to impeach and replace him with another person more alive to the responsibility. Relationship with other nations should be based on justice and equity. Their security and sovereignty should not be undermined for political, economic or any other reason. Dispensation of justice should be entrusted to capable hands, pious and impartial. Nobody is above the Law. Perversion of the course of justice should be guided against at all costs. Poverty, low social status or poor family background should not deprive one of justice in the court.

SELF-ASSESSMENT EXERCISE

Give a brief account of the political system recognized by *Sharĩ'ah***.**

iv.   Moral

As a complete way of life, *Sharĩ'ah* attaches much importance to the moral responsibilities of its adherents in all spheres of life. In fact, the Prophet is quoted to have said.

"إذا لم تستحي فاصنْعْ ما شئت"

Meaning:
"If you have no shame, do all that you wish".

The meaning here is that your sense of morality is enough to restrain you from shameful acts. It is in case when you lack this important quality that you are at liberty to give free rein to your caprices and whims. In that case, one is as good as a beast.

Morality under *Sharī'ah* is based on the consciousness of Allah. It is part and parcel of the awareness that one is responsible to Allah to give one's account of stewardship in the hereafter. For instance, Allah says the Glorious *Qur'ān* 17:23:

((وقضى ربّكَ ألاألاّ تعبدوا إلاإلاّ إى آه وبالوالدين إحسانا))...

Meaning:

"You Lord ordained that you should not worship except Him, and you should be good to your parents".

Allah wants you to be nice to your parents, especially when they reach an advanced stage in age and have to depend on you, but the verse opens with the injunction to worship Allah alone. So also is the case in some other passages of the holy *Qur'ān*. The relationship between worshipping Allah alone and being good to one's parents is that the latter is a concomitant of the former without which it lacks its spiritual and motivating value.

Other moral issues such as truthfulness, generosity, large-heartedness, love, consideration for others, patience, forbearance, good neighbourliness, selflessness, doggedness, just to mention a few are qualities that can be consistently exhibited if? Only they are based on the consciousness of Allah. Otherwise, little temptations may distract one's attention to deviate from the course of rectitude and moral uprightness.

Sharī'ah does not only compel Muslims to be conscious of the moral implications of their acts but also guides and facilitates the attainment of the objective for them. For instance, parents are enjoined to discharge their responsibilities to their offspring and educate them for both material and spiritual purposes. The State or society is also saddled with the responsibility of creating conducive atmosphere for the proper development of the young ones. A child who enjoyed the tender care of the parents, received balanced education and was shielded from negative influence of the society would be obedient, respectful and affectionate to those parents. Problems of broken homes, inadequate parental care due to financial reasons and negative impact of peer- groups, mass media, film houses and schools, at times, contribute to the cold attitude of many children to their parents. Lastly, *Sharī'ah* has corrective measures to reform those found morally wanting.

SELF-ASESSMENT EXERCISE

Expatiate on morality as one of the various aspects of life covered by *Sharī'ah*.

4.0   CONCLUSION

You have learnt that the law as conceived in Islãm in form of *Sharĩ'ah* covers the totality of man's life. It is also perfect free from all the defects that man-made laws suffer from. This is in view of the fact that *Sharĩ'ah* is from Allah who is perfect and cannot do anything imperfect. Thus, *Sharĩ'ah* is a veritable means of guaranteeing bliss for man in this world and in the hereafter. It is universal and everlasting. Its scope covers the religious, social, political and moral aspects of life, just to mention a few. In fact, there is nothing a person may wish to do without finding necessary guidance in *Sharĩ'ah*. With these unique features, one can say that: *Sharĩ'ah* is different from any other legal system known to man.

5.0   SUMMARY

This unit examines *Sharĩ'ah* as the code of conduct that Allah, the Creator of the universe, has recommended to guide man in all aspects of his life to achieve success in this earthly life and in the hereafter. It establishes that *Sharĩ'ah* is applicable everywhere and at all times without requiring any review, repeal or modification. It also looks at *Sharĩ'ah* as a divine law that covers all aspects of life in line with the comprehensiveness of Islãm which is not only a religion but a complete way of life harmonizing between the moral, the spiritual and secular aspects of life.

6.0   TUTOR-MARKED ASSIGNMENT

•   Explain the concept of *Sharĩ'ah* in comparison with the Common Law.
•   "*Sharĩ'ah* is all that a Muslim needs to lead a happy and successfullife". Discuss.

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UNIT 3   RELATIONSHIP BETWEEN *ISLÃM*, *SHARĨ'AH* AND *FIQH*

CONTENTS

1.0   Introduction
2.0   Objectives
3.0   Main Contents

      3.1   Islãm in Relation to *Sharĩ'ah* and *Fiqh*

      3.2   *Sharĩ'ah*

      3.3   *Fiqh*

      3.4   Comparison Between Islãm, *Sharĩ'ah* and *Fiqh*

4.0   Conclusion
5.0   Summary
6.0   Tutor-Marked Assignment
7.0   References/Further Reading

1.0   INTRODUCTION

The terms "*Islãm*", "*Sharĩ'ah*" and "*Fiqh*" are commonly used in the study of the Islãmic Law. You are to learn, in this Unit, the meaning of each of these terms and the ways they relate to each other. This is to pave the way for the subsequent Units in which the terms are copiously used.

2.0   OBJECTIVES

At the end of this unit, you should be able to:

- Define Islãm, *Sharĩ'ah* and *Fiqh* as technical terms in the study of Islãmic Law.
- Analyse the areas of similarity and difference between *Islãm*, *Sharĩ'ah* and *Fiqh* in relation to the Islãmic Law.
- Discuss, with appropriate examples, the issues involved in the comparative study of the three terms.

3.0   MAIN CONTENTS

3.1   Islãm in Relation to *Sharĩ'ah* and *Fiqh*

"*Islãm*", as a word in Arabic Language, means 'peace' or "submission".

It evolved from the verbal root-form plu *aslama* which is the quadrilateral (four-letter) form of the simple trilateral form, *salima*. The verbal noun is "*silm*" or "*salm*" meaning peace. Therefore, "*Islãm*", being the verbal noun of "*aslama*", means "submission" or "peace". The term "*Islãm*" (usually written as "Islãm" in English) in this study refers to the conduct, way of life recommended by Allah through His angel, *Jibrīl*, to humanity right from the time of Ãdam to that of Prophet Muhammad (P.B.U.H) who is the last and seal of the Prophets.

Islãm Meaning Submission

The fact that Islãm means submission means that you, as a Muslim, are supposed to submit yourself willingly to the will of Allah. By this, you are to surrender yourself to be guided in all aspects of life by the instructions Almighty Allah gives you with the explanations and practical demonstrations from the life of Prophet Muhammad. In case there is anything you want to do, you first think of Allah's guidance relating to it before deciding whether to proceed with or withdraw from it. You suppress your personal interests, gains or aspirations to those of Allah, the Almighty.

For one's submission to the will of Almighty Allah to be acceptable, it is necessary to satisfy the following conditions:

i.   **Conviction:** Islãm as a religion requires its adherents to be committed and devoted to it, no matter what the situation may be. This cannot be done except with necessary knowledge and practice as a result of which one will be convinced and sure that Islãm is worthy of one's devotion. Unless based on firm conviction, one may not be able to live up to this condition especially in the face

of threats or dangers to one's life or

property. For this reason, coming to the fold of Islãm should be voluntary and conviction. The *Qur'ān* says: ((لا إكراه في الدين قد

((تبيّنّ الرّشد من الغّيّ

There is no compulsion in religion. The right direction is clearly distinct

from error. …. (*Qur'ān* 2:256)

ii.   **To be total:** The submission should be total in the sense that you worship Allah alone and you direct all your prayers to Him alone. Divided loyalty has no place in Islãm. In fact, it is a sin. The *Qur'ān* says:

((يا أيها الذين آمنوا، ادْخُلوا في السّلم كافّةً، ولا تتبعوا خطوات
الشّياطين، إنّه لكم عدوٌ مبين))

Oh you who believe! Come into submission (*silm* or *Islām*) wholly and follow not the footsteps of Satan. Surely, he is your open enemy. (*Qur'ān* 2:208)

iii. **To be unconditional:** Islām stipulates that its adherents should not set conditions for submitting themselves to the will of Almighty Allah. It is common to hear people say that they will become Muslims if they go to Makkah or become rich. Such an utterance shows ignorance about what Islām is. The worship by any person or group or refusal to worship does no good or harm to Allah, the Almighty. The fact is that Allah provides guidance. Those who take advantage of it gain from it while those who ignore it lose out. Islām is the right way and failure to follow it leads one astray. Basing one's worship on achieving material

gains will not allow one to be consistent and principled. No wonder then to see some people always moving from one place of worship or religious group to the other. The *Qur'ān* says: ، ومن النَّاس من
وإن أصابته فتنة   ((يعبد الله على حرف، فإن أصابه خير اطمأنّ به
انقلب على وجهه، خسر الدنيا والآخرة، ذلك هو
الخسران المبين))

And among mankind is he who worships Allah upon a narrow marge so that if good befall him he is content therewith, but if a trial befalls him, he falls away utterly. He loses both the world and the hereafter. That is the far error. He calls, beside Allah, unto that which hurts him not nor benefits him. That is the error. (*Qur'ān* 22:11-13)

Islām Meaning Peace

Another meaning of Islām is 'peace'. In this respect, Muslims are required to maintain peace in such a way that they enjoy it and extend it to others around them. To further emphasise this, Muslims greet each other by saying As-*salāmu* '*alaikum* (peace be unto you). In addition, they conclude all the ritual prayers (*Salāt*) by saying the same thing. This shows that the essence of worship is to have peace and share it with others.

Some people wonder why Muslims claim that Islām means peace and aims to achieve peace in the world whereas its history is full of wars from the time of Prophet Muhammad. The fact is that Islām does not forbid its adherents to fight especially if that is necessary to defend themselves as it was the case during the time of the Prophet and in the early stages of Islām. Even at the time of Usman Dan Fadio of the Sokoto Caliphate, the

wars began because the ruler attacked the Muslims who had to defend themselves at last, having relocated because of the high-handedness and persecution of the ruler. Contrary to the expectation, the Muslims succeeded in defending themselves and defeating the invaders and persecutors. Other kingdoms sympathized with the ruler and attacked the Muslims but they were defeated and subdued one after the other.

Most of the religious riots being experienced nowadays are either politically- motivated or result from misrepresention of Islãm as in the case of Maitatsine and Boko Haram that is currently disturbing the peace of north-east of nigeria. More importantly, a nation that suffers widespread poverty, decay in social amenities, lack or insufficiency of infrastructural facilities, political instability, and high rates of crimes and lack of social security cannot but experience outbursts of violence and chaos. This explains the emergence of militant groups across the nation and secret cults in the institutions of learning. Most of these groups have nothing to do with religion and Islãm in particular.

As far as Islãm is concerned, it teaches and encourages its adherents to maintain peace all the time. The teachings in this direction can be viewed from the following perspectives:

i) **Maintaining Peace with Allah:** Islãm requires that those who practise it should maintain peace with Allah by obeying and keeping His remembrance fresh in their memories always. The philosophy is that any person who bears the greatness, might and benevolence of Allah in mind will find it easy to worship Him and keep away from whatever He forbids. Such steadfast obedience cannot but earn one His pleasure and good rewards. By this one maintains peace with the Supreme Being broadly by:
   a.   Obeying in what He commands in form of worship, moral behaviour and selfless services and
   b.   Obeying Him in what He forbids by not refusing to worship Him and do other good things, and by keeping away from what He forbids in terms of polytheistic practices, immoral behaviour and anti-social practices.

The *Qur'ān* says:

((الذين آمنوا وتطمئنّ قلوبهم بذكر الله، ألا بذكر الله تطمئنّ القلوب .
الذين آمنوا وعملوا الصالحات، طوبى لهم وحُسْنُ مئاب))

Those who believe and whose hearts find comfort in the remembrance of Allah that hearts can find comfort. Those who believe and do good works

– happiness shall be theirs and an excellent place of return. (*Qur'ān* 13:28-29).

ii) **Maintaining Peace with oneself:** Islãm teaches that one who does not enjoy peace within oneself, at the same time, cannot extend peace to others around him. That is why it requires Muslims to comply with its guidance relating to their well-being physically and spiritually. The two aspects are discussed as follows:

a.   **Physical well-being:** Islãm teaches that Muslims should feed well, wear good dresses and tidy up their environment. They are forbidden to drink alcohol, impure and unhygienic food or wear dresses that may portray them to be shameless by not adequately covering their nakedness. The dangers and demerits of these practices are too apparent to mention here. Any person, who leads a wholesome and disciplined life, as required by *Shari'ah*, will enjoy good health, peace of mind and peace.

b.   **Spiritual well-being:** Man is made of physical and spiritual parts. The physical part is taken care of as mentioned above. The spiritual part (soul) is taken care of by doing things that will enhance the functions of the conscience. If you do good things, your conscience proves you right and gives you a pass mark, so to say. But if you do an evil thing, the conscience keeps worrying you and troubling your mind. This is the reason why Muslims are to keep away from

all evil deeds relating to '*Aqīdah* (Faith or Belief system) '*Ibādah* (Worship) and *Mu'ãmalãt* (Inter-personal activities). The *Qur'ān* says:

((قد أفلح من زّكّاها، وقد خاب من دّسّاها))

He indeed prospers who purifies it (soul) and he who corrupts it is ruined. (*Qur'ān* 91:9-10)

iii) **Maintaining Peace with People around us:** Islãm does not allow keeping one away from the society in form of monasticism. While living together, it is necessary for everybody to be of good behaviour to have social harmony and peace. It is in view of this that Islãm commands the Muslims to do good to everybody they come in contact with starting from parents, spouses, children, relatives, neighbours, and fellow human beings no matter where they come from, the language they speak and the religion they practise. The Prophet is reported to have said that any person whose neighbours do not feel secure from his evil deeds is not a Muslim. Ḥadīth Book. He also said:

None of you is a Believer until he loves for his fellow brother what he loves for himself. Ḥadīth Book. See also the *Qur'ān* 6:151-152, 17:2338 and 49:1-18).

(iv)   Maintaining Peace with other creatures: The *Qur'ān* presents the whole universe to Muslims as the handiwork of Allah and man as Allah's representative to maintain harmony and concord i n it. All other creatures including the sun and moon are made subservient to man to enable him to discharge the duty assigned to him satisfactorily

and successfully. It is not to make him brag and lord it over other creatures around. He can make use of them to improve the quality of his life but he should not becruel or inconsiderate to them. For instance, Islãm allows man to make use of plants and animals for food and other legitimate purposes. At the same time, he is enjoined to be nice and kind to them even at the point of slaughtering in the case of animals allowed for human consumption. A Ḥadīth says: إن الله كتب الإحسان في كل شيئ، فإذا

فأحسنوا القتلة، وإذا ذبحتم فأحسنوا الذبحة'' ((قتلتم

Verily, Allah obliges (you to be of) good behaviours (and proficient) concerning anything (you do). So, if you kill (animals), make the killing with courtesy; and if you slaughter (animals) slaughter (them) with courtesy. Let each of you sharpen the (Knife's) edge, and make the animal die peacefully.

SELF-ASSESSMENT EXERCISE

Give a comprehensive explanation of the term "Islãm" *Sharĩ'ah*:

This is the embodiment of the rules and regulations Allah revealed to guide His servants to the realization of the purpose of their creation and existence in this world for which they will be rewarded in the earthly life and in the hereafter. It covers the whole aspects of man's life because Islãm itself is not only a religion but a complete wayof life. The broad guidelines of *Sharĩ'ah*, the Islãmic Law, are contained in the *Qur'ān*. In many cases, details are not given in the scripture. This should not be a surprise; because if the *Qur'ān* should contain all the details of the law, it will be so voluminous that the purpose of being handy and easy to use will be defeated. In addition, it will be difficult to carry out the injunctions in different times and places. As the holy *Qur'ān* is at present, it is not difficult to use because the prevailing circumstances will be put into consideration to interpret and find appropriate meaning for the various injunctions in it. Another reason is that the *Qur'ān* is meant to be recited regularly in form of worship and to acquire knowledge and spiritual uplift.

Should it be in many large volumes, reading the whole scripture will be cumbersome not to talk of memorizing it.

The role of Prophet Muhammad, as the recipient of the divine revelation, went beyond passing the messages to his followers and preaching to them. He served as the practical exemplification of the teachings of the *Qur'ān*. In other words, he practicalised the divine messages in such a way that his followers would have no problem to understand and carry them out. Such practical demonstrations were done by giving verbal instructions, acting and approving or disapproving what his followers did in his presence. Such normative guidance constituted the *Ḥadīth* or *Sunnah* of the Prophet as the second source of the *Sharĩ'ah*. It gives the details of the teachings of the *Qur'ān*, their practical demonstrations or supplements them.

The passing on of the Prophet put an end to the opportunity of learning directly from him. His followers, however, carried on with the good works he had been doing by trying to keep to his teachings as much as possible. The rapid expansion of Islãm to places beyond the Arabian Peninsula exposed Muslims to situations and circumstances different from what they had been used to you. Some of the problems emanating from such new conditions could not be traced directly to the teachings of the *Qur'ān* and *Sunnah* of the Prophet (P.B.U.H). As such, scholars of the Islamic Law would have to come together and take decisions in light of the Qur'ānic teachings and *Sunnah* of the holy prophet to guide the generality of Muslims. Such decisions unanimously taken are technically known as *Ijmã',* Consensus of Opinions, serving as the third source of the Islãmic Law.

On many occasions, new problems may crop up which require immediate attention without any opportunity to reach out to other scholars to take a joint decision. The solution here is to compare and contrast the new problems with others similar to them which took place at the time of the Prophet and the succeeding generations. Such a practice is to determine whether the new problems are allowed or not in Islãm and the extent of that based on the decisions previously taken on cases similar to them. This practice is technically known as Qiyãs, which is the fourth source of Islamic Law.

In essence, *Sharĩ'ah* is the law of Islãm guiding Muslims in their day-today activities. Its sources are primarily the *Qur'ān*, the *Sunnah* of *Hadīth* of Prophet Muhammad, *Ijmã'*, (Consensus of Opinions) and Qiyãs (Analogical Reasoning).

SELF-ASSESSMENT EXERCISE

Provide a bird's eye view explanation of the term *Sharī'ah*

3.2   *Fiqh*

As an Arabic word, *fiqh* means understanding or having a clear understanding of something. In relation to the Islãmic Law, it means the understanding of the Islãmic Law resulting from personal exertion in applying it to specific issues or cases. Bearing in mind the provisions in the *Qur'ān*, *Sunnah*, *Ijmā'* and Qiyãs. The *Faqĩh* (the practitioner of *Fiqh*, Jurist) analyses the issues involved in a particular case and comes out with a verdict on the case which may be in any aspect of life. Such legal verdicts may be codified and documented to facilitate references.

Many scholars of repute have emerged from the various parts of the Muslim world distinguishing themselves as authorities in *Fiqh*. Among the *Sunni* Muslims, four of them have been recognized as the foremost authorities. They are the founders of the four schools of the Islãmic jurisprudence in the following order:

i.   Imãm Abū Hanīfah, the founder of the Hanafi School ii. Imãm Mãlik, the founder of the Mãliki School iii.   Imãm Ash-Shāfi'i, the founder of the Shāfi'ĩ School iv.   Imãm Ahmad bn Hambal, the founder of the Hambali School.

The efforts of the experts in *Fiqh* cannot be over-emphasized. They have gone a long way to facilitate the understanding and application of the Islãmic Law for the rank and file of Muslims. With this, every Muslim does not need to labour to go through the volumes of works on the exegesis of the *Qur'ān* and compilations of Hadīths especially in living their daily life according to Islãm. Most of the issues involved have been analysed and discussed with verdicts and necessary guidance give on them.

In an attempt to simplify *Sharĩ'ah* provisions, *Fuqohãh* (experts in *Fiqh*) divided them into five broad groups as follows:

i) Farđ or *Wãjib* **(Compulsory or Obligatory):** These are the duties incumbent on every Muslim legally responsible who has no legally – acceptable excuse for exemption. Such duties earn one rewards if carried out as required but failure to carry them out attract severe punishments. Such duties include observing the five daily obligatory prayers and fasting in the month of Ramađãn, just to mention only two.

ii   ) H*arām* (**Forbidden, Prohibited, Illegal or Unlawful**): These
        are the things that are not allowed for Muslims legally responsible
        to do. Any of them who falls into the mistake of committing them
        stands the risk of being punished but those who

avoid them based on the fact that they are forbidden in Islãm will be
rewarded for that. Examples of such prohibited things include alcoholic
drinks and adultery, just to mention few.

iii   ) *Sunnah* (**Supererogatory**): These are the duties which attract
        rewards if performed but failure to perform them does not attract
        punishments. They are voluntary acts, so to say, which Muslims
        capable of them are encouraged to carry out. If, despite the
        capability to carry them, one fails or refuses to carry them out,
        there is no punishment for that.

iv   ) *Makrūh* (**Acts not encouraged**): These are the acts
        legallyresponsible Muslims are encouraged not to commit in their
        own interest. They are dissuaded from the acts for the fear that
        involvement in them portends dangers to one's faith, life,
        property, morality or integrity. If one avoids them, there is a reward
        for that but there is no punishment for committing them. Of course,
        it is dangerous to take chances with acts that may take one to the
        periphery of sins or acts expressly forbidden. A minor slip,
        thereafter, will eventually land one in trouble. Prevention is better
        than cure. Examples here include wearing golden rings for Muslim
        men and playing cards.

v   ) *Mubāħ* (**Neutral**): These are the issues totally left for the
        discretion of the individual concerned. One is free to make a choice
        either to do or not to do such things. In this case, there is neither a
        reward nor punishment for any decision taken. Examples here
        include making a choice out of the variety of food items available
        to eat as long as they are all lawful, and choosing to wear a
        particular dress out of so many as long as they are made to conform
        with the requirements of Islãm relating to dressing.

SELF-ASSESSMENT EXERCISE

Define "*fiqh*", enumerate its celeberated scholars and the divisions of its
provisions.

3.4   Comparison between Islãm, *Sharĩ'ah* and *Fiqh*

The paragraphs above shed light on the definition and general introduction to each of the technical terms under discussion. Now that you have an idea of what each of them means, let us now consider how the three are related to each other.

The first area of similarity between Islãm and *Sharĩ'ah* is that Islãm is the totality and the ultimate goal of worshipping Allah which earns one the divine pleasure in this world and in the hereafter, whereas *Sharĩ'ah* is the path, the road or the means of having access to it. In a nutshell, Islãm can be likened to a house which every Muslim aspires to enter while the only road leading to it is *Sharĩ'ah*. It is in the light of this that Prophet Muhammad is reported in many Hadĩths to have said that Islãm is "built" on the five fundamental pillars.

If you consider the intimate relationship between Islãm as mentioned above, you will see that one is indispensable to the other. Without *Sharĩ'ah* there cannot be "Islãm" and without Islãm, there is no need for *Sharĩ'ah*. Owing to this symbiotic relationship, Muslims cannot do without *Sharĩ'ah* to fully practise their religion and derive maximum benefits from it. No wonder then that Muslims in Nigeria continue to press for the full implementation of *Sharĩ'ah* across the nation especially in Yoruba land that is yet to have autonomy of practicing *Shari'ah* like the north that is already empowered by Nigerian constitute to do so.

Sharĩ'ah **and** *Fiqh*: *Sharĩ'ah* is the Islãmic Law as enunciated in the *Qur'ãn*, *Hadĩth* or *Sunnah*, *Ijma'* and *Qiyãs*. It contains the provisions of the law in all aspects of human life. *Fiqh* is the laborious study and understanding of the law to grasp its import, purpose and relevance in successfully living as individuals and groups. Distilling the details of the law to provide simplified guides for the generality of Muslims has been a great contribution to the study and practice of the Islãmic Law. The relationship between the *Sharĩ'ah* and *Fiqh*, therefore, is that of the law in its essence, on the one hand, and its understanding and simplification, on the other.

The importance of the close relationship between *Sharĩ'ah* and *Fiqh*, as highlighted above cannot be over-emphasized. The *Sharĩ'ah* deals with all issues of all times and all places. The *Qur'ãn* 6:38 declares that nothing has been left unattended to in it as the primary source of *Sharĩ'ah*. Ordinarily, a layman without the knowledge of the rudiments of the law cannot but have problems in applying the law in his daily activities. Such problems have been alleviated as a result of the sacrifices and

contributions of experts in *Fiqh*. These scholars painstakingly analysed the various law provisions, critically examined them and broke them down into simple Units to enable Muslims generally to digest and put them to practice. Without this effort from such scholars, the understanding and practice of *Sharĩ'ah* would have been more difficult than it is at present.

SELF-ASSESSMENT EXERCISE

State the relationship between Islãm, Shari 'ah and Fiqh.

4.0   CONCLUSION

You have learnt in this Unit the meaning and importance of *Islãm*, *Sharĩ'ah* and *Fiqh*. You have also learnt how these major terms in the study of the Islãmic Law relate to each other. Without *Sharĩ'ah* there is no way of practising Islãm because it is the way to it. The same relationship exists between *Fiqh* which is a means of understanding and practising Islãm.

5.0   SUMMARY

Islãm is the ultimate goal that every Muslim aspires. It is like the final destination of the long journey of life to enable Muslims to earn Allah's pleasure in this world and in the hereafter. The only access road to Islãm, however, is *Sharĩ'ah*. Without *Sharĩ'ah*, there is no access to Islãm. *Fiqh* on the other hand, is a means of understanding the *Sharĩ'ah* and facilitating its application. Without *Fiqh*, therefore, it is difficult, if not impossible, to understand and put *Sharĩ'ah* to practice.

6.0   TUTOR-MARKED ASSIGNMENT

1.   Define *Islãm*, *Sharĩ'ah* and *Fiqh* respectively.

2.   In what way do *Islãm*, *Sharĩ'ah* and *Fiqh* relate to each other in the study of the Islãmic Law?

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UNIT 4   PRE-ISLÃMIC ARAB CUSTOMS AND REFORMS INTRODUCED BY ISLÃM

CONTENTS

1.0   INTRODUCTION

This lecture will focus attention on the various aspects of the life of the Pre- Islamic Arabs, and the various reforms introduced by Islãm. You are to learn the pre- Islamic Arab practices in the religious, social, political and economic aspects of their life in particular.

2.0   OBJECTIVES

At the end of this lecture, you should be able to:

• explain the Pre-Islamic customs of theArabs

• give account of reforms introduced byIslãm

• distinguish between authentic teachings of Islãm and innovations

• contrast between the pre-Islamic customs and reforms introduced by Islãm as a basis.

3.0   MAIN CONTENT

3.1   *Jāhiliyyah* and its Meaning

The period that preceded the advent of Islãm in the Arabian peninsular was known as *Jāhiliyyah* meaning "ignorance" or "barbarism". It was a period of ignorance because at that time, the Arabs had lost all ideas of divine revelations that could have brought then out of spiritual darkness to light. Although they descended from Prophet Ibrahim through Prophet Ismã'īl (peace be on them) who bequeathed unmistakable

guidance to them, the long lapse in time with attendant problems of misconception, misinterpretation, misrepresentation and forgery had robbed them of the clear understanding of the divine message. It was only very few individuals known as *Hunafā' (*[monotheists] pl. of Ḥanīf) that kept the memory and maintained the practice of monotheism. The situation was largely that of dancing to the tune of one's caprices and whims in the absence of authentic divine guidance.

There is also every justification to describe the period as that of barbarism at the society level. The situation was that of the survival of the fittest where might was right. There was anarchy throughout the length and breadth of the peninsula. Strong communities or clans would just pounce on others without any cause whatsoever and dispossess them of their belongings. There was no rule of law. Any crime could be committed and the perpetrator would go scot-free as long as his clan was not ready to surrender him for trial of punishment. Members of weak clans were at the mercy of noblemen. Trivial issues such as misunderstandings between children would cause wars lasting for decades. Vengeance, greed, licentiousness, debauchery and other forms of willful brutality were the order of the day. It was the period of barbarism and disorderliness at its peak.

This is just an account of the *Jāhiliyyah* period as an explanation of the term. Let us take each of the major aspects of life one-by-one and see how the pre-Islamic Arabs' life was and the reforms brought about by Islãm. This we do as follows:

SELF-ASSESSMENT EXERCISE

Define *Jāhiliyyah*. Illustrate your definition with adequate examples

Religious life of the Pre-Islamic Arabs and the Islamic Reform

The pre-Islamic Arabs can be divided, in terms of religious leaning, into polytheists or pagans worshipping deities beside Allah, Jews, Christians and monotheists. As it should be expected, the overwhelming majority

belonged to the first group. Every family had its god or object of worship kept in the compound while the Kaʾbah in Makkah served as the central shrine where about three hundred idols were kept. Some of the notable gods of those days were al-Lãt, al-Manãt, al-ʿUzza and Hubal.

The Kaʾbah was not only the central shrine and sanctuary. It was the symbol of the Arabs' Unity. They used to perform annual pilgrimages to it from all over the Arabian Peninsula. The opportunities offered by the yearly gatherings were used to organize fairs not only for commercial transactions but also for literary competitions. The most successful poems would be hung on the Kaʾbah as a mark of recognition and honour. For that reason, such compositions were known as *Mu'allaq*ãt (plural of *Mu'allaq*ãt meaning something hung or suspended).
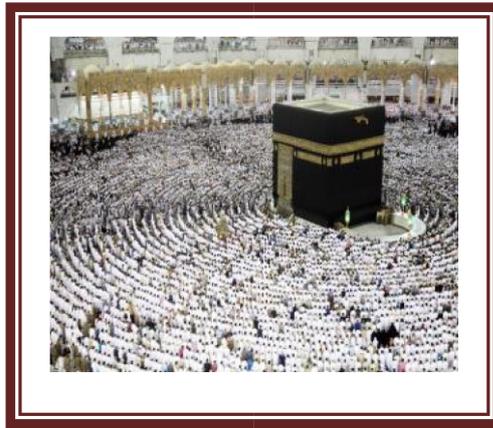
It was the common practice of the pre-Islamic Arabs, especially the Bedouin, who were nomads always on the move in search of pasture for their cattle, in contrast to those settled in towns, to consult their gods before any important decision was taken. That was however a formality because the result of the divination was not binding on them. But the agreement of the oracle's decision with their intention would stimulate and assure them of success. It was also not uncommon to see a nomadic Arab using the same stone deified as an object of worship for cooking or any other purpose if the need arose.

As the pre-Islamic Arab saw himself first as a member of his family rather than an individual in which case the society needed the consent of his family to discipline him for any misdeed, he was expected to be a devoted believer in the family god. Failure to do this would present him as a dissident guilty of treason. This would explain the reason why the people of Makkah persecuted the Prophet and the early Muslims especially when the preaching of Islãm became publicized. Obedience to the family god was a civil responsibility and this tradition was handed down from one generation to another.

Reforms introduced by Islãm

The advent of Islãm brought about revolutionary changes in the religious life of the pre-Islamic Arabs. All forms of polytheism were abolished. The Kaʾbah was cleansed of idols and dedicated for the worship of Allah alone. The holy pilgrimage handed down from the time of Prophet *Ibrāhīm* was purified of paganistic and superstitious practices. Apart from nullifying adoration of idols, there were changes in the mode of performing it. *Ihrām* (pilgrims' cloth) was introduced instead of stark nakedness in which rites like circumambulation of the Kaʾbah used to be performed. The circumambulation itself in the *Jāhiliyyah* period then was anti-clockwise instead of being clockwise. So also was abolition of the discrimination which used to characterize movement between *Şafā* and *Marwah* and standing on the plain of

ʾArafāt by giving preference to families of nobility before others. With advent of Islãm everything is now done together by all Muslims all over the world; because Islamic philosophy is that all are equal in the eye of Allah. Divination is forbidden in Islãm (Ālu sh-Shaykh, (1413A.H.) : 235). Any Muslim attempting to do something and is worried about the success or failure of the venture is advised to perform *Istikhārah* which consists of a ritual prayer of two Rakʿahs and supplication for Allah's guidance, support and blessings. If the venture is to prove unbeneficial materially and spiritually, Allah is beseeched to disallow it but to replace it with another profitable in this life and after death. The *Qur'ān* 27: 65 is categorical that: ((قل لا يعلم من في السماوات والأرض الغيب إلاإلاّ الله))

Meaning:

"None in the heavens and earth beside Allah knows the hidden".

Both the diviner and the one consulting or believing him are sinners. With this prohibition, Islãm has nipped in the bud attempts to encourage superstition and falling victims to cheats and charlatans. Any Muslim that practices divination in any form cannot find any basis for the practise either in the *Qur'ān* or *Sunnah*.

SELF-ASSESSMENT EXERCISE

Describe the religious life of the pre-Islãmic Arabs and the reforms introduced by Islãm.

Social life of the Pre-Islamic Arabs and the Islamic Reforms

The social aspect of the pre-Islamic Arabs' life was full of instability, chaos and unrest. As there was no central authority to maintain law and order in the sense that each clan was independent, the practice was that

strong clans or settlements would raid weak ones dispossessing them of their property, enslaving their children and women and getting rid of able-bodied men among them. The unfortunate thing was that this savage source of income, raiding, was considered legitimate without any public censure. The only measure to be taken to forestall falling victims was to be on the alert always and enter into alliance with stronger clans who could scare away prospective raiders or take vengeance on them, as the case might be.

Social discrimination was at its peak among the Arabs shortly before the advent of Islãm. Men of nobility saw themselves as being superior to others and would avoid interacting with them particularly in marriage. Slaves and other people of not pure Arab stock were looked down upon. This was very much pronounced in the city of Makkah which had developed into a flourishing cosmopolitan metropolis.

The pre-Islamic Arabs were given to sensual enjoyment. Drunkenness was the order of the day. Their contact with Byzantines and Persians, the two world powers then at loggerheads competing for political and economic power, facilitated the importation of new brands of alcohol. Nothing, no matter how serious it might be, could disturb or curtail drinking sessions. Gambling was also common among them. It was a common occurrence that one would dispose of all one's property to have money to gamble with, and to watch the opponent carting it away if he won. Vengeance was considered necessary by the Arabs of those days to ward off shame. If any person should injure or kill a relation of another person, it would be the responsibility of the one that had lost his relation, so to say, to ensure that he killed the murderer of his relation. Had there been a central authority invested with the power to bring criminals to book, probably this problem might not have been a social norm.

The social status of woman in those days was at the lowest level. She enjoyed no social security or had any right whatsoever particularly if she was not from a noble family. As a daughter, the news of her birth was a bad omen. She was either to be buried alive or simply murdered. The few that escaped being so dealt with had to contend with degradation and cold attitude from all and sundry. At the time of marriage, she had no say whatsoever. In fact, she could be exchanged with another girl as gifts. In the house of her husband, she was treated as a chattel. The man could divorce or keep her in confinement throughout her life. There was no limit to the number of wives a man could marry. As a widow, she had no right to share from the husband's estate. Instead, she would be
inherited along with other things bequeathed by the deceased. The eldest son of the deceased had the first claim to her. In case there was no son, a

brother could take her. If the son or brother was not interested in marrying her, he could get her married and receive the payment on her.

Four forms of marriage relationship were recognized by the pre-Islamic Arabs. The first was that in which a man would propose to a woman and she would accept with the dowry paid. Another was that in which a man would ask his wife to invite another man of nobility to have dealings with her. At this time, the legitimate husband would desert her. When she became pregnant, he might resume having affairs with her. The child to be delivered would be his legitimately. This was done as a way of earning or bringing nobility to the family. Another form is that in which men, ten or less, would have affairs with a single woman. When she became pregnant and was delivered of the child, she would invite them and choose one of them as the father. Another one was that in which many men would have affairs with a woman. When she became pregnant and was delivered, a physiognomist would be invited to determine the most probable father. This was their brand of the present day prostitution. There was also marriage by exchange known as *Shighār*. In this case, a man would give out his daughter, sister or ward in marriage in exchange for another girl he wanted to marry. No dowry would be paid for or to the girls involved in the process.

Reforms Introduced by Islãm

Islãm has a revolutionary impact on the social life of the pre-Islamic Arabs. First, it replaced anarchy and social unrest with orderliness and social harmony. Being a complete way of life aimed at achieving peace in all ramifications, Islãm softened the hearts of the pre-Islamic Arabs and engendered love and concord among them. It was to the credit of the Prophet (p.b.u.h) that the long-drawn hostility between 'Awz and

Khazraj clans in Madinah was settled amicably. The constitution he drew in Madinah, for the first time, made the Arabs appreciate and respect the rule of law instead of taking laws into their hands as it previously used to be the case.

Universal brotherhood preached by Islãm does not favour discrimination on any basis. All human beings descend from Ãdam who was created from sand. Although, *Qur'ān* recognizes the differences in geographical location, language, complexion, culture and social status, it does not consider them as sufficient reasons to alienate one person from another. They are only to facilitate recognition and identification of individuals. It is only piety, consciousness of Allah in everything one does that is the veritable mark of honour. Incidentally, it is only Allah that can objectively assessthat.

Islām strikes a just balance between other worldliness and materialistic tendencies. It allows for eating, drinking and enjoyment generally but not without restrictions. All those things that may hamper man's welfare and progress materially and spiritually are forbidden. This teaching of Islām is necessary to make man lead a comfortable and prosperous life in this world and achieve bliss and felicity in the hereafter. Thus, alcohol, gambling and all other forms of unbridled sensual enjoyment are prohibited. Intoxicants either in form of liquid, sniff or drugs are unlawful. Gambling is condemned either as a pastime or a source of income. It is based on chance without any positive contribution to the economy. It does not involve the exchange of goods or services. It engenders, instead, ill feelings and grudge between those who are involved in it with adverse effects on the community at large.

Islām sees woman as a full-fledged human being endowed with physical and mental capabilities that enable her to contribute to the progress of the society. It is true that she is physically not as strong as man, but her nature is the best to discharge her duties which are complementary to those of man in the interest of humanity at large. Thus, killing her as an infant, neglecting her as a daughter, maltreating her as a wife and cruelty to her as a widow are ill-motivated actions depriving the community at large of her immense potentials. Kind treatment with respect and honour that Islām recommends for her throughout the stages of life has enhanced her social status. Her birth is now greeted with happiness and joy. She is treated with compassion as a daughter, with respect as a wife, and as an inheritor or beneficiary of the estate of the deceased father, brother or husband instead of being part of the inheritance. She is free to own property and dispose of it willingly. She can also hold public posts in line with her nature and temperament.

All forms of man-woman relationship of the pre-Islamic days have been forbidden by Islām except the one in which the man would propose to the woman with her consenting and the dowry is paid. There were some modifications to this before adopting it. Any relationship between man and woman that does not conform to the rules and regulations as laid by the *Sharī'ah* is illicit and a sin.

SELF-ASSESSMENT EXERCISE

Write a vivid description of the social life of the pre-Islamic Arabia and the reforms introduced by Islām.

Political life of the Pre-Islamic Arabs and the Islamic Reforms

There are two kinds of Arabs. The first consists of the nomadic or bedouin having no permanent settlement and always looking for water and pasture for their cattle. The other is that of those settled in towns, known as sedentary or town Arabs. Although there were differences between them in almost every aspect of life, the differences were more pronounced in politics. The nomadic Arabs had no idea of central government except that many clans forming a tribe would come together and choose a *Shaykh* or *Seyyid* (leader). The selection was the responsibility of the council of elders known as *Ahl-al- Ikhtiyãr* (lit. people invested with the power to choose). The Shaykh was not a sovereign but first among equals. He was constantly advised by the *Majlis*, Consultative Council. He had no authority to enforce his laws. He was therefore more of an arbitrator and adviser than a ruler. He would have a quarter of the war booty as income.

The town Arabs were better organised, so to say, politically. Their settlements were mainly in valleys and around gases where they could easily get water. Makkah happened to be the most famous of such settlements shortly before the advent of Islãm. The political system there was merchant oligarchy, that is, government by a small group of allpowerful merchants. This system arose from the fact that the religious roles played by the city which attracted people from the four comers of the Arab land had transformed it into one of the largest world markets and those who controlled the economy just discovered that the political power had also been conceded to them. As one could imagine, the system which concentrated power in few hands led to gross abuse, exploitation and oppression. Ability and moral uprightness did not matter at all as necessary qualities to be possessed by any person interested in political leadership. The important thing was to come from a noble and well-to-do family. That was why some people bitterly opposed the Prophet saying that there were persons far wealthier than he was.

The pre-Islamic Arabs had rights and responsibilities not as individuals, but as members of the family or tribe. Blood relationship was therefore the basis of social interaction. The Arab would stand by his brother, as long as the blood relationship had been established, whether he was right or wrong. It did not matter as well if he lost his life doing so. Except when threatened by external aggression, the pre-Islamic Arabs of various tribes hardly came together in Unity.

Reform Introduced by Islãm

Islãm sees the whole humanity as constituting a single community. Thus, the tribal boundaries to mark out political entities have been replaced with

the universal concept of Islãm. The significance of this is that all tribal sentiments which, more often than not, tend to alienate one man from another leading to obnoxious policies such as apartheid are totally removed. There should be no discrimination whatsoever.

The Islamic political system is *Khilãfah* (Caliphate or Vicegerency). This in essence means that those at the helm of State affairs hold the posts in trust for Allah who is the real owner of all authority. With this in one's mind, one bears Allah in mind always before doing anything.

This also signifies that *Sharĩ'ah* is binding on one just like any other person in the community. It is therefore one's responsibility to safeguard and implement it to the letter. So also one exercises self-restraint to avoid abuse of power by allowing sentiments and subjective considerations to influence one's activities, unlike what used to be the case before Islãm.

Islãm teaches that positions of authority should be entrusted to those capable of holding them. Qualities like piety, knowledge, wisdom, sound health, courage and ability to uphold justice should be considered before choosing anybody as a leader. So also *Shūrā* (consultation) should be held regularly to ensure that the leader does not become autocratic, and to enable citizens to have a say in running the State. Concentration of power in few hands to the exclusion of the overwhelming majority is not in the best interest of the State. Sooner or later the suffering majority will be forced to seek redress which may lead to civil crisis and disorder.

It may be necessary to call attention, at this juncture, to the fact that there are fundamental differences between the Islamic concept of democracy and that of the West. Islãm does not invest absolute authority in the majority or hold the opinion of the majority as the final say on every issue. The will of Allah, as made known in the *Sharĩ'ah*, is given priority over what may be the decision of the majority. The decision will be valid or deserves being considered at all if only it does not run counter to the injunctions of *Qur'ān* and *Sunnah*. For instance, there is no authority for legalizing prostitution or abortion because *Sharĩ'ah* expressly goes against it (*Qur'ān* 17:32-33).

SELF-ASSESSMENT EXERCISE

What are the reforms Islãm introduced to the political system of the Jahiliyyah Arabia?

Economic life of the Pre-Islamic Arabs
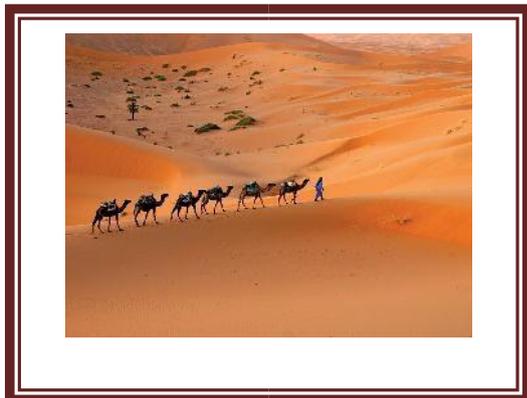
The insecurity of life and property in the pre-Islamic period in the Arab land was mainly due to economic reasons. The harsh weather coupled with the fact that desert covered the lion share of the land made life extremely difficult. Chief occupations then were farming which could be practised only at pockets of fertile land, cattle rearing and trading. To forestall falling victims of robbers and wild animals, traders used to go in caravans and their journeys used to take weeks and months.

To free themselves from economic hardships, the Arabs of those days used to attack caravans and settlements especially those with whom they had not entered into agreement. Raiding, plundering and robbery were recognised as legitimate sources of income and those involved in them used to boast of their exploits. It was through these means that articles plundered at the coast or borders usually found their ways to the other extreme end. Except in the holy months set aside for the free movement of pilgrims to and from Makkah, nobody was safe to travel in the Arabian Peninsula.

Commercial activities were full of fraudulent and exploitative practices. These included using false measures and hoarding. The trader hardly thought of the interest of the buyer. All his concern was to make more and more money. He would swear by God without compunction knowing fully that he was telling lies to impress the prospective buyer. He would do everything possible whether honestly or dishonestly, to promote his trade and run down his colleagues. The pre-Islamic Arab trader was only conscious of money and money alone.

The unbridled quest for money made the pre-Islamic Arabs resort to many degrading forms of exploitation. The worst was misappropriation of orphans' wealth. The social instability, as we discussed previously, usually led to untimely deaths with widows and orphans at the mercy of whoever was in charge of taking care of the estate of the deceased. The tendency, on several occasions, was to deprive poor orphans, particularly

the young ones, of the property. It was not impossible also to sell them as slaves if there was nobody to protect their interest. Widows were worse off as the social set-up was itself against them. They had no right whatsoever to inheritance. They were, in fact, part of the inheritance to be shared by the male heirs of the deceased especially the eldest son and brothers.

Lending money on interest was a popular and lucrative business among the pre- Islamic Arabs. The rich seized the opportunity to exploit the poor and the needy to get richer. The interests were so high that borrowers could not, in most cases, pay up. The result of this was that such unfortunate people would literally become slaves to lenders who could subject them to all forms of public ridicule and persecution. The stigma of being indebted was also on the members of their families and clans at large.

The pre-Islamic Arabs indulged in gambling and saw it not only as a pastime but also as a profession through which one could earn one's living. As success in it depended on chances, their fortunes and misfortunes alternated in such quick succession that hardly could one make out anything of its gains. Large amounts of wealth were daily squandered with attendant adverse effects on the family and society at large. Both the winner and the loser would bear a grudge against one another and there were occasions when the ill feelings could not be concealed, culminating in fights or wars. Gambling contributed in no small measure to the instability of the Arabs' society in the pre-Islamic period.

Reforms Introduced by Islãm

As a way of life that requires that peace should form the bedrock of social interaction, Islãm condemns most of the economic activities of the pre-Islamic Arabs. All commercial transactions should bring joy and satisfaction to the parties to it. In trading, for instance, both the buyer and seller should benefit from the transaction. The former should be satisfied that the article bought is of the quality or services expected while the latter should make reasonable gains for his efforts, investment and risks to make the article available for sale. Should either of them feel cheated, the transaction is unacceptable according to the *Sharĩ'ah*. With this general principle briefly explained, one would see that major sources of income of the pre-Islãmic Arabs were defective in one way or the other, judged according to the *Sharĩ'ah.*

Raiding through which one forcibly dispossesses others of their property and, at times, wounds or kills them, is completely outlawed by Islãm. Theft and robbery are criminal acts according to *Sharĩ'ah* with stiff penalties stipulated to serve as deterrents. Instead, Islãm enjoins mighty nations or communities to be judicious and considerate in using their resources. They should not seize the opportunity to Lord it over weaker nations and acquire their belongings illegally.

Trading is held in high esteem in Islãm. That is why Muslims are allowed to engage in it even when at the holy land before or after performing *Hajj* (Holy Pilgrimage). But there are differences between the pre-Islãmic Arab trader and the Muslim one. The latter steers clear of all forms of fraudulent practices of those days such as the use of false measures, covering up the defects of articles, frivolous swearing in the name of Allah and hoarding. He always bears Allah in mind, knowing that He takes an account of everything he does in the mosque, shop or somewhere else. He needs gains but not at all costs. His joy mainly is to contribute his humble quota to the progress of the community in obedience to Allah.

Muslims are brothers and sisters to one another. The Prophet describes them as parts of the same body, sharing the joy and agony of one another. If any of the parts of the body sustains an injury, all other parts will not be comfortable. Thus, when a Muslim passes away leaving behind orphans and widows, the person in charge of his property should do everything possible to alleviate their suffering. He should not maltreat them. He can spend part of the wealth as his charge for taking care of it if he cannot afford to do that freely. The *Qur'ãn* strongly condemns exploiting orphans and dispossessing them of their legitimate property.

Sharĩ'ah forbids charging interests on loans no matter how little. The concept is that money itself cannot bring in gains. Other inputs such as labour, planning, land and transportation are necessary. More importantly, all investments are risky – they may succeed or fail. The money lender avoids all the risks involved and takes it for granted that the investment or business undertaking must bring gains. The borrower toils day and night to make the two ends meet while the lender relaxes, watching his money growing and growing. Islãm sees this as a form of exploitation. Unless you have a stake in a business, you cannot share from its gains. Borrowers are also disallowed to agree to the terms of paying interests. The world-wide economic recession being experienced at present may not be unconnected with the policy of charging interests on loans, no matter whether for commercial purposes or welfare services.

Sharĩ'ah forbids gambling because it fails to fulfill the requirement of bringing joy and satisfaction to the parties involved in it. While the winner is happy, the loser is sad. This does not enhance mutual love and goodwill as required by Islãm. Secondly, it does not contribute in any way to the improvement of the quality of life by providing goods or services.

Lastly, it depends purely on chances which may lead to psychological depression and anti-social behaviour. This may happen because depending on chances to be rich rather than on hardwork will make one look for quick means of getting wealth. This may ultimately lead to pick pocketing, stealing and swindling.

SELF-ASSESSMENT EXERCISE

Islãm introduced reforms into the economic system of the early Arabs. Discuss.

4.0   CONCLUSION

The use of the term "*Jāhiliyyah*" applies usually in relation to the life of the pre- Islamic Arabs with particular references to their practices in the various aspects of live and their negative effects on the society. Islãm introduced reforms to give the people a new orientation to worship only Allah and refrain from licentious life and believing that they would give accounts of their earthly life on the Day of Judgment. To this end, polytheism, drunkenness, adultery, exploitation of the poor and the weak, oppressive use of political power, lending money on interest, cheating, gambling and self-centredness as individuals and groups were forbidden. Instead of all these, Islãm encourages universal brotherhood of man, self-discipline and probity.

5.0   SUMMARY

This unit focuses on the definition and implication of *Jāhiliyyah* as a term used to describe the life of the pre-Islamic Arabic and their practices in the various aspects of life. It highlights the reforms Islãm introduced to dissuade them from polytheism, all forms of anti-social behaviour, exploitative economic practices, abuse of political power and immoralties.

6.0   TUTOR-MARKED ASSIGNMENT

⬜⬜ Explain the term *Jāhiliyyah* in relation to the life of the preIslãmic Arabs.⬜

⬜⬜ Identify the practices of the pre-Islãmic Arabs in the various aspects of life andthe reforms Islãm introduced to them.⬜

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MODULE 2   SOURCES OF *SHARĨ'AH*

UNIT 1   THE *QUR'ĀN* AS A SOURCE OF *SHARĨ'AH*

CONTENTS

1.0   Introduction
2.0   Objectives
3.0   Main Contents
    3.1   General Classification of the contents of the Glorious
           Qur'ān
    3.2 The Significance of the *Qur'ān* as the first primary source of
           Sharĩ'ah
    3.3   A Highlight of the legal verses of the *Qur'ān*
4.0.   Conclusion
5.0   Summary
6.0   Tutor-Marked Assignment
7.0   References/Further Reading

1.0   INTRODUCTION

Module 1 of this Course detailed you with the lexical and technical
meaning of *Sharĩ'ah* and expatiated upon the importance, concept and
scope of the Islamic law. The relations between the terms Islãm, *Sharĩ'ah*
and *Fiqh* were also analysed for your digestion. The last Unit of the
Module focused on analysis of the pre-Islamic Arab customs and the
reforms introduced by Islãm.

In this Module, you are going to study and digest the sources of *Sharĩ'ah*
legal system which are: *Qur'ān*, *Sunnah*, *ljm*ã' (Consensus of Opinions)
and *Qiyãs (*Analogical Deduction).

Since the *Qur'ān* is the first primary and the most important source of
Sharĩ'ah on which all other sources are based we are going to begin by

sheding light on the importance and roles of the *Qur'ān* as a source of *Sharī'ah*.

2.0   OBJECTIVES

At the end of this unit, you will be able to:

* give a general classification of the contents of the Glorious *Qur'ān*
* expatiate upon the significance of the *Qur'ān* as the first primary sourceof *Sharĩ'ah*
* highlight the legal verses of the *Qur'ān.*

3.0   MAIN CONTENT

3.1General classification of the verses of the *Qur'ān*

The verses of the Holy *Qur'ān* can be classified into four categories as follows:

> (i)   Those that direct mankind to learn lessons through the remembrance of the giftof Allah (*at-Tadhkīr bi ālā'i Allah*)

There are numerous gifts of Allah like water, air, sun, moon, day, night, heavens, earth, children, vegetation, animals, etc. which point out the existence of Allah, the Divine Lordship of Allah, Oneness of Allah, etc. Allah says:

((فبأيّ آلاء ربكما تكذّبان))

"Which of the bounties of Allah will you reject?".

This verse constitutes the chorus of twenty- nine verses of *Qur'ān* Chapter 55, *Sūratu `r-Rahmān*.

(ii)   Those that direct mankind to learn lessons through the remembrance ofvarious happenings, incidents, etc. (*at-Tadhkīr bi āyām Allah*)

A number of events show how Allah had helped His Prophets and other pious people, and how he had punished the wrongdoers. The example of Allah's help to prophet Ibrãhim, Ismaĩl, Mũsa, Hãrũn, 'Isa and Muhammad can be seen throughout the pages of the Holy Book.

Also the example of Allah's punishment on the wrongdoers can be observed in the *Qur'ān* in the cases of Fir'awn, (Pharaoh), Namrūd, Qārūn, Abū Lahab and the communities of 'Ād and Thamūd.

(iii)   Those that direct mankind to learn lessons through the remembrance of death and eschatology (*at-Tadhkīr bil mawt wa mā ba 'da `l-mawt*)

Death and all events which follow death are mentioned in the Holy *Qur'ān*. These are as follows:

a)   Questioning in the grave by the two Angels , Munkar and Nakīr
b)   *Barzakh*, the intermediate state after the death till the day of resurrection
c)   Resurrection
d)   The day of judgement
e)   Rewards and Punishments
f)   Heaven and Hell
g)   The Beatific vision (seeing Almighty Allah face to face)

(iv) Passages of the Holy Book that contain injunctions of Allah with which mankind should abide (*a`t-Tadhkīr bi Āyāt al-Ahkām*). A highlight of this will be presented shortly after the following section.

SELF-ASSESSMENT EXERCISE

"The verses of the Qur'an can be classified into four themes**.**" Expatiate upon this statement briefly**.**

3.2 The Significance of the *Qur'ān* as the First Primary Source of *Sharĩ'ah*

The Holy *Qur'ān*, as we mentioned previously, is the first primary source of *Sharĩ'ah*. It has the final say on any issue that relates to the Islãmic Law, or to be more specific, way of life. This is in view of the fact that the Law in Islãm does not only treat criminal, civil, commercial and international cases. It goes further to discuss morals, ethics, worship, eschatology, metaphysics and social interaction. In other words, everything that a Muslim needs is provided for by the *Sharĩ'ah*. The *Qur'ān*, as a Law Book, is therefore different from any other one man has ever known. The following are some of its distinctive qualities.

i.   **Complete way of Life:** As said while discussing the scope of the *Sharĩ'ah*, man's religious life is traditionally divided into three

broad aspects by the early scholars of Islãm. These are the '*Aqīdah* (creed) '*Ibãdah* (worship) and *Mu'ãmalah* (social interaction). The first, as the translation shows, relates to faith or doctrinal issues such as belief in Allah and the other Articles of Faith. The second is on the acts of worship such as *Salãt* (Prayer), *Zakãt* (obligatory charity) and other cardinal principles of Islãm; while the third consists of legislations on what transpires between one person and another or a group of persons. This may relate to economy, politics, entertainment and social activities generally.

That is why some regards it a misnomer to single out some verses of the *Qur'ãn* and tag them as being the only ones capable of legal application.

ii. **Synthesis of morality and law:** The modern concept of law does not have any regard for moral and ethical consideration. An obvious case can be perverted if the lawyer handling it is capable or knows how to play his card to influence the judge. The ultimate aim is to impress the judge without any consideration for the conscience. But, *Sharĩ'ah* is different in this because it constantly reminds man of the omnipresence, omnipotence and omniscience of Allah. He knows everything and will give appropriate rewards in the hereafter. The *Qur'ãn* cautions those in charge of dispensing justice asking:

((أليس الله بأكم الحاكمين))

"Is Allah not the Judge of judges?" (*Qur'ãn* 95:8).

iii. **Stipulating the Law Potentially:** By this we mean that the *Qur'ãn* is just "the model illustration for future legislation and does not constitute a legal code by itself". It provides the principles in most cases without stipulating the Law explicitly or actually. Should it attempt to do so, it would be too voluminous and will not serve the purpose it is meant for. The explicit and actual legislations are furnished in form of *Sunnah* which is the second primary source of *Sharĩ'ah*. This shows the indispensable roles the Prophet played as the recipient, interpreter and practical demonstrator of *Sharĩ'ah*. The fact that the *Qur'ãn* has not supplied details in every aspect of life also provides opportunities for interpreting the law to accord with all times and places. Had it given specific legislations in the light of the situation at the time of the Prophet, it would have restricted itself to that time and the Arab land. In that case, it would be difficult, if not impossible, to make the legislations applicable in the present time. The need for its review would have been irresistible, just like the case of other codes all over the world.

iv. **Perfect:** No man is perfect, and anything coming from him cannot be perfect. That is why the need is always felt to improve on policies by modification, review or outright change. As a result of this, constitutions all over the world are subject to review, amendment or repeal. But the case of the *Qur'ān* is different. Its source is Allah to whom the past, the present and future are the same. He knows everything. Owing to His infinite knowledge, He is fully aware of all possible future needs of man and how to meet them. As such, He has revealed the *Qur'ān* as guidance in which there is no doubt in accordance with man's

nature. Any deviation from it will not only make man fail to achieve the desired aim but will also create difficulties for him. We are all witnesses to what happens in developed countries where technological advancement has failed to bring about peace and tranquility in the society. Organised violent crimes are the order of the day in most of them.

v. **Facilitation of Implementation:** Unlike other legal codes which expose man to temptations and, at the same time, expect him to keep the law, the *Qur'ān* gives due consideration to the nature of man and takes steps to enable him to carry out the injunctions. For instance, raping is a crime all over the world but woman is encouraged to make herself as attractive and seducing as possible in dressing, keeping dates and visiting males. The case of Mike Tyson, the heavy-weight boxing champion jailed for six years for raping a contestant in a beauty contest is apposite here. The lady was approached and invited to his hotel accommodation. The invitation was honoured and only God knows how she dressed and behaved to arouse his carnal feelings. The situation can hardly arise in an Islamic setting. The woman is enjoined to dress decently without exposing her beauty. Members of the opposite sexes are instructed to "lower their gaze" and avoid promiscuous intermingling (*Qur'ān* 34:30-31). A woman or girl is not allowed to visit any man who is not her husband or relative, but if need arises, she must not go there alone. Thus, to commit fornication or adultery is very difficult in the Islamic country unlike what obtains in the West. In fact, the principle in the Islamic jurisprudence is that anything that may lead to a sin is a sin in itself.

In sum, the *Qur'ān* contains the totality of *Sharĩ'ah* although in principle without going into detail in many cases. It provides the framework on which the elaborate exposition of *Sharĩ'ah* in the Sunnah, *Ijmā'* and Qiyãs is based. Due to this unique role it plays, the *Qur'ān* is considered the most authoritative of the sources of *Sharĩ'ah*. It has the final say on every

legal issue. It is even used to determine the authenticity of Hadīth because all the sayings and practices of the
Prophet are expected to be in accordance with it. In case any statement or action is ascribed to him but is contrary to the *Qur'ān*, it will have no legal value. It must have been forged.

As the *Qur'ān* is meant to guide man to the realisation of the purpose of his creation both here and in the hereafter, he is enjoined to ensure that he lives according to its provisions. The Prophet was specifically instructed to judge cases according to it. The *Qur'ān* 5:49 says: وأن احكم بينهم بما

((أنزل الله ولا تتبع أهواءهم

واحذرهم أن يفتنوك عن بعض ما أنزل الله إليك))...

To you we sent the scripture in truth, confirming the scripture that came before it, and guarding it in safety, so judge between them by what Allah has revealed, and follow not their vain desires, diverting from the Truth that has come to you.

Failure to adhere to the provisions of the *Qur'ān* in dispensing justice is strongly condemned and those guilty of this sin are called *al-Kāfirūm* (the unbelievers), *al- zālimūn* (the wrong-doers) and *al-Fāsiqūn* (the rebels) (*Qur'ān* 5:44-47). This means that the sin is so grave that it may rob one of one's faiths and turn one into an evil-doer and a rebel. Hence, carrying out *Sharĩ'ah* provisions as in the *Qur'ān* is part of one's responsibilities as a Muslim.

SELF-ASSESSMENT EXERCISE

Assess the importance of the *Qur'ān* as the first primary source of *Sharĩ 'ah*.

A Highlight of legal Verses of the *Qur'ān*

Many *Qur'anic* verses contain the commandments and injunctions of Allah for governing the conduct of every Muslim from birth to death; their observance will bring him eternal happiness. These verses are called *Āyāt al-Aħkām*. They may be grouped into four categories:

(i)   The Concise Injunctions

These are the precise commandments contained in the Holy *Qur'ān*. But the Holy *Qur'ān* does not give detailed rules regarding these

commandments. For example, the Injunctions concerning purification (*Tahārah*), prayers (*Şalāt*), fasting (*Şawm*), poor rate (*Zakāt*) and pilgrimage (Hajj) etc. are all mentioned in the *Qur'ān*, but the detailed rules about this are to be found in the traditions of the Prophet (SAW).

(ii)   *The Consice-cum-Detailed Injuctions:*

This Injuctions are those which are contained in the verses some of which mentioned the commandments in brief but others mention them in detail and further leave them to the *Ħadīth* and *Sunnah* as for example injuction on war, peace, Jihad, prisoners of war, booty and relations with non-Muslims. These details are not merely left tothe *Ħadīth* and *Sunnah* alone but *Ijtihād* can also be a method to find suitable solution to the problems.

(iii)   *The detailed Injuctions:*

These Injuctions are contained in the *Qur'ān* which gives complete details of the commandments. Therefore, there is no room for *Ijtihād* e.g. all the *Hadd* punishments (*Qişāş)*, unintentional homicide, murder (*al-Qotil*), theft (*Sariqah*), robbery (*Hirābah*), *Zinā* (Fornication), and *Qadhif* (Defamation).

(iv)   *Fundamental principles of Guidance derived from injunctions:*

The Holy *Qur'ān* also mentioned certain fundamental principles for the guidance of Muslims. But these principles have no clear cut definition either in the *Qur'ān* or the *Sunnah* except basic norms. They are to be provided through the due process of *Ijtihād*. These principles are:

a)   Principles of freedom
b)   Principle of justice
c)   Principle of consultation
d)   Principle of public interest
e)   Principle of equality

It is the consensus of the opinion among the interpreters of the *Qur'ān* and Muslim Jurists (*al-Mufassirūn* and *al-Fuqahā'*) that any Muslim who legislatively innovates, or enacts laws inconsistent with what God has revealed, enforcing his own laws while renouncing the revealed ones
- unless he believes that this innovated or self-imposed laws are correct interpretation of Allah's revelation- would be classified under one of the categories of either *Fāsidūn*, *Fāsiqūn*, *Zālimūn*, and finally *Kāfirūn*. For example, if a ruler does not apply the Islãmic penalty for theft or slander or adultery, preffering the judgement of man-made law, such a ruler will be considered definitely an unbeliever. If a ruler fails to apply Islamic

Jurisprudence for reasons other than disbelief, he is considerd a wrongdoer, and if, as a result of neglecting Islamic Jurisprudence he violates a human right or overlooks a principle of justice and equity, he is considered a rebel.

List of some of the Legal Injuctions of the Holy Qur'ān

Ijmā' **(Consensus of juristic opinion)**	*Al-Nisāi*, 4v59, 115
Qiyãs **(Analogy)**	*Al- Baqarah*, 2v227, *Al-Hashr* 59v2
Ijtihād	*Al-'Ankabūt*, 29v69
Istiħşān **(Juristic preference):**	***Al-Baqarah**, **2v185; Al-Hajj, 22v78***
Marriage	*Al-Baqarah*, 2v222,235; *Al-Nisāi*, 4v4, 19,21,23,24,25; *Al-Māidah*, 5v5,7; *Al-A'rāf*, 7v189; *Al-Nūr*, 24v3,22,26,32,33;

	Al-Ahzāb, 33v37; Al-Rūm, 30v21; Al-Mumtaħinah 60v10,11,12
Purpose of Marriage	***Al-Rūm, 30v21; Al-Nisāi, 4v1; Al-Nahl, 16v72.***
Choice of Partners	*Al-Nūr*, 24v31; *Al-Nisāi*, 4v3.
Polygamy	*Al-Nisāi*, 4v3,29.
Mahr **(Dower)**	*Al-Nisāi*,4v4,20,21,24,25; *Al-Māida*,5v6;*Al-Baqarah*, 2v236
Nafaqah **(Maintenance)**	*Al-Baqarah*, 2v233,241; *Al-Nisāi*, 4v34; *Aţ-Ţalāq*, 65v6,7; *Al-Ahzāb*, 33v50
Good behaviour between spouses	*Al-Nisāi*, 4v19, 129, 130.
Code of conduct for believing women	*Al-Nūr*, 24v30,31
Responsibilities of man	*Al-Nisāi*, 4v34,35,128
Marriage with unbelievers	*Al-Baqarah*, 2v221
Marriage with Ahlul-Kitab	*Al-Māidah*, 5v6

Prohibited degree of Relationship	*Al-Nisāi*, 4v22,23,24.
Zihār (Injurious comparism)	*Al-Ahzāb*, 33v4; *Al-mujādilah*, 58v2,3,4.
***Īlā* (Vow of desertion)**	*Al-Baqarah*, 2v226.
***Li'ān* (Mutual Cursing)**	*Al-Nūr*, 24v 4-12
Ṭalāq (Divorce)	*Al-Baqarah*, v227-232,236-237,241,242; *AlNisāi*, 4v20, 21, 35,128,130; *Al-Ahzāb*, 33v49; Al-Talaq, 65v1,2,6,7.
***Khul'u* (Redemption)**	*Al-Baqarah*, 2v229; *Al-Nisāi*, 4v128
***Iddah* (Retreat)**	*Al-Baqarah*, 2v228,234,235; Al-Talaq, 65v1-4.
***Raja'a* (Revocation of Divorce)**	*Al-Baqarah*, 2v228; Al-Ahzab, 33v49.
Suckling (*Raḍā'ah*)	*Al-Baqarah*, 2v233.
Orphan and guardianship	*Al-Nisāi*, 4v2,3,5,6,8,10,127; *Al-Baqarah*, 2v220.
Succession or Inheritance	*Al-Baqarah*, 2v180,181; *Al-Nisāi*, 4v7,8,11,12,
***Waṣiyyah* (Wills)**	*Al-Nisāi*, 4v7,8,11,12,33,176.

LEGAL TRANSACTIONS

Trade and Business (Sales)	*Al-Baqarah*, 2v188,275.
Writing and deeds of sales	*Al-Baqarah*, 2v282
Usury (*Ribā*)	**Al-Baqarah, 2v275,276,278,279,280,281 Āl'Imrān, 3v130.**
Debt	**Al-Baqarah, 2v245,280; Al-Muzammil, 73v20; A`t-Taghābun, 64v17.**
Mortgage	*Al-Baqarah*, 2v283
Trust (*Amānah*)	**Al-Nisāi, 4v35; Al-Anfāl, 8v27**
Measurement	**Banū Isrā'īl, 17v35; A`sh-Shūra, 42v181,182,; Hūd, 11v85.**
Food and Drinks	*Al-Baqarah*, 2v168,172.
Justice	*A`n-Nisāi*, 4v58,135; *Al-Māidah*, 5v9,45,47; *AlA'rāf*, 7v29; *A`n-Naḥl*, 16v90.

CRIMES

Theft (*Sariqah*)	*Al-Baqarah*, 2v286; Al-Māida, 5v41,42

Zina (Fornication)	*Banū Isrā'īl*, 17v32; *A`n-Nūr*, 24v2-9
Wine for any intoxicant	*Al-Baqarah*, 2v219; *Al-Māida*, 5v93
Highway robbery (*Hirābah)*	*Al-Māida*, 5v36,37
Killing (Qatl)	*Al-Baqarah*, 2v178,179; *Al-Māidah*, 5v35
Defamation (*Qazf)*	*A`n-Nūr*, 24v4,5,11,20,23,24.
Witness	*Al-Baqarah*, 2v140,282,283; *Al-Nisāi*, 4v15,135; **Al-Māidah, 5v9,109,110, 111; A`n-Nūr, 24v13; Al-Furqān, 25v72.**
Oath (*Al-Yamīn*)	*Al-Baqarah*, 2v224, 227; *Al-Māidah*, 5v92; *A`nNaħl*, 16v94; *A`n - Nūr*,24v22, 53
Punishments	*Al-Baqarah*, 2v178,179; *Al-Nisāi*, 4v15, 16, 92, 93; *Al-Māidah*, 5v36, 37, 41, 42, 48; *A`n-Nūr*, 24v2-5
Repentance (*Tawbah*)	*A`t-Tawbah*, 9 the whole chapter especially v29 which deals with legal injunctions.
Lawful Relation (*Qaşaş*)	*Al-Baqarah*, 2v178; *Al-Māidah*, 5v35, 48.
Consultation (Shura)	*Āl-Imrān* 3v158; Al-Shurah, 42v38
Law of War and Peace	*Al-Baqarah*, 2v217, *Al-Nisāi*, 4v71, 100; *Al-Anfāl*, 8v41, 61

In sum, an Egyptian scholar 'Abdu `l-Wahhāb bn `l-Khallāf classified

Qur`ānic legislations as follows: Constitutional Provisions – 10 verses; International law – 25 verses; Jurisdiction and procedures – 13 verses; Civil laws – 30 verses and Economic and Financial injunctions – 20 verses (Clinton Bennet: 1994. P.100)

SELF-ASSESSMENT EXERCISE

Enumerate the groupings of the *Qur'ān*ic verses that contain legal issues with brief explanation.

4.0   CONCLUSION:

The *Qur'ān* is the first and the original source of *Sharῖ'ah*- the Islãmic Law. It does not only stipulate but also provides guidelines on how to implement its provisions. It puts the nature of man into consideration always. The guidance provided in the *Qur'ān* covers all the aspects of life

except that it does not go into details in most cases. As a legal treatise, the *Qur'ān* has the peculiarity of covering all aspects of man's life. It contains the Law potentially and not explicitly. It is incumbent on Muslims to avail themselves of guidance the Book provides as failure to do so amounts to nothing less than disbelief and recantation.

5.0 SUMMARY

This unit opens with a classification of the verses of the *Qur'ān* into those that direct mankind to learn lessons through the remembrance of the gift of Allah; through the remembrance of various happenings, incidents, etc. through the remembrance of death and eschatology and those that contain injunctions of Allah with which mankind should abide. It then gives a highlight of the significance of the *Qur'ān* as the first primary source of *Sharĩ'ah* containing provisions for all aspects of human life; and enumerating its distinctive qualities as a Law Book different from any other one man has ever known. It then focuses on the grouping of *Āyāt al-Aħkām* (verses having bearings on legal injunctions) and concludes with a list of some of such legal injunctions in the HolyBook.

6.0 TUTOR-MARKED ASSIGNMENT

1. Give a general classification of the contents of the Glorious *Qur'ān*.

2. Expatiate upon the significance of the *Qur'ān* as the first primary source of *Sharĩ'ah*.

3. The list of some of the Legal Injuctions of the Holy Qur'ān can be classified into four Groupings, i. e. Marriage, Divorce, Business transaction, and Crimes; quote five *Qur'ān*ic verses for each of them.

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UNIT 2 *SUNNAH* AS THE SECOND PRIMARY SOURCE OF *SHARĨ'AH*

CONTENTS

1.0   Introduction
2.0   Objectives
3.0   Main Contents
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    3.2   The Sunnah as the Second Primay Source of *Sharī'ah*
3.3   Importance of *Hadīth* for both Religious and Legal purposes in Islãm
4.0   Conclusion
5.0   Summary
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7.0   References/Further Reading

1.0   INTRODUCTION

The Course, ISL121 has introduced you to the science of *Hadīth* in detail. It enlightened you about the origin of *Hadīth*, its kinds, divisions, compilation, criticism, classification, and its famous scholars. The collectors of the six authentic *Hadīth*s and their collections in particular were not left behind.

Meanwhile, Sunnah is next to the *Qur'ān* and is the second primary source of *Sharĩ'ah*. Perhaps you should be reminded that *Hadīth* and

Sunnah are sometimes interchangeably used for the tradition of the Prophet. This unit will carry you through the importance of *Sunnah* as a source of *Sharĩ'ah* and discuss other related issues.

2.0 OBJECTIVE

At the end of this unit you should be able to do the following:

- explain the significance of *Sunnah*
- expatiate upon the *Hadīth* as the second primary source of *Sharĩ'ah*,
- discuss the importance of Sunnah for both religious and legal purposes.

3.0 MAIN CONTENT

3.1 Significance of "*Sunnah*"

As a lexical item in Arabic, *Sunnah* means a way or manner of acting. It is used in the *Qur'ān* in this sense to signify the mode of life of the previous peoples. Examples of this can be found in the *Qur'ān* 8:38, 15:13, 18:35, 35:43. It is also used to mean the way Allah deals with people or acts generally. As a technical term, it initially meant, first and foremost, the deeds or practice of the Prophet as distinct from his sayings which were usually assigned to *Hadīth*. Events soon overtook this separation and the two terms – *Sunnah* and *Hadīth* came to mean the same thing. Now, either of them means the sayings and actions of the Prophet and those of his Companions that got his Prophetic approval. Thus, we have *Sunnah* in form of *Qawl* (speech) *Fiᶜl* (action) and *Taqrīr* (approval).

The significance of *Sunnah* derives first and foremost from the emphasis laid on it by the *Qur'ān* as an indispensable guide to the straight path. Some of the relevant passages of the *Qur'ān* go thus:

((لقد كان لكم في رسول الله أسوة حسنة ،لمن
كان يرجو الله واليوم الآخر وذكر الله كثيرا))

Verily in the Messenger of Allah you have a good example for him who looks unto Allah and the Last Day, and remembers Allah much.

Qur'ān)21:33

((يا أيها الذين آمنوا، أطيعوا الله وأطيعوا الرسول وأولي الأمر منكم، فإن
في شيئ فردّوه إلى الله والرسول، إن كنتم تؤمنون بالله واليوم
الآخر. ذلك خير وأحسن تأويلا))

O you who believe! Obey Allah, and obey the Messenger and those of
you who are in authority; and if you have a dispute concerning any
matter, refer it to Allah and the Messenger if you are (in truth) believers
in Allah and the Last Day. That is better and more seemly in the end.

Qur'ān)59:4

((يا أيها الذين آمنوا، أطيعوا الله وأطيعوا الرسول ولا تبطلوا
أعمالكم))

O you who believe! Obey Allah and obey the Messenger, and render not
your actions vain.

(*Qur'ān* 47:33)

The first verse quoted above (*Qur'ān* 33:21) emphasizes the need for us
to take the life of the Prophet as a model to achieve prosperity both in
this world and in the hereafter. The second enjoins Muslims to obey
Allah and the Messenger and concede their final verdicts on actions to
the two of them if indeed they are believers. This, in essence, means that
we should take as forbidden anything declared as such by Prophet
Muhammad. The third warns against disobedience to Allah and the
Prophet because that will surely lead to the nullification of human deeds
rendering them null and void. As we cannot see Allah and even the
Prophet is no more, the meaning of obedience to them is to obey the
Qur'ān and *Sunnah* which respectively represent their will.

By the time the Prophet passed away, the whole *Qur'ān* had been
revealed while his life had taken its full course, leaving indelible
landmarks in the various aspects and stages of life. He, therefore, had no
doubt whatsoever in urging the Muslims to stick to the *Qur'ān* and his
Sunnah. He said:

"تركت فيكم ما إن تمَسّكتم به لن تضلّوا: كتاب الله وسنّة رسولهر. عَضّوا
عليها بالنواجذ"

"… I have left with you something which if you will hold fast to it, you
will never fall into error – a plain indication, the Book of Allah, and the
practice of His Prophet. So give good heed to what I say".

The *Sunnah* is significant in understanding and practising Islãm because
of many purposes it serves. Among such purposes are the following:

i)   **Explanation of the *Qur'ān*:** That the scripture covers all aspects of human endeavour does not mean that it gives every detail in each case. At times, it gives details while allusions or essential guidelines are given at others. The usual practice was that the Prophet would supply explanations, taking the initiative or in answering questions. Examples here are cases of the ritual Prayer, *Salāt*, and the Pilgrimage, *Hajj*.

ii)   **Supplement to the *Qur'ān*:** In addition to the above, there are occasions when injunctions in the *Qur'ān* do not have direct bearing on a particular issue and it is necessary to make provisions for such. An example that may be given here is that of making necessary amendments in *Ṣalāt* when there is a mistake of omission, addition or both at the same time. In this case, the *Sunnah* will provide guidance to supplement the *Qur'ān*.

iii) **Practical Exemplification of the *Qur'ān*ic Injunctions**: But for the life of the Prophet, some people may think that many teachings of the *Qur'ān* are very difficult or utopian. A world in the firm grip of secularism and materialism will find it difficult to understand, for instance, the integration of the spiritual and temporal, the State and Religion, in such a way that the world is not rejected in favour of the hereafter or *vice versa*. Islãm teaches that there should be "harmony and equilibrium" between man's sensual, social, economic, political, religious, spiritual and cultural tendencies to enable him to live comfortably and pleasantly here, and to achieve felicity and bliss after death. The maxim, in fact, is to have the best of the provisions in this world as well as in the hereafter (*Qur'ān* 2:201). But for the fact that the Prophet, at the same time, played the roles of Head of State, Chief Justice, War Commander, Diplomat, I. Imãm , just to mention a few, it could have been justifiably argued that the feat is impossible. There are other fundamental teachings relating to economic, judicial, political and spiritual issues, the understanding of which has been enhanced by the practical exemplification of the Prophet as recorded in the *Sunnah*. iv) **Shedding light on the Prophet's life:** It is not uncommon to hear that mystery surrounds some aspects of the life of the previous Prophets. The study of the Ḥadīth of *Sunnah* and the nature of the Prophet's mission has gone a long way to avoid the problem. Almost every detail of his life is known. His close associates, members of his household, especially his wives, and Muslims in general who were his contemporaries preserved such information for us. But for the *Sunnah* which evolved as a

systematic way of recording such details, some aspects of the life history of the Prophet might have suffered the fate of being shrouded in mystery and forgotten.

v) **Life history of Companions:** These are the Muslims who belonged to the generation of the Prophet. They were eye – and ear-witnesses to all his actions and speeches. The study of the *Sunnah* facilitated knowing their history especially when it became necessary to mention those responsible for the transmission of *Hadīth* from the source and the last reporter with a view to assessing the extent of the authenticity of the *Hadīth*. This, in turn, led to the study of the life of those belonging to the next generation and the following ones otherwise known as *Tabiᶜūn* or *Tābiᶜū Tābiᶜīn* (Successors or Successors of the Successors) as the case may be.

SELF-ASSESSMENT EXERCISE

What does *Sunnah* signify and what are the factors that make it important to a Muslim?

The *Sunnah* as the Second Primary Source of *Sharī 'ah*

The Holy *Qur'ān* was revealed to prophet Muhammad (SAW) who never spoke from His own imagination but told only what Allah had revealed to him. The Holy *Qur'ān* bears witness to this fact: ((وما ينطق عن الهوى

((إن هو إلاإلاّ وحي يوحى

"Nor does he say (ought) of his own desire. It is no less than inspiration sent down to him".

This verse was revealed to counter the three wrong charges levelled by the Qurashites of Makkah against the Prophet to the following effect:

3.1.1 That he was going astray either through the defect of intelligence or carelessness.

3.1.2 That he was being misled or deceived by evil spirits (*Jin*) and was a *Majnūn* (One possessed by a *Jin*); and

3.1.3 That he was speaking out of his own whim or impulse, or from a selfish desire to impress his own personality. It confirmed that the

Prophet (SAW) received directs inspiration from Allah which guided all his thoughts and actions. The real import of the above verse is that it shows the importance of the *Hadīth* and *Sunnah* in the interpretation of

the entire message of the *Qur'ān* and in the formation of the Islãmic System.

It is for this reason that after *Qur'ān*, which is God's word and the first source of *Sharī'ah*, *Hadīth* stands second as the hidden revelation (*Wahy Khafiyy*). The *Qur'ān*ic verse lends support to this fact:

((وأنزلنا إليك الذكرى لتبيّن للناس ما نّزّل إليهم ولعلّهم يتفكرون))
"And we have sent down unto you also the message: that you may explain clearly to men what is sent for them, and that they may give thought"

In addition to the above *Qur'ān*ic authority there is an authority available in the *Hadīth* confirming that *Sunnah* is no less important in interpreting the *Qur'ān*:

"ألا إني أوتيت القرآن ومثله (أي: السنة) معه"
"Undoubtedly, I am given the *Qur'ān* and the like of it (*Sunnah*) with it"

This is reported by the Holy *Qur'ān* itself. There is also an authority in the *Sunnah* to the same effect:

"Beware I am giving the *Qur'ān* and something like it along with it"
But in cases where the Sunnah is also silent as to the interpretation of the *Qur'ān*ic verses, recourse may be had to the way the companion of the Prophet had interpreted them. This is understood by a saying of Ibn Mas 'ūd:
"These were people among us when they learnt ten verses, they would not go further unless they knew their meanings properly and acted upon them. Thus we learnt the Qur'an and based our actions on it"

This statement shows that the Ṣaḥābah were well versed in the interpretation of the Holy *Qur'ān* and that in the absence of any guidance from the *Qur'ān* and the Sunnah of the Prophet (SAW) the interpretation of the Holy *Qur'ān* by the Ṣaḥābah will be binding on the future generations.

The following example shows how the Ṣaḥābah used to interpret the Holy *Qur'ān*:

A lady came to Abdullah Ibn Mas'ūd and said:

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"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 *Qur'ān* from cover to cover and did not find therein what you are saying" Ibn Mas'ud Said: **"Go and read the *Qur'ān* again"**

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

"Even now I have not yet discovered in the *Qur'ān* what you say" Ibn Mas'ūd replied: **"What, have you not recited, 'Whatever the messenger brought to you take hold of it, and whatever he forbids you of abstain from it"**

When the lady replied in affirmative, Abdullah bn Mas'ūd said: **"that is it i.e. whatI have said"**

In reality, the entire life of the Holy Prophet (SAW), whatever he did or said, was according to the teachings of *Qur'ān* and hence if all the events of his life and teaching are taken together with all the authentic *Hadīth*s, we get complete commentary of the *Qur'ān* put into practice by the Messenger of Allah himself, the bearer of the Divine revelations. The causes of revelations (Asb*ā*b `n-Nuzūl) and other explations of the verses of the Holy *Qur'ān* that we find in the collections of *Hadīth*s of I.

Imãm al-Bukhārī, I. Imãm Muslim, I. Imãm Tirmidhī, which forms the *Tafsīr Nabawī*, is not complete, although they have been arranged according to the chapters of the Holy *Qur'ān* by these great scholars of *Hadīth*. There might be traditions from the prophet (SAW) relevant to three or four verses of chapter while there might be nothing relating to its remaining verses. There are scholars, however, who believe that the prophet commented on the whole *Qur'ān*., and one of this is the famous scholar Ibn Taimiyyah. What seems more plausible is the statement of 'Aishah: the Prophet (SAW) commented only on some verses of the Book of Allah (and his commentary consisted of) what Gabriel had thought him.

Abdullah bn Abbas used to comment on the *Qur'ān* even in the presence of the companions. Umar b. al-Khatab used to give priority to Ibn Abbas, over the companions, so they complained to him about this. Umar called Ibn Abbas and asked the companions about the explanation of chapter 110: **"When comes the help of Allah and victory".**

The companions remained silent. Ibn Abbas said that it referred to the time of the death of the Messenger of Allah. Umar endorsed that opinion and thereby justified his preference for the young Ibn Abbas.

It is significant that there is no explicit mention in the chapter of the time of death of the Prophet. What the statement of Ibn Abbas implies is that when victory comes everything is completed, meaning that the Holy prophet (SAW) had completed his task. Hence nothing lays in store for him except to return to the mercy of Allah.

Before long attention came to be concentrated on the Prophet and his manner of life became in their eyes the ideal Muslim to be imitated by his followers. In other words the Sunnah of the Prophet became a standard of living which every Muslim should aspire to reach. Certainly, who else could be better guide for the Muslim than the Prophet himself. His words and deeds became a source a source of inspiration for all Muslims in all time to come.

After his death, reports of the prophet's wonderful sayings and doings began to circulate. These sayings continued to increase from time to time and became subjectto standardization and selection.

These represented the words of the prophet as supplemented to the word of Allah. The *Hadīth* in other word is the second pillar after the *Qur'ān* upon which every Muslim rests the fabric of his faith and life. The body of traditions circulated orally for some time, as indicated by the word *Hadīth*, commonly used for tradition and which literarily means a saying conveyed to man either through hearing or through witnessing an event. It isalso used to denote "conversation" i.e. the telling of something new.
The record of the sayings, therefore, was called *Sunnah* (custom or usage). For its details the plural Sunan meaning customs was used.
The *Hadīth*, in short, is the storerooms of the Sunnah of the prophet, serving an essential need of the Muslims, be they individuals or communities. It was for this reason that they were taught by the prophet in the following manners.

(i)   Verbal teaching was done by the prophet himself respecting important things three times. Then he used to listen to the companions to make sure that they had learnt them correctly. Even, when delegations arrived in Medinah, the prophet had charged the Medinates not only to accommodate them to teach them the message of Islãm and its practices through the *Qur'ān* and the *Sunnah*. The prophet used to ask them questions to find out as to how much they had learnt.

(ii)   Teaching through writing was done by the prophet through various letters that he wrote to kings, rulers, chieftains and Muslim governorns. These letters contained instructions concerning *Zakāt*, taxes, forms of worship e.t.c.

(iii)   Teaching done by the prophet through practical demonstration like thehow to perform ablution, how to say *Şalāt* - prayers, how to perform Hajj, and how to observe fasts. His instruction in respect of salat was: **"صلوا كما رأيتموني أصلي"**

   "Pray as you see me offering prayers"

SELF-ASSESSMENT EXERCISE

Show the significance of *Hadīth* to Islãm and the Muslims stating the attitude of the early Muslim predcessors towards it.

3.2 Importance of *Hadīth* for both Religious and Legal purposes in Islãm

As we have seen earlier, the *Hadīth* has come to supplement the *Qur'ān* as a sourceof the Islãmic religious law. Muslims can always turn to both sources for answers to all problems; be they legal or religious. The importance of *Hadīth* in this regard can be realized when one considers the Zeal and enthusiasm with which every group of Muslims, every party, every movement supplied itself with a selection of traditions which would give prophetic authority for its particular point of view.

After the death of prophet, every case that came up for decision had to be referred to either to the *Qur'ān* or to some judgement or saying of the prophet, which judgements or saying therefore, obtained a wide reputation. There are a number of numerous cases on record in which a right was claimed on the basis of a judgement or saying of the Holy prophet, and evidence was demanded to the authenticity of the saying.

For instance, Fatimoh, the prophet's daughter claimed that she was entitled to an inheritance from the holy prophet. But according to Bukhārī, chapter 85, traditions no. 2, the holy prophet said: **"we the prophets do not inherit nor leave an estate for inheritance: whatever we leave is a charity".** This saying was sited by Abu Bakr as against the claim of Fatimah. The truth of this *Hadīth* was not questioned by any one and Fatimah's claim was rejected. Incidents of these types occurred daily and became the occasion of establishing the truth of many sayings of the holy prophet.

Not only was the trustworthiness of the particular *Hadīth* established all doubt, but the *Hadīth* also obtained a wide circulation, and from being the knowledge of one man only passed to that of many. The *Hadīth* literature, as we now have it, provides us with apostolic precept and example covering the whole duty of man. It is that developed system of law, theology and custom which is Islãm. Muslim law is so very comprehensive that all the minute acts of a Muslim are guarded by it. A Muslim, in reality, is told by his code not only what is required under penalty, but also what is either recommended or disliked. It will be relevant here to reproduce the five classes into which actions are divided in the Shari 'ah by way of emphasis.

3.2.1 **Fard or Wajib**: A compulsory duty the omission of which is punished.

3.2.2 **Mandub or Mustahab**: An action which is rewarded, but the omission isnot punished.

3.2.3 **Jaiz or Mubah**: An action which is permitted but is legally indifferent.

3.2.4 **Makruh**: An action which is disliked and disapproved by *Sharī'ah* butit is not under any penalty.

3.2.5   **Haram**: An action which is forbidden. It is punishable by law.

After understanding the above frame work of Muslim law, it is understandable that it was essential to receive guidance from the life history of the prophet. For this reason, all the records of the manners and customs of the prophet and details of his life and conversation were collected.

Thus, traditions of the prophet were important in the development of Islãmic legal system and jurisprudence. The *Muwatta* of I.   Imãm Malik bn Anas (d. 179 A.H.) shows, for example, how the law can be drawn from these usages and traditions of the prophet. This book, the first of its kind, helped to build up a system of law based partly on Traditions. It was followed by the *Musnad* of I. Imãm Ahmad bin Hanbal (d. 241 A.H.). And thus, after the Holy *Qur'ān* the *Hadīth* is the primary source of Muslim law.

4.0   CONCLUSION

You have learnt in this Unit the meaning, importance and significance of *Sunnah* or *Hadīth* as the second primary source of *Sharī'ah*, you have also learnt the preservation of the *Sunnah* and its compilation by the various scholars with the result that six compilations become recognized as the most authentic compilations. Social, political and theological problems that characterized the early stage of Islãm starting from the latter part of the caliphate of ʿUthmān bn ʿAffãn led to the fabrication of Hadīth to support one group or the other. That development necessitated setting standards for Hadīths/*Sunnah* for the purpose of authentication.

In the end, *Hadīths/ Sunnah* were classified according to the extent of satisfying the conditions into *Ṣaḥīḥ* (Sound) *Ḥasan* (Fair) and *Ḍaᶜīf* (Weak) just to mention only three.

5.0   SUMMARY

This Unit examines *Sunnah* or *Hadīth a*s the second primary source of *Sharī'ah.* It gives explicit expressions to *Sharī'ah* in terms of practical exemplications. It shows that the importance of *Hadīth* was recognized during the time of the Prophet resulting into efforts been made to preserve all that came from him. His passing away, all the more, made people attach importance to it in view of the reality of their situation. The concern continued to grow greater culminating eventually in the official attempt to compile it during the caliphate of ʿUmar bn ʿAbd alʿAzīz. Individuals later took up the challenge including the compilers of the Six Sound Ḥadīth Collections. Certain social political and theological problems cropped up in the first and second centuries of Islãm, which made some people fabricate *Hadīths*. Scholars were fortunately equal to the task of detecting out such fabrications. The two component parts of Hadīths – *Isnād* (Chain of transmitters) and *Matn* (text of the *Hadīth*) received their attention. The result of this exercise was the division of *Hadīths* into many categories, the most important of which are *Sahīh* (sound) *Ḥasan* (Fair) and *Daᶜīf* (Weak).

6.0   TUTOR-MARKED ASSIGNMENT

   Discuss the significance of Hadith showing the importance attached to it by the early Muslims.
  How can you justify the use of *Sunnah* as a source of *Sharī'ah* on the basis of the *Qur'ān*?

⬜⬜   Of what importance is *Sunnah* for both religious and legal

purposes?⬜

7.0   REFERENCES/FURTHER READING

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UNIT 3   IJMĀ': CONCENSUS OF OPINIONS

CONTENTS

4.0.   Conclusion
5.0   Summary
6.0   Tutor-Marked Assignment
7.0   References/Further Reading

1.0   INTRODUCTION

The two primary sources of *Sharī'ah* are the *Qur'ān* and the *Sunnah* as presented in the foregoing Units One and two of this Module. In the following two units we shall discuss two other sources of the Islãmic law viz. *Ijmā'* and *al-Qiyãs*. As the final sanction for all intellectual activities in respect of the development of *Sharī'ah* comes from no where else but the *Qur'ān* and *Sunnah* of the Holy Prophet these two instruments are regarded as secondary deriving from the legal stipulations from the two primary sources. This unit presents an examination of *al-Ijmā'* as one of the two secondary sources of Islãmic law to you.

2.0   OBJECTIVES

By the end of this unit, you will be able to:

•   define *al-Ijmā'* and give its basis
•   highlight the divisions of *al-Ijmā'*
•   expatiate upon application of *al-Ijmā'* as a source of the *Sharĩ'ah*.

3.0   MAIN CONTENT

3.1   Definition and Basis of al-Ijmā'

Al-Ijmā' is the consensus of juristic opinions of the learned scholars of the Ummah after the death of the Messenger of Allah. Ijmā' can also be defined as the consensus of the opinion of the Companions of the prophet (*Şaħābah*) and the agreement reached on the decisions taken by the learned Muftis or Jurists on various Islãmic matters.

Almighty Allah Himself encourages seeking the opinions of others on religious matters as is said in the Holy Qur'ān: ، **فبما رحمة من الله لنت**

فاعف عنهم واستغفر ،)(لهم ولو كنت فظّا غليظ القلب لانفّضّوا من حولك

It"**إن الله يحّبّ المتوكلين))لهم وشاورهم في الأمر ، فإذا عزمت فتوكل على الله**

is through the mercy of Allah that you are lenient with them. If you are to be hard-hearted, they would have deserted you: pardon them and seek forgiveness for them and seek their opinions in the matters; whenever you

decide upon something. Have believe in Allah surely Allah loves those that rely on Him" Almighty Allah has also said:

((والذين استجابوا لربهم وأقاموا الصلاة وأمرهم شورى بينهم ومّما رزقناهم ينفقون))

"Those who answer the call of their Lord, and establish regular prayer (Salat) and whose affairs are a matter of counsel and spend out of what we bestow on them for sustenance"

Prophet Muhammad (SAW) also supported the process of *al-Ijmāʿ when* he says in the *Hadīth*: "لا تجتمع أمتي على ضلالة"

"My people would never agree on whoever leads them astray"

The practice of *al-Ijmã' can* be traced back to the days of the Companions of the Prophet as can be seen from the following examples. Almighty Allah does not state the type of punishment that should be applied to one who drinks alcohol. But the agreement was reached by the consensus of opinions of the *Ṣaḥābah* when Caliph ʿAli bn Abī Ṭālib said: "he who drinks, get drunk, he who gets drunk, raves; he who raves, accuses people falsely; and he who accuses people falsely should be given eighty strokes of cane according to the injunction of the Holy *Qurʾān*. Almighty Allah has said:

((والذين يرمون المحصنات ثم لم يأتوا بأربعة شهداء فاجلدوهم ثمانين جلدة، ولا تقبلوا لهم شهادة أبدا وأولئك هم الفاسقون))

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

Al-Ijmāʿ owes its origin to the following *Qurʾā*nic verses in *Sūrah alNisāi:*

((ومن يشاقق الرسول من بعد ما تبيّن له الهدى ويتّبع غير سبيل المؤمنين نولّهَ ما تولّىَ ونصله جهنّمَ وساءت مصيرا))

"But whoso makes a breach with the Messenger after the guidance has come 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"

((يا أيها الذين آمنوا أطيعوا الله وأطيعوا الرسول وأولي الأمر منكم، فإن تنازعتم في شيئ فرّدوه إلى الله والرسول))

*"O believers, obey Allah and obey Messenger and those in authority among you. If you should quarrel on anything, refer it to Allah and the **Messenger"***

Consultation (*Shūrā*) and the use of juristic reason (*Ijtihād*) are normal preliminaries for arriving at a binding *Ijmā'*. The Rightly guided Caliphs always consulted the *Şaħābah* whenever a novel issue arose. The caliphate of Abu Bakr was based and run on the process of the *Şaħābah*.

The following few examples are based on such process of *al-Ijmā'*. The validity of a contract for the purchase of goods yet to be manufactured (*'aqd al- Istisna'*) is based on an *al-Ijmā'*.

The normal rule is that a sale of non-existence goods is not valid because of uncertainty. The juristic consensus was aiming at providing a practical solution. In the field of inheritance, for an example, it was agreed that if a person is predeceased by his father, then the grandfather participates in the inheritance of the estate with the son taking the share of the father.

It was also agreed that the grandfather is entitled to a sixth of the estate of the propositus. The *Ijmã'* on this issue, is based on a decision attributed by al- Mughirah Ibn Shu'bah (d. 50 A.H.) to the Prophet (SAW).

In the field of family law it was agreed that since the *Qur'ān* prohibits marriage with mothers and daughters then grandmothers and grand daughters (however remoted) by the same token fall within the prohibited degrees.

The minimum period of gestation is six months according to all *fiqh* schools, but an example of lack of *al-Ijmā'is* in fact the disagreement over the maximum period of gestation.

During the caliphate of ᶜUmar b. Al-Khaṭṭāb, Muslims conquered Syria which had a large expanse of fertile land being cultivated. In line with the stipulation in the *Qur'ān* 8:41 and the practice of the Prophet, in most cases the Muslim soldiers demanded that the land be distributed among them. The Caliph sensed the dangers in doing that. In the first instance, the distance between Medina, the capital of the Government, and Syria, was so long that the settlement of the soldiers in Syria would lead to their relocation. Secondly, having settled for cultivating the land, the soldiers' attention would be diverted from defending Islãm and the Islãmic Empire against external aggression. More importantly, Medina would lose the services of gallant soldiers and accomplished intellectuals who had been assets and pillars of the city.

In the end, the Caliph invited the generality of people versed in the Islãmic Law to consider the problem dispassionately. In the end, they took the unanimous decision that the land be left in the hands of the original owners. In return, they would pay rents the proceeds from which would be used to compensate the soldiers and provide amenities for all the citizens. As from that time, *Kharāj,* rent paid on using
Government land, became a source of revenues to the Islãmic Government. Thus, he charged ᶜUthmān b. Hanīf with the responsibility of administering the conquered land of ᶜIrāq, as well as of other places.

The example cited above illustrates how the explanation of the *Qur'ān* and its spirit can influence personal reasoning. It is true that the soldiers, according to the *Qur'ān*, had the right to share the four fifths of booties especially at the time of the Prophet because of their precarious financial condition and proximity of the territories subdued to the seat of the Empire.

Having the spirit of the Law rather than the text to guide one's reasoning also comes into play here. Despite the text of the verse and the Prophet's tradition, ᶜUmar has chosen to consider the far implications and the welfare of the society which both the *Qur'ān* and *Sunnah* aim to guarantee. Centuries after that bold decision has been taken, it is to be noted that events so far have proved him right. The territories still remain in the hands of Muslims to date.

Thus, the consensus of the *'Ulamā* (*al-Ijmā'*) must be based on the Book o f Allah, the instructions of the prophet (*Qawlu Rasūl*), the actions and demonstrations of the prophet (*Fi'l Rasūl*). But some actions of the prophet canbe of a very special nature which cannot be applicable to an ordinary man.

Lastly, the consensus must be based on preaching and speeches of the holy prophet (*Taqrīrāt al-Rasūl*).

SELF-ASSESSMENT EXERCISE

Define *al-Ijmā'* and give its basis.
Divisions of *Ijmā'*

The **Ijmā'could** be divided into three broad categories: *Ijmā' Qawlī* (the erbal consensus of opinion), *Ijmā' al-Fi 'l* (consensus of opinion on an action) and *Ijmā' Sukūtī* (silent approaval).

The *Ijmā'*could also be sub-divided into two broad categories: *Ijmā'alAzīmah* (the regular consensus of opinion) and *Ijmā' Rukhşah* (the irregular consensus of opinion).

As regards the verbal consensus of opinion, if an issue is raised and all the Jurists assent to it by voicing out their approval, the consensus of opinion is regular. Nonetheless both of them are valid in Islãm Law system.

As regards the practical *Ijmā'*, if a Jurist does something and none of the other Jurists challenges him, the *Ijmā'* is regular; but if a Jurist does something, and one or more Jurists question him, the *Ijmā'* is irregular. Nonetheless, both of them are valid as far as Islãmic law is concerned. During the time of I.Imãm Malik and Abu Hanifah, the eligibility of Jurists who could sanction the *Ijm' became* a matter of controversy.

According to some Jurists, it is only the companions of the prophet who were in position to sanction the *Ijmā'*. According the Shites, however, the *Ijmā'* can only be sanctioned by *Ahlu `l-Bayt* (the people of the house of the prophet), that is the descendants of Ali and Fatimah, the daughter of the prophet.

According to I. Imãm Malik, the *Ijmā'* can only be sanctioned by the Jurists of Medinah. But as far as the Hanafi school of thought is concerned, the *Ijmā'* can be sanctioned by any qualified jurist irrespective of his geographical place f abode or the religious sect that he belongs to.

The Jurists also disagreed amongst themselves as to the number of the Jurists who can ratify the *Ijmā'*. According to I. Imãm s Malik and Abu Hanifa, the number must not necessary be very great. Some Jurists put the number to three Jurists while some others say that two will suffice the purpose. The Jurist also say that any *Ijmā'* sanctioned by the companions of the prophet can only be repealed by no one else but by the Jurists who lived during their period. But any *Ijmā'* sanctioned by the Jurists who are not the companions of the prophet can be repealed by the Jurists of their generations as will as the jurists of ther generation after them are empowered to do so because people consider their opinion as of the same weight in the Islãmic legal system.

The jurists say that any *Ijmā'* that has to do with some marginal issue on *'Ibādah* (religious worship), must be ratified by every member of the community that is concerned. If a layman says that he does not agree to a matter raised, it must be accepted as invalid. But, on the other hand, if the *Ijmā'* has anything to do with Mu'amalat which need through reasoning, the layman's pointof view must not be considered.

The Maliki school considers that the established practice of the people of Medinah (amal ahl al-Madīnah) provided valid *Ijmā'*. But other schools disagreed on this point. Some Hanbalis (as well as some other Jurists) accept only the agreement of the four Rashidun Caliphs as the only binding *Ijmā'*.

Similarly, other Jurists consider the Fatwas (Jurisdical opinions and decisions) of the *Şaħābah* as binding *Ijmā'* for the Ummah. To the Shi'ites, however, the binding *Ijmā'* is that of ahl al-Bait, as well have seen before. Some Hanbali scholars are of the view that *Ijmā'* is not binding if reached more than one generation after the prophet's death, because it is nearly impossible to obtain the express agreement of every single qualified Jurist after that stage of the spread of Islãm.

Most jurists have agreed that only an express *Ijmā'* is binding. But the Hanafi Jurists consider the silenceof the jurists with regard to the vocal expression ofa particular opinion as an effective implied agreement provide that (a) there is an evidence that the silent Jurist were really well acquainted with the issue (b) a reasonable period of time passed after the view was expressed to enable other Jurists to devote suffiienttime for rsearch and analysis. If both conditions are met, say the Hanafi Jurists, silence of Jurists amounts to an approval.

No matter the rank of the 'Ulamā' and their thorough deliberations, no amount of *Ijmā'* can abrogate a text (nass) i.e. a provision laid down in the *Qur'ān* and *Sunnah* of the prophet. It should also be recommended that no *Ijmā'* was eached or could have been reached except after the death of the Holy Prophet, that is after all the texts were revealed or stated, for *Ijmā'* is based on always on the interpretations of the *Qur'ān* and the *Sunnah*.

If any *Ijmā'* is soundly founded on the texts of the *Qur'ān* and the Sunnah it can not be repealed by any subsequent consensus; but if the Ijma, is merely based on public interest (Maşāliħ *Mursalah*), it may be repealed if the public welfare so requires.

In the fourth century of Hijrah era that is the tenth centure A.D., some Muslim Jurists took a passive attitude and said that the *Ijtihād* and *Tafsīr* had been exhaustively accomplished by the early scholars of peerless ability.
Later, in the seventh century of Hijrah (the middle of the 13th century A.D.), a great catastrophe struck the Muslim world and the Tartars,

headed by Holaku Khan the grand son of Chengis Khan, captured Baghdad and killed the Abbasid Caliph al-Musta'sim on 1258 A.D. the Mumluks who overthrew the Ayyubids in Egypt in 1205 A.D. fought the central Asian invaders and defeated the Mongols on more than one occasion, starting their campagn as early as 1260 A.D. under al- Sultān Nāşir, a former army commander under theAyyubids, that the Tartars were finally defeated. During the period when Baghdad was under the mercy of the Nomadic warriors of central Asia, the Jurist in Iraq reached a wrong consensus to close the door of *Ijtihād* which they had not practised much anyway since thetenth century A.D. No one, in fact, had the right to put a stop to the process of*Ijtihād.*

In short, *Ijmā'* is Hujjah according to the four schools of Islãmic Jurisprudence; I. Imãm Shafi' has fully discussed *Ijmā'* as one of the sources of Sharī'ah in his famous *Risālah.*

The following quote of al-Shafi'ī throws enough light on *Ijmā'*. He says: "Someone asked me 'Do you assert, with others, that the consensus of the *Ulamā*' should always be based on an established *Sunnah* even if it were related (on the authority of the prophet)?" he replied:

"That on which the Ulama' are agreed and which, as they assert, was related from the messenger of Allah, that is so. As to that which they may or may not relate as a tradition from the prophet, we can not consider it as related on the authority of the Holy prophet because one may relate only what he has heard, for no one is permitted to relate (on the authority of the prophet) information which may or may not be true. So we accept the decision of the Ulama' because we have to obey their authority, and we know that wherever there are Sunnahs of the Prophet, the Ulama' cannot be ignorant of them, although it is possible that some of them are, and we know that Ulama' can neither agree on anything contrary to the Sunnah of the Prophet nor on error".
Some may ask: Is there any evidence in support of what you hold? I. Imãm Shafi'
replied: Sufyan (b. Uyayna) told us from 'Abd al-Malik b. Umayr from Abd al-Rahman b. Abd Allah B. Masu'd from his father, who said: The messenger of Allah said: "Allah will grant prosperity to His servant who
hears mywords, remembers them, guards them and hands them on. Many a transmitter of law is no Lawyer himself, and many may transmit law to others who are more versed in the law than they, etc."

SELF-ASSESSMENT EXERCISE

•   Highlight the divisions of *al-Ijmā'*
•   Expatiate upon application of *al-Ijmā'*as a source of *Sharĩ'ah*.

4.0   CONCLUSION

You have learnt in this Unit the definition of *Ijmā^c* consensus of opinions,

as a source of the *Sharĩ'ah*, based on the *Qur'ān* and the

Sunnah. You have learnt how it was practiced at the time of the Prophet, his successors and in the following generations known technically as *Tābi^{c}ūn* (Followers) or *Tābi^{c}ū Tābi^{c}īn* (Followers of the Followers) as the case may be. It has also been explained to you how the peculiarities of each centre of learning in the Islãmic Empire influenced the concept and practice of *Ijmā^c* in each with minor differences here and there.

5.0   SUMMARY

*Ijmã' (*Consensus of Opinions) is the third source of *Sharĩ^{c}āh*. Its legitimacy is based on the *Qur'ān* and *Sunnah*. Its application which started informally at the time of the Prophet assumed larger dimensions in the following generations. This was in response to new challenges that arose at the time. *Ijmā^c* can be in form of *Qawl* (Speech) *Fi^{c}l* (Practice) and *Sukūt* (Tacit Approval).

It can also be of the whole community, in which case it is binding on all Muslims or of the learned alone when it relates to technicalities and difference of opinions is allowed. The concept of *Ijmā^c* and its application differed from one centre of learning to another especially in relation to details.

6.0   TUTOR-MARKED ASSIGNMENT

•   How can you prove that the use of *Ijmā^c* as a source of the *Sharĩ'ah*
        is based on the *Qur'ān* and *Sunnah*?
•   Comment on the application of *Ijmā^c* during the time of the
        Companions.
•   *Ijmā^c* arose from the need to harmonise the divergent opinions of
        scholars. Explain the reasons why the scholars had to disagree with
        appropriateexamples.

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UNIT 4   *QIYÃS (*ANALOGICAL DEDUCTION)

CONTENTS

1.0   INTRODUCTION

Unit three presented *Ijmā'* to you as one of the two secondary sources of *Sharī'ah* - the Islãmic law. Its definition, basis, kinds and examples were all expatiated upon for your digest. This unit will focus on *Qiyãs* (Analogical Deduction) which is the second of the secondary sources of the Islãmic law. To be specific, the unit will present the definition of *Qiyãs*, its origin, evolution and application, and contemporary issues relating to it. The legality of *Qiyãs will* also be established on the basis of the *Qur'ān* and precedents from the early Muslims.

2.0   OBJECTIVES

At the end of this unit, you are expected to be able to:

- define *Qiyãs*
- give the variant views on the application of *Qiyãs* as source of *Sharī'ah*
- highlight the conditions governing validity of *Qiyãs* ☐ illutsrate application of *Qiyãs* with samples.

3.0   Definition of *Qiyãs*

    As an Arabic word, *Qiyãs* is a noun derived from the verb "*qāsa*",

meaning he compared, consider the extent, magnitude, depth, etc of something, he determined the extent … etc. *Qiyãs*, therefore, means measurement, measure, dimension, scale, relation, comparison, etc.

As a technical term, *Qiyãs is* first met with in the letter of Caliph ᶜUmar to Abū Mūsā al-Ashᶜarī. Among other things, the Caliph gave instructions that the Governor should learn the "parallels and precedents' (of legal cases) and then 'weigh up' the cases (*qis al-Umūr*), deciding what in his judgement would be the most pleasing to God and nearest to the truth". Apparently, the Caliph meant that the Governor should exercise personal reasoning in judging cases which are not provided for in the *Qur'ān* and *Sunnah*. To avoid misguided judgments, he should use unanimous decisions or precedents as the basis of his decisions in this respect.

Perhaps, it will be pertinent to produce here the definition derivable from *Sharī'ah* – the Islãmic Law by R.I. Doi. According to him Al*Qiyãs could* be defined in Islãmic theological parlance as analogy, or analogical deduction. In other words, al-*Qiyãs is* the legal principle introduced in order to arrive at a logical conclusion of a certain law on a certain issue that has to do with the welfare of the Muslims. In exercising this, however, it must be based on *Qur'ān*, *Sunnah* and *Ijmā'*. **Variant views on the application of *Qiyãs* as source of *Sharī 'ah*.** *Qiyãs* was introduced as a legal principle by I. Imãm Abū Hanīfah, the founder of the Hanafī School in Iraq. The reason why he introduced it

was not unconnected with the intention of cubing the excessive thinking and digression of the people from the Islãmic legal point.

During the period of the Abbasids, people engaged themselves in reading various text books on logical philosophy, etymology, linguistics, literatures of various places, foreign text books, which to some extent tended to corrupt their minds and lead them astray. They wanted to apply what they had studied in these foreign text books to Islãmic Jurisprudence. Many new Muslim in far away lands had brought with them their philosophical outlook, their culture and even some religious and legal notions in the fold of Islãm. Abū Hanīfah introduced *Qiyãs as* a measure to curb the excessive thinking and to keep them on check. However, the Mutazilites like Ibrahim bn Sayyar, and the scholars of Zāhirī School including Ibn Hazm of Andalusia, were among Jurists who opposed the use of *Qiyãs*. In this regard, there are scholars and Jurists who may be termed as anti-*Qiyãs* and pro- *Qiyãs*. Each and every one of

them brought forth evidence to support his stand. The following are some of the reasons put forward for rejecting it.

i. **The notion that the *Qur'ān* is complete and covers all areas of human need.** The *Qur'ān* itself says:

((ونّزّلنا عليك الكتاب تبيانا لكّل شيئ وهدى ورحمة وبشرى للمسلمين))
…And We have sent down to you (i.e. Prophet Muhammad) the Book explaining all things, a Guide, a Mercy and Glad Tidings to Muslims. (*Qur'ān* 6:38)

… Nothing ((... ما فّرّطنا في الكتاب من شيء))
have We omitted from the Book …
(*Qur'ān* 6:38)

The argument here is that having recourse to Qiyãs despite the claim made by the *Qur'ān* that it is all-encompassing is to deny the completion, perfection and comprehensiveness of the Holy Scripture. Qiyãs, according to this line of thought, is therefore, unnecessary. **ii. The alleged prohibition of *Qiyãs* by the Prophet as shown in this Ḥadīth:**

The affairs of the sons of Israel have continued to prosper until there multiplied among them the children of the war captives, for these have measured (*qāsū*) what did not exist on the basis of what did exist, and so they have erred and led others into error.
In other words, the downfall of the Israelites was as a result of the "sin" of analogical reasoning committed by those who were not of the thorough Israel stock. This is another way of saying that *Qiyãs* is such an evil that no well-bred person will ever attempt, and that it leads astray.

iii. **Difficulty in identifying the *ᶜIllah* (effective cause):** As the application of Qiyãs is based on identifying the effective cause (*ᶜillah*) of the revelation so as to use it to assess and determine the course of handling the problem on hand in form of analogy, it is argued that it is very difficult, if not impossible, to know the causes of the texts especially where they are not explicitly declared. This argument, based on reason, goes further to say that man does not rely on his thought or reason to worship Allah. Indeed, many of the rites may appear unreasonable. If this is the case, on what premises is *Qiyãs* based?

In their response to the above, the proponents of *Qiyãs* say that:

i. **The apparent support of the *Qur'ān* for the use of reasoning:**

The *Qur'ān* supports the practice of *Qiyās* thus:

… Consider, oh you possessors of sight"

Other verses in the *Qur'ān* where Allah addresses those who reflect (*yatafakkarūn*) or understand (*ya'qilūn*) as in Qur'an 10:24 and 30:28 respectively, are also cited in this respect. In effect, the completion of the *Qur'ān* is in the sense of providing guiding principles potentially which the jurists will strive to understand, interpret and apply in the prevailing circumstances. Thus, *Qiyās* is solidly based on the *Qur'ān* as the scripture urges Muslims to reflect reason and exert themselves to understand. ii.
**The support of the *Sunnah for the use of reasoning:* So many Ḥadīths and practices of the Companions support the practice of

> *Qiyās*. For instance, the Prophet was pleased to learn from Muᶜādh bn Jabal, whom he had sent to Yeman, that he would use
> his personal opinion to judge cases in the absence of guidance from the *Qur'ān* and *Sunnah*. Showing his satisfaction, the Prophet said:

نمد لله الذي وفّق رسول رسول الله إلى ما يرضي رسول الله»

Thanks to God that He has directed the delegate of His prophet to that opinion in which the Prophet of God finds pleasure.

When Abū Mūsā was sent to the same place, he was instructed not to hesitate to use his personal opinion (*ra'y*) to judge cases if the *Qur'ān* and *Sunnah* did not give necessary information. Companions are also known to have used *Qiyās* to decide many cases after the Prophet. Some of such cases are the election of Caliph to succeed the Prophet and determining the penalty for drinking intoxicants (*Khamr*). With respect to the latter, ᶜAlī is said to have reasoned.

"When one drinks he gets drunk; and when he gets drunk, he raves; and when he raves, he accuses falsely".

That was how the same penalty was fixed for drunkenness and false accusation of infidelity.

        iii. **The use of probability instead of exact facts when necessary:**

Inability to understand or know the effective cause (*ᶜillah*) of revelation does not necessarily mean that *Qiyãs cannot* be based on it. In that case, one has to base one's action on what is most probable and "probability is sufficient for purposes of conduct". The opponents are queried for using *Qiyãs* in determining the *Qiblah*, the direction of the *Kaᶜbah* which they should face in prayer. They are also challenged for using *Qiyãs to* determine the amount of compensation for property destroyed. Since the property is already destroyed, there is no basis for determining its exact worth.

The controversy above notwithstanding, *Qiyãs* is recognized as a source of *Sharĩᶜāh* by the overwhelming majority of the jurists, with the exception of groups like the Muᶜtazilites who cannot even be exonerated from it in practice.

Perhaps, it may serve a good purpose here to make some observations on the arguments put forward by the opponents and proponents of *Qiyãs*. It is an established fact that the *Qur'ān* states and is believed to have covered

all the areas of man's needs, but this is only by providing

the guiding principles. If this argument is not faulty, it threatens the acceptance of all other recognized sources of the Law such as the *Sunnah* and *Ijmāᶜ*. Contrary to this, it is generally known that without these additional and supplementary sources, the whole of *Sharĩᶜāh* would be out of tune with the practical needs of man particularly in the light of the dynamic nature of man's life. That is why the Prophet and

the Companions could not but encourage and instruct that *Qiyãs* and other forms of *Ijtihād* should be used in response to the dictates of circumstances.

SELF-ASSESSMENT EXERCISE

Examine the stand taken by both the anti-Qiyas and pro-Qiyas elements on its application as a source of Islãmic law.

Conditions Governing validity of *Qiyãs*

Many efforts have been made to ensure proper application of *Qiyãs* and to avoid its abuse. Thus, certain guidelines were laid down specifying the conditions to be fulfilled before *Qiyãs* can be deemed to have taken place. The rules are elaborate and different, somewhat, from one school of thought to another. The following, however, is summary representing the views accepted by the generality of the jurists:

i.   **Applicability to general cases as against isolated cases:** *Qiyās*
      must be based on a stipulation or prescription that is general
      (*ᶜāmm*), and not of special (*Khass*), application. There are much
      legislation in the *Qur'ān* and *Sunnah* relating to the various aspects
      of life which do not apply to every Dick and Harry. An example
      that readily comes to mind here is the special allowance given to
      the Prophet in the *Qur'ān* to exceed the maximum number of four
      wives and to be exempted from some other laws applicable to
      marriage. The *Qur'ān* specifically mentions that "This is only for

      you and not for other believers" (*Qur'ān* 33:50).

      No caliph or any Muslim ruler, no matter how highly placed, can
      therefore justify failure to comply with the general rules regulating
      marriage in Islām on the basis of the special allowance to the
      Prophet by analogical deduction. Another example is that of
      combining the *Ẓuhr* and *'Aṣr* prayers at ᶜArafāt, and the

      Maghrib and *ᶜIshā'* at Muzdalifah, by pilgrims while on *Ḥajj*. This
      practice is compulsory on the special occasion of pilgrimage which
      cannot be extended to any other one. Ordinarily, combination of
      prayers (*Salawāt*) is a concession or allowance which one may take
      the advantage of or otherwise, if one is under the condition to
      enjoyit.

ii.   **The cause (*ᶜillah*) must be known and understood:**
      Justification for analogy is based on the premise that there is an
      operative cause common to the original case and the one on hand
      requiring a solution. Before the question of being common or
      otherwise arises, it must be ascertained that the cause is clearly
      identified and thoroughly understood. For instance, the *Qur'ān*
      5:94 appears to state that the cause for prohibiting intoxicants and
      gambling is, among other things that Satan uses them to set those
      involved in them against one another and prevent them from
      remembering Allah and observing *Ṣalāt*. This is understood and
      supported by experience. This injunction can therefore be used for
      analogy to prohibit anything that may do the same harm as
      mentioned above. On the other hand, the reason for having a
      particular number of Rakᶜahs for one *Ṣalāt* and the requirement to
      read aloud or silently is not given. Thus, these practices cannot be
      used as a basis for analogy.

iii. **Basing the decision on the *Qur'ān*, *Ḥadīth* or *Ijmāᶜ*:** *Sharĩ'ah*

      principle *Aṣl*, being the precedent, must be based on an express

      injunction of the *Qur'ān*, authentic *Ḥadīth* or popular *Ijmāᶜ*. Any

      previous case not decided according to these sources of *Sharĩ'ah*

is not suitable as a basis for any analogy. This is necessary to avoid digressing from the course of *Sharĩ'ah* in favour of one's caprices and whims.

iv. The decision arrived at as a result of analogy must not be contradictory to the *Qur'ān* and *Ḥadīth*. The rationale behind the use of *Qiyãs* is to be guided by the *Qur'ān* and *Sunnah* in deciding new cases that do not directly come under any of the injunctions. Thus, the spirit of *Sharĩ'ah* should guide the decision. Except something goes wrong, the decision eventually arrived at should not run counter to the principles laid in the *Qur'ān* or *Ḥadīth*. If it does, the analogy is null and void, and is of no effect.

To conclude with, it would be observed that these conditions were laid down quite a long time ago when the challenges were different from what we have at present. The world is changing every day. It is necessary to have a critical look at these conditions and see if they can satisfy the modern needs. If not, further *Ijtihād* has to be exercised to bring them up to date. The ultimate conclusion is most likely to be in favour of reopening the gate of *Ijtihād* erroneously believed to have been closed for centuries in certain quarters.

SELF-ASSESSMENT EXERCISE

Discuss the conditions governing validiy of the application of *Qiyãs* as a source of *Sharĩ'ah.*

Examples of *Qiyãs*

During the life time of the companions of the prophet they arrived at various descisions on analogical deductions. As for example on the punishment that should be given to a drunkard Ali bn Abĩ Ţālib 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 strokes of cane".**

From all that has been said so far, we can deduce that there is nothing wrong in using al-*Qiyãs* in deriving at a logical conclusion in Islãmic law in as much as that conclusion does not go against the injunctions of the Holy *Qur'ān* or the *Sunnah* of the prophet.

Another interesting example of analogical deduction is that of the *Qiyãs* and Ijtihād by 'Umar, the second Caliph. He asked the prophet whether a

kiss during the fast vitiates the fast even though no organism is reached. The prophet posed a question: "Does rinsing ones mouth vitiate the fast" Umar replied "No, it was alright to do so". So the prophet
indicated that the fast is similarly not vitiated by a kiss if it is not accompanied by an orgasm.

Similarly, when a Muslim breaks his fast during the Ramadan intentionally, he is obliged to expiate for it in the following manner:
(a)   Manumitting a slave;
(b)   Fasting for two months consecutively in lieu of manumission;
(c)   If his health will not stand 2 months fasting, then he must feed 60 paupers

Another example of *Qiyãs* is provided in the case of Bedouin who had a sexual intercourse with his wife during the time of fasting. He went to the prophet and confessed of his sin. The prophet told him that he should give a Kafarah (expiation). The '*illah* (effective cause for extending a rule by analogy) was deliberate breaking of fast. Kaffarah (expiation) becomes incumbent upon the defaulter.

I. Imãm Mālik has also given a verdict issued on *Qiyãs* by a remarriage of the wife of a missing person after the court has issued a decree deeming him dead, although he subsequently appears, with the remarriage of a divorced wife who has been recalled by her husband into the matrimonial home bond but who has remarried because the recall was not communicated to her. In both cases the wife observes *Iddah* of death in the first case and the 'Iddah of Ţalāq in the second case. In both cases the woman enters into the second marriage in good faith.

Sayyidna Umar had given a *fatwa* that in the case of a woman who was not made aware of the recall becomes the lawful wife of the new husband. I. Imãm Malik said the same applies in the case of the former wife of the missing person as she becomes the legal wife of the new husband.

The prophet was asked by a woman whether she could perform the Hajj on behalf of her aged father. The prophet replied in affirmative just as she may discharge on his behalf a pecuniary debt.

SELF-ASSESSMENT EXERCISE

Reiterate the above examples to justify application of *Qiyãs* as a souce of *Sharĩ'ah*

Different Kinds of *Qiyãs*

There are two types of al-*Qiyãs* : (a) *al-Qiyãs al-Jaliyy* (the transparent *Qiyãs*) and (b) *al-Qiyãs al-Khafiyy* (the hidden *Qiyãs*).

With regard to *Qiyãs Jaliyy*, alcohol is forbidden on the grounds of its being intoxicant, other new intoxicants can also be equally forbidden in Islãm based on this reason.

As regards the al-*Qiyãs al-Khafiyy*, Almighty Allah asks us to give out *Zakãt*. It was the prophet who explained how it should be given out. He said among other things, that one goat must be given out as *Zakãt* on every forty goats. Giving a poor man a goat will do him little or no use. Therefore, we are allowed to sell that goat and give him the money. He would appreciate perhaps the money more than he would appreciate the goat.

The *Shĩ'ah* sect like the *Ithnã 'Ashariyyah* (the twelvers), the Uşūlĩs and the Ibãđite (Kharijite sect) employ the terms *'aql* and *ra'y* for the same concept of *Qiyãs*.

4.0   CONCLUSION

In this Unit, you have learnt the definition, importance and basis of *Qiyãs* as one of the sources of the *Sharĩ'ah*. You have also been taught the various arguments in favour or against its application as a source of the Islãmic Law. So also you have been introduced to the conditions to be satisfied before *Qiyãs* is understood to have been properly carried out and the need to review the conditions in view of the modern dispensation with a view to ensuring that the *Sharĩ'ah* practices keep pace with the contemporary situation.

5.0   SUMMARY

Qiyãs, analogical reasoning, is the fourth source of the Islãmic Law. Its legality is based on the numerous verses of the *Qur'ãn* that urge Muslims to reflect especially on the Book to understand and apply its teaching appropriately. There are also sayings and deeds of the Prophet and Companions that legitimize the use of *Qiyãs* as a source of *Sharĩ'ah*. To ensure that it is not abused, certain conditions are required to be satisfied. Some of them are:

i) basing it on verses and Ḥadĩths that are of general application, ii) proper understanding of the spirit and motive of the verses and/or Ḥadĩths.

iii) avoiding using *Qiyãs* as the basis for *Qiyãs* and iv) ensuring that the final decision does not contradict the principles of Islãm.

6.0   TUTOR-MARKED ASSIGNMENT

1.   Define *Qiyãs* justifying its application as a source of the *Sharĩ'ah* in the light of the *Qur'ān* and *Sunnah.* Cite cases to illustrate your answer.
2.   Critically assess the views of the anti-Qiyas and pro-qiyas schools and thentwo kinds of Qiyas. Discuss the conditions guiding the application of Qiyãs.

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UNIT 5   *AL-IJTIHĀD* (EXERCISE OF REASONING)

CONTENTS

1.0   INTRODUCTION

In the foregoing Units of this Module, you have learnt how the Qur'ān, Hadith, Ijma' and *Qiyãs* constitute the Sources of the Islãmic law - the *Sharī'ah*. To be able to derive legal provisions from these sources *alIjtihād (*exercise of reason) is a factor that must come to play. This Unit is therefore focused on this indispensable aspect in the exercise of formulating Shari 'ah provisions from its sour$_{ces}$.

2.0   OBJECTIVES

After you must have completed the study of this Unit you should be able to:

•   define *al-Ijtihād* and explain the role I.   Imãm a`sh-Shāfi'ī played in its support

•   highlight the conditions under which *al-Ijtihād* must not be exercised

•   describe the qualities that a *Mujtahid* must possess in terms of eruditionand morals

•   illustrate the concept of *al-Ijtihād* with examples

•   ṣtate the Shīite's stance on the concept of $_{al}$-*Ijtihād*.

3.0   MAIN CONTENTS

3.1   Definition

THE Arabic word for *al-Ijtihād* literally means an effort or an exercise to arrive at one's own judgement. In its widest sense, it means the use of human reasoning in the elaboration and explanation of *Sharī'ah* – the Islãmic Law. It covers a variety of mental process, ranging from the interpretation of texts of the *Qur'ān* and the assessment of the authentic *Hadīths*. *Qiyãs* or analogical reasoning then is a particular form of *alIjtihād*, the method by which the principles established by the *Qur'ān*, Sunnah and *Ijmā'* are to be extended and applied to the solution of new problems not expressly regulated before.

Al-Ijtihād, therefore, is an exercise of one's reasoning to arrive at a

logical conclusion on a legal issue done by the Jurst to deduce a conclusion as to the effectiveness of a legal precept in Islãm. I.

Imãm Muhammad Idris A`sh-Shãfi'ī has supported the idea of Ijtihad by quoting a verse of the Holy *Qur'ān* to substantiate his conviction over the issue.

Almighty Allah said:

"Wherever you go, face the mosque of Haram, and wherever you are, turn your face towards it."

I.   Imãm Shãfi'ī maintains that if one does not exercise his intellect,
                 he would not be ale to know where *Masjid al-Haram* is.
         Therefore, Allah Himself indirectly encourages us to exercise our
         reasoning faculty, a great gift to mankind, to derive a logical
         conclusion on certain matters.

Conditions under which al-Ijtihād cannot be exercised

The Jurists have laid down certain conditions under which *al-Ijtihād*, must not be exercised:

(a)   *Al-Ijtihād* must not be exercised as to the extent of Allah. It is
         certain that Allah does exist; and any attempt to think on whether
         He exists or not will lead to disbelief.

(b)   *Al-Ijtihād*,must not be exercised as to the truism of the Prophets of
         Allah who were sent by Allah himself and any attempt to ponder
         over the idea of their prophethood is tantamount to disbelief. (c)
         Al-Ijtihād, must not be exercised on the authenticity of the *Qur'ān*..

SELF-ASSESSMENT EXERCISE

i. Define *al-Ijtihād* vividly presenting the support given to it by I. Imãm Shafi'ĩ. ii. Enumerate the conditions under which *Ijtihād* cannot be exercised.

Qualities Required of a *Mujtahid*

Before one can be a *Mujtahid* he has to be knowledgeable about the religion of Islãm, the *Sunnah*, *Fiqh* and *Uşulu `l-fiqh*. He should possess the following qualities:

a)   He must be so very well versed in the study of the*Qur'ān*.That he must know the reason why the verses and chapters of the *Qur'ān* were revealed (*asbāb al-nuzūl*).

b)   He must be well versed in the study of the traditions of Prophet Muhammad. That is, he must know the distinction between authentic *Hadīth* from the spurious *Hadīth*; he must know *Hadīth* Hasan (good *Hadīth*) *Hadīth Đa'īf* (weak *Hadīth*) and so on.

c)   He must know the principles of *Ijmā'*very well.

d)   He must know the Injunctions of *Qiyãs* and the conditions that surround it.

The *Mujtahidun,* in addition must possess good character apart from academic excellence. Among the moral qualities he must posses are:

(a)   He must be a good practising and not nominal Muslim.

(b)   He must be very pious and law abiding to all the injunctions of the Holy *Qur'ān*.

(c)   He must not be influenced by an heretical inclination

(d)   He must be just, reliable, trustworthy and pure from iniquitous practices.

Classification of the Mujtahids

The *Mujtahid* can be classified into three broad categories:

a)   *Al-Mujtahid fi `t-Tashrī'i*: These were those who did *Ijtihād* inthe matter of *Sharī'ah*. There were the Companions of the Prophet till the third century of Islãm.

b)   *Al-Mujtahid fi `l-Madh-hab*: These were those who did *Ijtihād* and later founded schools of Jurisprudence.

c)   *Al-Mujtahid fil Masāil*: These are the present day Mujtahids who give *fatwā* or juristic opinions on religious matters.

Examples of Valid *Ijtihād*

Any form of *Ijtihād* must have its starting point in a principle of the *Qur'ān*, *Sunnah*, or *Ijmā'* and can not be used to achieve a result which contradicts a rule established by any of these three fundamental sources; whenever a new case or issue presents itself reasoning by *Qiyās* with an original case covered by the *Qur'ān*, the *Sunnah* or *Ijmā'* is possible provided the effective cause (*'illah*) is common to both cases.

As for example, wine is prohibited by the texts, and the '*illah* for this prohibition is intoxication. Therefore other intoxicants like spirits and drugs like hemp and marijuana are prohibited by *Qiyās because* they also lead to drunkenness and loss of senses. In this way the prohibition is extended by analogical deduction. The majority of the Muslims, including the four major *Sunnī* schools, accept *Qiyās* and *Ijtihād* to determine Juristic matters by reasoning on the following basis:

a)   There should be original subject (*aşl*)

b)   There should be an object of analogy, being a new subject (*far'*)

c)   There should exist effective cause common to both subject (*'illah*)

d)   There should also be a rule arrive at by *Qiyās* (*hukm*)

In the case of prohibition of intoxicants like gin, the following four cardinal points must exist:

(i) Wine   (ii) Gin   (iii) Intoxication   (iv) Prohibition.

The following are some other examples of arriving at an *Ijtihād* through the use of analogical deduction.

1.   In *Sūrah al-Jum'ah* the *Qur'ān* prohibits the sale transactions after the last callto Jum'ah prayer. The rule is extended by *Qiyās* to other kinds of transactions and engagements which distract Muslims from attending the *Jum'ah* prayer.

2.   In the *Sunnah* of the Prophet a killer is deprived from sharing in the inheritance of his victim. This rule is extended to the law of *Waşiyyah* (bequests) as well. The Shī'ites believe that *Ijtihād* is

only the prerogative of their I. Imãms who are presumed to be infallible.

In the modern times, Muslim scholars like Jamal din al- Afgahani and his disciple Shaykh Muhammad Abduh tried to justify in the presence of a group of Muslim scholars in Cairo that the importance of reopening the door of Ijtihad was an Islãmic response to imperialism prevalent in the Muslim world at that time.

Muhammad Abduh, the Afghani's disciple gave fresh interpretation of the principles embodied in the divine revelation as a basis for legal reform. Although engendered violent controversy, the supporters of the fresh *Ijtihād* argued that the doctrine of the closure of the door of *Ijtihād* had not been established by an infallible *Ijmā'* as alleged by the opponents of the *Ijtihād*.

It was argued that any *Ijmā'* of the *'Ulamā'* in the period of intellectual stagnation and under fear as well as during any foreign domination like that of the Mongols in Baghdad around 1258 A.D. and afterwards could lead to harmful consequences.

Therefore, fresh *Ijtihād* was launched in the 19th Century in the public interest. Thus it was believed that the door of *Ijtihād* was re-opened and *Ijmā'* reached in Baghdad in the 13th century was repealed. But the question is: was the door of *Ijtihād* ever closed? To Doi R. I., perhaps Shaykh Afghāī and Abduh, however, great scholars they were overplayed their role.

SELF-ASSESSMENT EXERCISE

• Highlight the qualities required of a *Mujtahid* and classify the Mujtahids.

• Give copious examples of valid Ijtihads.

Istiħsān, Istişlāħ, **or** *Maşāliħ Mursalah: Public Interest*
Istiħsān, Istişlāħ or *Maşālih Mursalah* has been mentioned indirectly in the Holy *Qur'ān* in the following verses:

((الذين يستمعون القول فيتّبعون أحسنه، أولئك الذين هداهم الله وأولئك هم أولوا الألباب))

"Those who listen to the word and follow the best meaning in it: Those are the ones whom Allah has guided, and those are the ones endued with understanding"

The *Mufasirūn* (Commentators) have interpreted this verse in two ways. If "word" in this verse is taken as any word, the clause would mean that good and pious men should listen to all that is said and choose the best of it for general good-as long as that word is according to the spirit of Divine Message. But if the "word" is taken here to mean the word of Allah, it would mean they should listen reverently to it, and where permissive and alternative courses are allowed for those who are strong enough to follow the higher course, those endued with understanding should prefer to attempt the higher course of conduct. For example, it is permitted within limit to punish those who wrong us, but the nobler course is to repel evil with good. We should try to follow the nobler course.

Public interest is also regarded in *Sharī'ah* as a basis of law. The Jurists of different schools have used different Arabic term to describe it. The Hanafīs call it *istihsān* meaning equitable preference to find a just solution. I. Imãm Mālik calls it *Maşāliħ Mursalah* meaning public benefit or public welfare or public interest. The Arabic word Mursal literarily means to set loose from the texts; and *Maşāliħ* means welfare. I. Imãm Ahmad bn Hanbal calls it *Istişlāħ* seeking the best solution for the general interest. The Hanbalī scholar, Ibn Qudamah, as well as Malikī jurist, Ibn Rushd, has occasionally used the term *Istiħsān*. The only school which does not recognise *Istiħsān* as a source is the Shafi 'ī school. According to I. Imãm Shafi'ī, if it is allowed, it can open the door to unrestricted use of fallible human opinions since the public interest will vary from place to place and time to time.

It should be noted that the precept of public welfare and general interest can really be very helpful particularly in cases which are not regulated by any authority of the Book of Allah, the *Sunnah* of the Prophet or *Ijmā'*. In that case, principle of public interest may apply instead of strict *Qiyās*.

The Shafi'ī jurists have employed *Istidlāl* to achieve similar results by avoiding merely the application of strict *Qiyās*. *Istidlāl* is the process of seeking guidance, basis and proof from the sources although its dictionary meaning is merely an argumentation. With this brief introduction, we shall examine some examples of *Istiħsān*.

1. The *Bay' bi `l-Wafā* or the sale subject to any future redemption which can be construed as a kind of mortgage was allowed because of the practical need for such transactions in the interest of public welfare.

2. Islām attaches a great importance to the proper dress of a woman (*Satru `i-Awrah*), No man except her husband can see certain parts of her body. But on account of necessity, a physician may be allowed to medically examine and diagnose a woman in the interest of saving her life.

3. Divorce given in death sickness (*maraḍ al-mawt*), even though effected as irrevocable Ṭalāq, it will not deprive the divorced wife from her share in the inheritance. The husband in reality was trying to deprive her of her rights and wanted to shun his obligations. It

    was regarded as merely the divorce for an escape (*Ṭalāq al-Fārr*).
    Some Shāfi'ī and Zāhirī jurists disagree with the majority of '*Ulamā*' on this issue. TheHanafi jurists maintain that the entitlements of the divorced wife lasts during her '*iddah* period while the
    Hanbalis take the view that she will be entitle to participate as long as she has not remarried again. The Malikis however, accord her the right to participate in the inheritance even if she has remarried provided the deceased did not recover in between the death illness and his ultimate death.

4. The *Hadd* punishment of amputation of hands in case of theft will not be applied even if all evidences proved that it was really committed during the period of famine when no food was available and one was forced to steal. I. Imām Shāfi 'ī say that he will applythis rule simply because Sayyidna Umar decided a case in this way. He does not think that it was done on the principle of *Istiḥṣān*.

5. The eating of meat which has not been slaughtered according to the Islāmicritual (*Dhabīhah*) is permissible where no other lawful food is available.

6. Destruction of lawful food-stuff is not allowed without any special reason. But Sayyidna Umar ordered the spilling of milk mixed with water as punishment that would prevent deceit of dishonest persons engaged in the sale of adulterated milk.

7. The second call of the Adhān for Jumu'ah prayer was not a
    practice in the time of the prophet and the two Rashidun Caliphs. Sayyidna 'Uthmān bn 'Affān, the third Caliph, started it as a reminder for the public benefit. I. Imām Mālik bn Anas gave several juristic decisions (Fatwās) based on *Masāliḥ Mursalah* (public-interest). Some of them arelisted as follows:

a)   The Muslim ruler may exact additional taxes from the wealthy citizensin the period of emergency.

b)   A Caliph or a ruler does not have to be the most meritorious claimant, otherwise strive will be inevitable.

c)   I. Imãm Malik as well as I. Imãm Hanbal prohibited the sale of grapes, which is otherwise legal, to a wine merchant as he will use them to ferment wine which is unlawful.

d)   The sale of arms during a civil disturbance is prohibited as may intensify the struggle.

Most of these rules could fit into Hanafî's Istiħsān or Shafi'ï's $Qiy\tilde{a}s$.

SELF-ASSESSMENT EXERCISE

Expatiate upon the place of Public Interest as a source law from the point ofview of the various schools of Islãmic law.

Istişħāb: **Legal Presumption**

Istiş-ħāb means a rule of evidence or legal presumption of continuance of conditions. In other words, it is the presumptions in the laws of evidence that a state of affair known to exist in the past continue to exist until the contrary is proved. *Istiş-ħāb* is accepted by all schools of Islãmic jurisprudence as a subsidiary source of *Sharī'ah*.

There is a presumption of innocence until the guilt is established. This presumption is based on *Istiş-ħāb*. There will be a similar presumption of *Ħalāl* things in the absence of its specific prohibition. A debt is presumed to subsist until its discharge is evidenced.

Likewise, a marriage is presumed to continue until its dissolution (*Ţalāq*) becomes known. In the case of devotional excesices ('Ibādah),
mere doubt does not vitiate the validity of rituals. Supposing a man after ablution entertain a mere doubt as to whether he still has his ablution to perform the prayers, then there is a presumption of purity; and ,similarly, if he thinks genuinely that he has performed the correct number of prostrations (*sajdah*) then a mere doubt will not affect his genuine belief. In the case of an ownership of title, a judge will presume ownership from valid title deeds until the contrary is proved. If a person is missing (*mafqūd*), his wife remains his legal wife until the court, after due enquiries issues a decree presuming the contrary, namely death.

Saddu `dh-Dharāi' (Blocking The Ways)

Sadd `dh-Dharāi'* really means blocking the ways even if the method involved is otherwise legal. This source of *Sharī'ah* is not much different from the *Maşāliħ Mursalah*, but it is used by Mālikī Jurists and some Hanbalīs under this name. Most of the rules categorised under *Sadd `dh-Dharāi' can conveniently fit into the various subsidiary sources related to public interest or public welfare.

'Urf (Practice) and *Ādah* (Custom)

'Urf (the known practice) and *Ādah* (Custom) are recognised as a subsidiary source by all schools of jurisprudence. The Mālikī School attaches more importance to custom than any other schools. But customary rules are valid as long as there is no provision on the matter in the *Qur'ān* and the *Sunnah.* If any of the customs contradicts any of the rule of *Sharī'ah*, they will be considered outside the scope of Islãmic Law.

SELF-ASSESSMENT EXERCISE

Write notes on the place of the following in the *Sharī 'ah*

(i)   *Istiş-ħāb*: Legal Presumption
(ii)   *Sadd `dh-Dharāi'* (Blocking The Ways)
(iii)   *'Urf* (Practice) and *Ādah* (Custom)

4.0   CONCLUSIONS

Al-Ijtihād is an exercise of one's reasoning to arrive at a logical conclusion on a legal issue done by the Jurst to deduce a conclusion as to the effectiveness of a legal precept in Islãm. Reasoning faculty is a great gift to mankind and its utilization is encouraged by Allah in many passages of the *Qur'ān*. In depth knowledge of the *Qur'ān*, the *Sunnah*, *Fiqh* and *Uşūlu `l-fiqh* is essential qualification required of a *Mujtahid*. He must be of high moral integrity in addition to his academic excellence. There are three classes of Mujtahids i.e. (i) *Al-Mujtahid fi `tTashrī'i* (ii) *Al-Mujtahid fi `l-Madh-haband* (iii)*Al- Mujtahid fil Masāil.* The Shīites belive that *Ijtihād* is only the prerogative of their Imãm s who are presumed to be infallible.The Supporters of fresh Ijtihad argued that the doctrine of closure of the door of *Ijtihād* had not been established by an infallible Ijmā'as alleged by opponents of the *Ijtihād.* Other miscellaneous source of *Sharī'ah* include *Istiħsān*, *Istişlāh,* or *Maşāliħ Mursalah (*all of

which connotes public interest)*, Istiṣḥāb (*legal presumption), *Sadd `dh-Dharāi'* (Blocking The Ways) *'Urf* (Practice) and *Ādah* (Custom).

5.0   SUMMARY

In this Unit, we have extensively treated the place of *al-Ijtihād* in the frame-work of *Sharī 'ah* jurisprudence. The conditions governing validity of its application and the limitations to its application are well articulated. A highlight of qualities required of the Mujtahids and their classification are also provided. Copious examples of valid *Ijtihād* cases are also given as illustrations. The Unit concludes with a highlight of miscellaneous sources of *Sharī'ah* such as *Maṣāliḥ Mursalah, Istiṣ-ḥāb, Sadd `dh-Dharāi' 'Urf* and *Ādah*.

6.0   TUTOR-MARKED ASSIGNMENT

          □□   Examine the concept of *Ijtihād* and support your submissions

          with illustration.□

□□ State the perceved differences among the Jurists on the principle of
          Ijtihād.□

□□   What are the qualities required of a Mujtahid; classify them into
the three main groups.□

□□ Mention two important miscellaneous sources of *Sharī 'ah* and explain
          them.□

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MODULE 3

Unit 1 The Beginning of the Schools of Thought

Unit 2 Imãm Abū Ḥanīfah and His School

Unit 3 Imãm Mālik and His School

Unit 4 Imãm A`sh-Shāfiʿī and His School

Unit 5 Imãm Ḥambal and School

Unit 6 The *Shĩ'ah* and *Sharĩ'ah*

UNIT 1   THE BEGINNING OF THE SCHOOLS OF THOUGHT

CONTENTS

    1.0   Introduction
    2.0   Objectives
    3.0   Main Contents
        3.1   What is a *Madhhab* (School of thought)
        3.2 Factors responsible for the establishment of the
Schools
    4.0.   Conclusion
    5.0   Summary
    6.0   Tutor-Marked Assignment
    7.0   References/Further Reading

1.0   INTRODUCTION

As you should have been well aware, there are schools of Islãmic law known as the Hanafi, Maliki, Shafii, the Hambali and the Shiite. This Unit intends to discuss the definition of the schools of thought, the events leading to their establishment and the scope of differences between them. This, as a whole, is aimed at preparing your mind for the study of each of the schools, one after the other.

2.0   OBJECTIVES

By the end of this unit, you will be able to:

* describe what is a Sharī 'ah School (*Madhhab*)
* explain the circumstances surrounding the foundation of the schools of Law
* highlight the factors responsible for the characterists of *Sharĩ'ah* schools.

3.0   MAIN CONTENT

3.1   What is a *Madhhab* (School of Thought)?

There is no official definition of a school of thought. This may be as a result of the feeling that it is so self-evident that it can be taken for granted to have been known or understood by every student of Islãmic Jurisprudence. In fact, the need for it is hardly felt here also except that one would not like to give room for confusion especially at the initial stage like this. For the purpose of this study, *Madhhab* (School of thought) may be described as a body of juristic opinions emanating from or ascribed to certain scholars of the past based on their efforts and selfexertion in the understanding and application of *Sharĩ'ah*, notable among who are: Imãms: Abū Hanīfah, Malik, al-Shāfi'i and IbnHambal.

Certain clarifications are necessary here. One is that, although there are many scholars of international repute nowadays all over the Muslim world, none of them is recognized as the founder of any school of thought. In fact, such scholars usually base their opinions on those of the above mentioned Imãms. This does not necessarily indicate that there have not been others. There were and the list is long for the *Sunnis*, *Shĩ'ah* and others among them. The important thing here is to note that only the four mentioned are the *Sunni* ones that enjoy universal recognition, cutting across those who subscribe to their points of view or otherwise, and have survived to the present.

None of the schools came into existence as a result of deliberate efforts by the founder. Rather, one can only identify the popularity of each founder as an accomplished jurist with a large following as the main factor. There was no line of demarcation between them. In fact, some of the founders met, learnt from one another and showed appreciation for the level of erudition of one another. Thus, the differences between them were not fundamental and did not set them against one another.

SELF-ASSESSMENT EXERCISE

Expatiate upon the concept of a *Sharī'ah* School.

Factors responsible for the establishment of the Schools

The presence of the Prophet afforded his Companions access to him for questions and clarifications and did not create serious challenges for them to practise independent thinking. However, there were occasions when some of them were sent out as missionaries or administrators with the

express instruction to use their reasoning if the *Qur'ān* and *Ḥadīth* did not provide required guidance. It was not uncommon that decisions of two persons on the same issue based on personal reasoning might be contradictory and, still, be accommodated. This created no serious problem as such decisions related only to issues that were not all that fundamental to the practice of the religion.

The Prophet is reported to have said that difference of opinions among Muslims is a mercy. This is apparently in view of the fact that the situation will challenge them to further investigations and researches, an action which is good for their intellectual development and progress. He is also quoted to have said that he who exercises personal reasoning and errs has a reward while he who is right has two rewards. In other words, the two of them deserve and really earn commendation. In this case, the fear of arriving at a wrong conclusion is no barrier to the exercise of personal reasoning inasmuch as it is based on piety, objectivity and sincerity of purpose.

The facts discussed above paved the way for animated efforts in form of independent personal thinking to find solutions to new legal issues. Five main reasons can be identified to have resulted in the establishment of the schools of thought to crystallize various opinions. The factors are as follows:

i.   **Focus of attention on the spirit or letter of the injunction:** It happens often that instructions are given to a group of people but may be carried out differently by them based on what each individual feels matters most in the instructions. An incident took place during the life of the Prophet which may be cited to illustrate this point. Some Companions were sent to Banū Qurayẓah after the latter's misdeeds in Medina. The Companions

        were instructed not to observe the ꜤA*ṣ*r Prayer until when they got to their destination. Incidentally, they were still on the way when it was time for the Prayer. Some of them felt that it was wrong to delay the Prayer beyond its normal time, and, therefore, offered it on the way. Others felt that they should act according to the letter of the instruction and did not pray until the nightfall after reaching their destination. The case was later reported to the Prophet but he did not say anything, meaning tacit approval of the two different interpretations. Such actions later became normative precedents.

ii.   **Lack of information:** It happens that some decisions are taken purely on the basis of personal reasoning due to non-availability of Ḥadīths relevant to the issue at the time. It may happen that another

decision is taken on the same issue somewhere else or at another time in the light of some Ḥadīths. Usually, such different decisions will win the fancy of some later jurists for various reasons. An apposite example here is that of the question of a woman whose husband died without fixing the amount of dower or consummating the marriage directed to Ibn Masᶜūd. After admitting having not heard any Ḥadīth on the issue, he opined that she should be entitled to the average dower of a woman of her social status and her full share from the heritage of the deceased, and that she should observe the *ᶜIddah*, waiting period. Maᶜqūl b. Sinān (d. 63 A.H.) is reported to have corroborated the judgment saying "that the Prophet had given a similar decision". However, Ibn ᶜUmar (d. 73 A.H.) and Zayd bn Thābit (d. 45 A.H.) are reported to have given a different judgment on a similar case, giving no dower to the woman but recognising her share in the heritage. The difference of opinions here can be traced to the use of a Ḥadīth by the former while the latter relied solely on personal thinking. Caliph ʼUmar is also reported to have changed many of his decisions in the light of Ḥadīths later made known to him.

iii.   **Different interpretations of the *Qur'ān*:** Some verses of the *Qur'ān* are capable of being given different interpretations. An example is the *Qur'ān* 2:228 stipulating that divorced women should observe the waiting period for three courses (*qurū'*). *Qur'* (sing of *qurū'*) was understood by ᶜUmar and some others to mean a period of menstruation while ᶜĀ'ishah and some others said that the meaning was the period of purity between menstruations.

iv.   **Different interpretations of Ḥadīths:** The text of Ḥadīth may be understood differently by individuals. For instance, Ibn ᶜUmar is reported to have narrated a Ḥadīth that a dead person is punished on the account of the mourning of his/her relatives. ʼĀ'ishah is reported to have denied this saying that the Ḥadīth had been misunderstood. According to her, rather than being a warning the Ḥadīth in question was just a remark that the relatives of a Jewess who died were mourning her demise while she was being punished. In that case, the punishment had nothing to do with the mourning. This stand of ᶜA'ishah was later on found to be in line with the *Qur'ān* 6:165 which says "No soul bears the burden of another".

v.   **Differences in Location:** Differences in geographical location and cultural background have some effects on the difference of

opinions among the jurists. For instance, those of them based in Hijāz comprising Makkah and Medina which served as the cradle of Islām with the preponderance of scholars there had more access to the Islāmic tradition than those of Kūfah and Baṣrah in Iraq far away. Yet, the distance between Syria and these centres of Islāmic learning would have its impact too. While the people of Medina would take popular practices there for granted that they represented the teachings of Islām, those based in Iraq would be engaged in personal thinking in solving many of the new problems cropping up there. This would explain the charges of over-dependence on local tradition against the former and of giving preference to personal thinking over and above Ḥadīths against the latter. As it should be expected, there were differences between opinions popular in these areas.

The above is a brief survey and summary of the factors that led to the foundation of the schools of juristic thought, especially the four that are our concern here. We are now to discuss their founders one-by-one with emphasis on their contributions to the growth and development of the Islāmic Jurisprudence.

SELF-ASSESSMENT EXERCISE

What are the factors responsible for the emrgence of Sharī 'ah schools?

4.0   CONCLUSION

The Schools of Thought are bodies of juristic opinions identified with certain groups under the leadership of able scholars. The schools have little or no difference with respect to the fundamental teachings of Islām. They disagree only on matters of detail. Factors responsible for differences between them include personal understanding of the injunctions in the *Qur'ān* or *Sunnah*, inadequacy of information available to them, differences in the interpretation of the *Qur'ān* and Hadīth, and in geographicallocations.

5.0   SUMMARY

This Unit describes what constitutes a *Sharī'ah* school of thought and explains the extent of the differences of opinion between the schools. It highlights the factors responsible for their development as (i) focus of attention on the spirit or letter an injunction (ii) lack of information (iii) differences in interpretation the Qur'anic or Hadith naṣṣ and (iv)

differences in location. It thus prepares you for the study of the foundation and characteristics of the four schools of Islãmic law.

6.0   TUTOR–MARKED ASSIGNMENTS

*   How would you account for the differences between one School of Thought and the other?
*   To what extent do you think modern developments can help to bridge the gap between the various schools of thought?

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UNIT 2   IMÃM ABŪ HANĨFAH AND HIS SCHOOL

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1.0   INTRODUCTION

Imãm Abū Ḥanīfah was a great scholar and founder of the School of Law
named after him. Based in Kūfah, the the capital of ᶜIrāq, he had
the opportunity of witnessing and benefiting from the theological and
political activities of the time. His school of thought is one of those
recognized by the majority of Muslims and has survived till to day.

2.0   OBJECTIVES

By the end of this unit, you will be able to:

*   give account of the life history of Imãm Abū Ḥanīfah

*   highlight his contributions to the development of Islãmic
jurisprudence andhis school of thought.

3.0   MAIN CONTENT

3.1   Imãm Abū Ḥanīfah: his birth, up-bringing and Early
Education

Abū Ḥanīfah whose original name is Nuᶜmān b. Thābit was born in Kūfah,
the ancient capital of ᶜIraq, in 80/699 in the reign of ᶜAbd alMalik b.

Marwān, when al- Hajjāj b. Yūsuf ruled over ᶜIrāq. He spent

the first fifty-two years of his life in the Umayyad regime and the last
eighteen in the ᶜAbbāsid. He was therefore opportuned to witness the
theological and political activities of the time most of which took place in
Kūfah, his home-town.

Imãm Abū Hanifah grew up to become a renowned scholar having studied philosophy, logic and theological divergences of sects which enabled him to enter into controversies with them. He was committed to intellectual activities which eventually led to the foundation of the Ḥanafi School of Law named after him. He led a life of piety, sincerity and moral uprightness. His sense of honour prevented him from accepting the post of Qādī (Justice) under the ᶜAbbasid regime despite all the persecution he suffered from their hands.

Our man's thirst for knowledge took him to several centres of Islãmic learning in those days. After completing his studies in Kūfah and Baṣrah, he went to Makkah and Medina where he learnt from many scholars including Imãm Malik b. Anas. This was despite the fact that he was thirteen years older than the teacher. Abū Ḥanīfah's teachers are said to be in thousands. His aim was to broaden the horizon of his knowledge by exposing himself to the various ideas in vogue at the time so that he could take as many shades of opinions as possible into consideration in his teachings.

As a scholar, Imãm Abū Ḥanīfah, was widely known. He attracted students from all parts of the Muslim world. His influence was so much that rulers, on many occasions, suspected his complicity in every upheaval that took place in those days. Probably due to his preoccupation with teaching and traveling, he did not write many books. He bequeathed only *al-Fiqh al-Akbar* which is mainly on the Islãmic doctrine. The other book, called *Musnad*, is not his original work. It is a compilation of Ḥadīths by one of his students.

His contributions to the development of the Islãmic Jurisprudence

The importance of Abū Ḥanīfah's contributions to the Islãmic jurisprudence cannot be over-emphasised. The most important of them are as follows:

i.   **Use of *Raᶜy* (personal opinion) to resolve legal issues:** Although we cannot credit Abū Ḥanīfah for having introduced *Ra'y* in the Islãmic jurisprudence because the practice is as old as Islãm, it has to be acknowledged that it was he who first openly and courageously admitted its use and even championed its cause. His opponents accused him of giving preference to *Raᶜy* at the expense of Ḥadīth and he denied it. The situation was so tense that he and his disciples were branded as *Ahl al-Raᶜy* (People of Personal opinion). The fact was that he laid emphasis on the use of *Qiyãs*

(analogy) to which *Ra^cy* served as a stepping stone. Incidentally, most, if not all, of other scholars did the same consciously or otherwise.

ii.   **Introduction of the principle of *Istiḥsān* (equitable preference):** This is defined technically as "the abandonment of the opinion to which reasoning by analogy (*Qiyãs*) would lead, in favour of a different opinion supported by stronger evidence".

This departure can be based on the *Qur'ān*, *Ḥadīth*, *Ijmā^c* or necessity *(Ḍarūrah)*. This principle generated a lot of controvery as Abū Ḥanīfah was accused of neglecting revelations and

Sunnah in favour of personal opinions. In reality, *Istiḥsān*, no matter what may be its misinterpretation and abuse, is of tremendous value in the Islãmic Law. It provides an opportunity to resolve contradictions and to reflect the reality of the situation without incurring unnecessary hardships or inconveniences. For instance, it is a law that everything washed must be squeezed like cloth; but the reality shows that things like vessels, boxes, just to mention only two cannot be squeezed. In that case, *Istiḥsān* sees the case of such materials as exceptional and indicates that they should be washed without being squeezed.

iii.   **Codification of the Islãmic Law:** Abū Ḥanīfah was far-sighted and broad- minded. Realising the precarious situation of theological disputes of his time and to forestall further deterioration especially in the absence of influential scholars who could serve as rallying points, our man embarked on the laborious task of codifying the Islãmic Law. Assisted by his students, he used *Qiyãs* mainly to take decisions on hypothetical cases after thorough discussions that lasted for days, weeks or months. For quite a long time after him, the codification served as the basis of judgement in most parts of the Muslim world especially on the hands of his disciples who became judges.

iv.   **Evolving the theory of** *Uṣūlu 'l-Fiqh* **(Principles of**

Jurisprudence): Abū Ḥanīfah blazed a trail by systematically designing the methodology of using, interpreting, applying and synthesizing the sources of *Sharĩ'ah*. He looked into the issue of complementing primary sources with the various kinds of *Ijtihād*, personal efforts, to solve legal problems. He definied *Fiqh* as "the self's knowledge of what is to its advantage and disadvantage".

This is a broad definition covering the totality of what the *Sharĩ'ah* stands for and this seems to be the understanding of our man. Issues relating to doctrine, worship, inter-personal relationship, law, relaxation, just to mention a few come under *Fiqh* according to him.

v. **His academic works:** Although *al-Fiqh al-Akbar* seems to be the only work that has been conclusively proved to be written by him, he should be credited for the work because it is no mean achievement. It should be acknowledged also that his views and inspiration led to many of the works compiled or written by his disciples especially Abū Yūsuf, *al-Shaybānī*. With the works, one has access to the opinions of the founding fathers of the Ḥanafi School instead of relying on secondary sources which may not give facts as they are because of controversies surrounding many issues identified with the School.

3.4   His Death

Imãm Abū Ḥanīfah had problems with the Abbasid rulers towards the end of his life. As a result of this, he did not accept to serve under them as *Qādī* (Judge). The government's overture was seen as a ploy to legitimize the administration. As all efforts to persuade the Imãm failed, the ruler, Caliph Manṣūr, decided to persecute him resulting in his death in 150/770. Thousands of people took part in his *Janãzah* (funeral) prayer. His death transferred the responsibility of defending his cause to his disciples, the most important among whom were Abū Yūsuf and Muhammad b. al-Ḥasan al-Shaybāni.

The followers of the Ḥanafi School are in Turkey, Central Asia, Turkestan, Bukhara, Samarqand and Hindustan. The School is noted for its humanitarian views especially in relation to the treatment of nonMuslims, war captives, slaves, and the under-privileged generally.

4.0   CONCLUSION

You have learnt in this Unit the birth, up-bringing, education and contributions of Imãm Nucmān bn Thãbit popularly known as Abū Hanīfah to the development of *Sharĩ'ah*. You have also learnt of his efforts to complement the *Qur'ān* and *Sunnah* with the use of *Ra'y* (Personal Opinion) which eventually led to the systemization of *Qiyãs* as a source of the *Sharĩ'ah*.

5.0   SUMMARY

Born in Kūfah, Imãm Abū Hanīfah lived between 80/699 and 150/770.

This period coincided with transition from the Umayyad Dynasty to the ᶜAbbāsid which was characterized by socio-religious crises. He started learning early in life. He travelled far and wide both as a student and a teacher. His only book, *al-Fiqh al-Akbar*, is a treatise on Islãmic doctrine and jurisprudence. His major contributions to the study of the *Sharĩ'ah* include formalization of *Ra'y* (personal thinking) to resolve legal matters, introduction of *Istiḥsān* (equitable preference) codification of the Law, and regulating the use of the sources of the *Sharĩ'ah*.

6.0   TUTOR-MARKED ASSIGNMENTS

1. Discuss the life of Imãm Abū Ḥanīfah highlighting the socioreligious situation of his time.

2. What can you identify as the major contributions of Imãm Abū Ḥanīfah to the development of the Islãmic jurisprudence?

3. To what extent do you feel it is right to call the Ḥanafites *Ahl alRa'y* (People of Personal Thinking)?

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UNIT 3   IMÃM MĀLIK BN ANAS AND HIS SCHOOL

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4.0   Conclusion
5.0   Summary
6.0   Tutor-Marked Assignment
7.0   References/Further Reading

1.0   INTRODUCTION

Imãm Mālik b. Anas was the founder of the School of Law named after him. He was also a great scholar based in Medina the capital of the Islãmic state during the Prophetic era and the era of caliphs Abubakr, 'Umar and 'Uthmān, the first three Commanders of the faithful who reigned after him. His legacy, the Mālikī School of Islãmic law is really a monumental contribution to the development of the Islãmic jurisprudence. Our focus in this Unit is on the school which has survived till today having followers in many parts of the Muslim world.

2.0 OBJECTIVES

By the end of this unit, you will be able to:

☐   write a biography of Imãm Mãlik☐

☐   discuss his contributions to the Islãmic Law.☐

3.0   MAIN CONTENTS

3.1   Imãm Mãlik b. Anas: His Birth and Up-bringing

Imãm Mãlik b. Anas was born in Medina in 93/712 and died there in
179/795. The time of his birth coincided with the departure of the
companions (*Ṣaḥãbah* the last of whom passed away almost that time.
The need was then realized to preserve as much of the Islãmic learning
inherited from the predecessors by *Tãbiᶜūn* (followers). Thus, scholarly
activities were at the peak, especially in Medina, when our man was born.
Imãm Mãlik belonged to the Arab royal family of Himyar from Yemen.
It was his grand-father, Abū ʾÃmir, who first accepted Islãm in the family
and came to settle down in Medina. It happened that the family became
reputed for their immense contributions to Islãm particularly in the area
of education. Many members of the family were trustworthy narrators of
Hadīth.

Our man started acquisition of knowledge, as it could be expected, from
the family. Later he learnt from great scholars such as Abū Radīm Nãfiᶜ
bn. ᶜAbd al- Raḥmãn, Jaᶜfar b. Sãdiq, Muhammad b. Yahyã al-Ansãrī,

Abū Hãzim Salmãn b. Dinãr, Yahyã bn Saᶜīd, and Hishãm bn ᶜUrwah.
All these were specialists in the areas of the exegesis of the *Qur'ãn*,
Hadīth, and jurisprudence, biography of the Prophet, language studies,
philosophy and mysticism. The opportunity that our man had to learn from
them made his knowledge broadly based and comprehensive although
jurisprudence seems to have had greater attraction to him than any other
discipline.

Just as our man was privileged to be associated with renowned men of
letters as teachers, so also he enjoyed interaction with young noble minds
as students who grew to become erudite scholars of no mean repute. A
good number of them copied and learnt the *Muwattaᶜ*, the Imãm's
magnum opus, directly from him. After the completion of their studies,
they would take their copies of the book home to their countries to impart
the knowledge acquired to their kinsmen. That was why the *Muwattaᶜ*

became famous in North Africa, Spain and other parts of the Islãmic world. Nobody could visit Medina at his time without attending one or two sessions of his teaching. Even Imãm Abū Ḥanīfah and Imãm Shãfiᶜī did as they could not resist the urge to join the circle of Imãm

Mãlik's students. The same thing applied to the Abbasid Caliphs such as Abū Jaᶜfar Manṣūr, Mahdi, Hārūn Rashīd, Amīn and Maᶜmūn bn Rashīd. Imãm Mãlik was a successful teacher.

SELF-ASSESSMENT EXERCISE

          ☐   Give a short biography of Imãm Malik bn Anas.

His major contributions to the Islãmic Jurisprudence

Imãm Mãlik bn Anas left indelible landmarks in the development of Islãmic jurisprudence. The large following he has to date is a testimony to his immense contributions to the understanding of Islãm in general and its law in particular. In specific terms, one can identify the following as some of the major contributions of this great scholar to the Islãmic jurisprudence.

Codification of the Madinan *Fiqh* (Jurisprudence): As said earlier, Medina, having been the centre of Islãmic learning during the life of the Prophet and the first three Orthodox Caliphs, enjoyed the concentration and patronage of Islãmic scholars more than any other place. The effect of this was that the practice in Medina became ideals and models. This pace-setting role of the city could not be sustained if not based on sound knowledge and critical self-examination. Otherwise, people might unconsciously deviate from the right course if they were to swallow everything from the predecessors, hook, line and sinker. Fortunately, there were iconoclastic scholars always at hand to sift facts from fabrications. Imãm Malik played this important role at his time more than any other person. It was he who codified the Madinah jurisprudence systematically and gave its distinctive identity in the form of his School.

i.   **Emphasis on Ḥadīth as a source of *Sharī'ah:*** That our man was based at Medina where most of the incidents and statements reported in Ḥadīth took place enabled him to have access to a large number of Ḥadīths. He was, however, extremely careful to

      accept any Ḥadīth to be authentic. He was aware of the numerous spurious Ḥadīths in circulation and he took steps to avoid them in deciding cases. On the other hand, he made sure that most of his decisions were based on reliable Ḥadīths or the opinions of the

predecessors (*Salaf*) especially those of the four Orthodox Caliphs. It is therefore not a surprise that he and his followers are popularly known as *Ahlu'l-Ḥadīth* (the people of Tradition). This is to distinguish them from the Hanafites called *Ahlu'r-Raᶜy* (people of personal reasoning) due to their reliance on and frequent use of *Ijtihād*. These nomenclatures do not necessarily mean that either of the Schools totally abstained from the use of Ḥadīth or Raᶜy, as the case may be. Rather, they indicate the relative degrees of emphasis each laid on the sources respectively. The Malikites, no doubt, stressed the use of Ḥadīth more than the Hanafites.

ii.   **Preservation of the dignity of knowledge:** Imãm Mãlik was not only a man of letters but also of courage and integrity. He appreciated the worth of the endowment of knowledge Allah bestowed on him and would not like any person, no matter how highly placed, to treat it with contempt. Disrespect to a scholar is disrespect to scholarship. A scholar should not expose himself to ridicule to avoid negative effects on knowledge generally. This sterling quality of our man came into play on many occasions. Jaʾfar bn Sulamān, Governor of Medina under Caliph Manṣūr, once attempted to influence the Imãm to uphold a case of divorce under duress but he refused and nullified it in the public. The Governor felt slighted and punished him for that. There was also another occasion when Caliph Hārūn Rashīd requested him to teach his children at home. Our man turned down the request saying that knowledge was so important that it would not go to people but those in need of it had to go to it. The Caliph was humble enough to let his children and others learn together. This quality deserves to be emulated by scholars nowadays particularly in the area of Islãmic Studies if there is going to be an end to being taken for granted by rulers, wealthy men and policy-formulators.

iii.   **The book *Muwaṭṭaᶜ*:** The greatest legacy bequeathed by Imãm Mãlik is the compendium, *Mawaṭṭaᶜ*. It contains Ḥadīths compiled on various topics ranging from doctrine and law to socio-economic transactions. Extra care was taken to ensure that unreliable Ḥadīths were not included in it. In all, the book contains about one thousand Ḥadīths. It enjoyed so much reputation that Imãm al-Shãfiᶜi once remarked. "There has never appeared on earth a book that is as close to the *Qur'ān* as the book of Mãlik". In North and West Africa, this book is used as the basis of judgements in *Sharĩ'ah* courts.

iv. Dissemination of Islãmic learning through teaching: There is no doubt that Imãm Mãlik inspired many scholars across the Muslim world. His students, numbering thousands, became, later in life, founders of schools such as his, for example I. Imãm s Abū Hanīfah and al-Shãfiᶜi. Others were rulers up to the post of Caliph, and scholars of international repute. The importance of imparting authentic knowledge about Islãm at that time cannot be over-emphasised. The political crisis that characterized the overthrow of the Umayyads and the enthronement of the ᶜAbbãsids, the end of the generation of the Prophet's Companions who had previously been the focus of attention for students of Islãm, the animated *Ijtihãd* activities at the various centres, and the unending theological disputations between the Muᶜtazilites and Ashᶜarites underscored the importance of having an inspiring and influential teacher that could command the respect of all and sundry and bring sanity to the situation. That important role Imãm Mãlik played satisfactorily.

SELF-ASSESSMENT EXERCISE

Itemise the major contributions of Imãm Mãlik in the realm of Islãmic law

4.0   CONCLUSION

You have learnt in this Unit the birth, up-bringing, education and contributions of Imãm Mãlik bn Anas to the development of *Sharĩ'ah*. You have also learnt that the Imãm was a successful teacher having produced scholars of international repute and political leaders some of whom had the opportunity of heading the Islãmic Empire. He wrote the *Mawaṭṭaᶜ*, a compilation of Ḥadīths on various topics.

5.0   SUMMARY

Born in Medina, Imãm Mãlik b. Anas lived between 93/712 and 179/795. His place of birth, being the seat of the Islmic Empire previously, was the base of many scholars of note. The opportunity was seized by Imãm Mãlik to start learning early in life. He later became a renowned scholar attracting students from far and near. His major contributions to the development of the Islãmic Jurisprudence include codification of the Medina juristic thought, affirmation of the authority of Ḥadīth as the second source of *Sharĩ'ah*, and personal exemplification of the ideals of Islãm. His book, *al- Muwatta'*, is not only a collection of

Ḥadīths but also an important legal treatise held in esteem by scholars of the Islãmic Law.

6.0   TUTOR–MARKED ASSIGNMENT

⬜⬜   To what extent did the situation of Medina as an important certre of learning⬜

2.   Ḥadīth influence Imãm Mālik in his views?

⬜⬜   What are the major contributions of Imãm Mālik to the development of the Islãmic Jurisprudence?⬜

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UNIT 4   IMÃM A`SH-SHÃFI'Ī AND HIS SCHOOL

CONTENTS

1.0   INTRODUCTION

Imãm Muhammad bn Idrīs al-Shāfiʿī was the founder of the Shāfiʿi

School of   Law. The contributions of this great scholar to the
development of the Islãmic jurisprudence are valuable. The school he
founded has a large following in Asia, Yemen andAfrica.

2.0   OBJECTIVE

By the end of this unit, you will be able to:

☐   discuss the life history of Imãm al-Shāfiʿi with particular reference

       to his contributions to the development of *Sharĩ'ah*.

3.0   MAIN CONTENTS

3.1   Imãm Muhammad bn Idrīs al-Shāfiʿī: his birth and upbringing

Born at Askalon near Gaza in Palestine in 150/767, Imãm al-Shāfiʿī was
from the Quraysh tribe of Mecca and a descendant of the Prophet. He was
given the appellation of *al*-Imãm al-*Muṭṭalibi* (the Muttalibi Imãm)
because of his having ᶜAbd al-Muṭṭalib as his ancestor. His father had

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been a bitter enemy of the Prophet before his conversion after the Badr war in which he was captured and later released on ransom.

Our man showed signs of being a brilliant scholar right from youth. He had memorized the whole of the *Qur'ān* from the age of seven and *Mawatta* of Imām Mālik at fifteen. He distinguished himself in his studies on theology, jurisprudence, Ḥadīth, exegesis of the *Qur'ān*, just to mention a few. At the age of twenty, al-Shāfiᶜi went to join the students of I. Imãm Mālik at Medina and remained there until the great teacher died in 179/796. By that time, al-Shāfiᶜī had earned the reputation of being a brilliant jurist in Hijāz and other places. Before his association with Imãm Mālik, he had studied *Fiqh* (jurisprudence) in

Makkah. It was therefore not a surprise that his relatively short sojourn in Medina which afforded him the opportunity of complementing his previous studies with Ḥadīth from such an accomplished Traditionist as

Imãm Mālik brought him to the limelight so soon.

When the Governor of Yemen, during the caliphate of Hārūn al-Rashīd, visited Medina, he was impressed by the standard of I. Imãm alShāfiᶜī's scholarship to the extent that he persuaded him to go with him

and work as an administrator. Our man took up the appointment. His frankness shortly after brought him in conflict with Government officials who implicated him in a case of conspiracy against Government. He was deported, as a result of that, to ᶜIrāq but the Caliph was kind enough to pardon him owing to the pleading of Imãm Muhammad al-Shaybānī on his behalf and his ability to defend himself. Although the Caliph became his patron, a`sh-Shāfiᶜī refused to take up any other public appointment because of his past experience.

Neveīrtheless, his peaceful stay in Baghdād and interaction with leading disciples of Imãm Abū Ḥanfah, especially al- Shaybāni mentioned above, enabled him to study the Ḥanafi School.

Having been influenced by Imãm Mālik whose School was noted for its emphasis on Ḥadīth, a`sh-Shāfiᶜī took up the Ḥanafites on a number of issues. His discussions with them resulted in his gaining an insight into the Hanafi School and he had to shift ground on many issues. By and large, he began to modify some of his opinions based on the orientation received from Imãm Mālik. In the long run, he carved a new identity for himself without being tied to any school. Thus, many Mālikites were disappointed by him in his lectures delivered at Mecca on his way to Egypt in 188/804. However, there were others who were impressed and therefore accepted to study under him. One of them was Imãm Aḥmad b. Hanbal who later became the founder of the Ḥanbalī School. Our man left Egypt for Baghdād again in 194/810. But he was there for

a period of three or four years only. The reason for this was probably his aversion to the Muᶜtazilite doctrine which the Caliph had adopted. His living far away from the seat of Government would avert clashes that might arise from his possible utterances against the Muᶜtazilite doctrine. He finally left Baghdād fro Egypt in 198/814 at the age of 50years.

Imãm al-Shāfiᶜī continued to live in the old Cairo where he died in 204/820. He was pious, charitable and prolific in writing. According to Hughes, Imãm Shāfiᶜī's works "are more voluminous than those of any other Muslim doctor". He was broad-minded and soft-hearted.

There are 113 works written by Imãm al-Shāfiᶜi. The most famous among them are *Kitab al-Risālah fī Uşūli'l-Fiqh*, commonly known as *al-Risālah* and *Kitāb al-Umm*. The former is mainly "to defend the view points of traditionists concerning the over- riding authority of the *Sunnah*", while the latter gives information on his discussions with, or study of the works of the leading scholars of his time such as Mālik,
Awzāᶜi, Abū Ḥanīfah and I.Imãm Muhammad al-Shaybani, just to mention a few.

Contributions of Imãm al-Shāfiᶜi to the development of *Sharī'ah*

He studied the schools of his forerunners and learnt from a number of most prominent scholars; he discussed and argued with the ablest and profoundest scholars and examined their teachings, from which he later on worked out a method combining the book, the *Sunnah,* the *Ijmā᾽,* and the *Qiyās,* and so he did not confine himself to one or the other of these sources, as was the case with others.

The ultimate object of the Imãm was to reconcile the *Fiqh* and the Traditions, in which he seems to have succeeded, i.e. *jam᾽ahū bayna alfiqh waᶜl-sunnah.* He is considered to be the originator of the scientific principles in the legal theory of Islãm. He is also considered to be an authority par excellence in the science of Traditions.

A wholesome picture of the teachings of Imãm Shāfi᾽ī is given in his own words: "God has not given it to anyone after the death of the
Prophet to express opinion except on the authority of the knowledge (᾽*Ilm*) that came before him, and such knowledge consists in the Book, the *Sunnah*, the *Ijm*ā᾽, and the sayings and doings (*Āthār*) of the Companions, and then, as I have explained, in Qiyās , upon the basis of what has preceded, and it is not allowed to anyone to use Qiyās until he has learned what has occurred before him in the way of practices (*Sunan*) and sayings

of the predecessors, and the *Ijmã^c* and differences of the people, as well as the Arabic language".

He placed the *Qur'ān and the Sunnah in the same class for the basis of Sharĩ'ah* knowledge. He said that both are from God though the reasons of their revelation differ, and every person has to accept that the language of the *Qur'ān* is Arabic and thus it is an essential element of knowledge. He said that the *Qur'ān* is comprehensive and contains a wholesome treasure of sacred laws. The explanations are furnished by the *Sunnah* of the Prophet. The *Sunnah* not being contrary to the *Qur'ān*, it may be abrogated by another *Sunnah* when a case of conflict arises.

Shāfi'ī justifies *Ijmā'* on the basis of the *Ḥadīth* in which the Muslims are enjoined to think collectively. He explains that, while isolated individuals are subject to error, the Muslim community as a whole is immune. He placed Qiyãs as a source of law. He said that Qiyãs should be strictly based on the revealed sources and *Ijmā^c*. He termed Qiyãs similar to and having the same meaning as *Ijihād* (*Risālah*, 288, paras 490-1). However, in cases of emergency, the Imām accepted the principles of *Istisḥāb* for the issue and formation of legal opinion in the absence of the fundamental sources and *Ijmā^c*. He allowed large latitude to this process in the determination of the effective cause or *^cillah* and thus came to more widely accepting the methodology of the *Ḥanafī* view on Qiyãs.

The Imām always adopted a policy of continued research in bringing out reality and truth. He was never static and it may be said that he was ever a student of law throughout his life. He examined his methods and emphasized the living side of the law for which he is considered progressive in outlook in the study of jurisprudence. Researchers have shown that the shifting outlook of the Imām had an effect upon jurisprudence developed by his School. His disciples and followers recorded the different views he gave on legal problems and this went a long way to enrich their knowledge and the practice of *Sharĩ'ah*.

The Imām was an erudite lawyer and a genius; he visualized what was to be done on account of change of circumstances and time. In consonance with other Schools, he never claimed that his works had a binding authority on the Muslims. In his book, *al- Umm*, he states categorically that in cases of difference between those who exercise individual reasoning in the absence of a binding text, each of them is bound only by the opinion he holds, and none of them may abandon what he personally considers to be right in order to follow blindly the opinion of another person.

The influence of Al-Shāfiʿī School of Law

The School of Shāfiʿī was nourished in Egypt and also in Syria. It enjoyed royal patronage. It went to Iraq and expanded inside the territories of Yemen, *Tūrān*, Persia, Hejaz, Spain and India. It spread to North Africa and Spain by 300 where it eventually got a foothold.

The most intensive application under State authority was given to the School in Egypt and Syria. In these territories, *Shāfiʿī* judges were appointed. Though there were judges of other Schools also, the *Shāfiʿī* judges were considered superior. In Iraq, the Ḥanafī School was generally preferred. Later history shows that there were great controversies among the *Sunnī* Schools on sectarian ideologies. The *Shāfiʿī* School had to enter into a tussle with them. For a time, it gained a hold in Spain but, later, the continuous rage of conflict and no one particular School had a monopoly. The *Shāfiʿī* School was, therefore, established there along with other Schools. The controversy of different schools was not permitted to go to the general level and was largely confined to educated classes. The School received much attention in Egypt. However, the followers of the School are still found in many Muslims lands.

3.2   His Disciples and Books

A study of the researches on *Shāfiʿī* gives an idea of the comprehensive and vast ocean of *Fiqh* literature. He has collected in his books thoughts, critiques and analysis of the legal acumen of the jurists of other Schools who constitute the vast system of law in Islãm. Through the works of the Imãm, one can have perfect understanding of the law of the *Mālikī* and Ḥanafī Schools and of the thoughts of different sects of Islãm. *Shāfiʿī* systematized the law for the generality of principles and paved the way for the furtherance of the cause of legal studies.

The life of Imãm *Shāfiʿī* is full of continued struggles for the cause of law and its refinement of its presentation. He was an expert in philosophy, language studies, human behaviour and jurisprudence. He was so gifted in many aspects of life that hardly be imagined to be possessed by a single individual.

4.0   CONCLUSION

You have learnt that Imãm Muhammad bn Idris al-Shāfiʿi, the founder of the Shāfiʿi School of Law was born in Palestine in 150/767. He was naturally gifted in academic works. He memorized the *Qurʾān* and

AlMuwatta^c of Imãm Mālik bn Anas and view-points of the Ḥanafi School. In an attempt to reconcile the views of the Māliki School based mainly

on Traditions or *Sunnah* and those of the Ḥanafi School which was more in favour of *Ijtihād* or legal logical reasoning, Imãm al-Shāfi^ci ended up founding a new School of Law still in existence up to date. The School enjoys acceptance and wields a lot of influence mainly in Egypt with some following in many other Muslim countries.

5.0   SUMMARY

Imãm Muhammad Idris al-Shāfi^ci was the founder of the Shāfi^ci School of Law. Apart from being a teacher with many students and a prolific writer, the Imãm made a lot of contributions to the development of the *Sharĩ'ah*. Having studied the works of the Ḥanafi and Māliki Schools respectively, he attempted to synthesise them by reconciling the areas of difference. Incidentally, his efforts ended in founding another School of Law which continues to exist to date. It is based in Egypt even though some Muslim scholars all over the world subscribe to its views on many legal issues.

6.0   TUTOR-MARKED ASSIGNMENT

1.   Write a comprehensive note on the life and works of Imãm Muhammad b. Idrīs al- Shafi^cī.

2.   In what way was Imãm Al-Shāfi^cī different from Imãm Maliki b.

Anas and Imãm Abū Ḥanīfah respectively?

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UNIT 5   IMÃM AHMAD BN HANBAL AND HIS SCHOOL

CONTENTS

1.0   INTRODUCTION

You are to learn, in this Unit, the life history of Imãm Ahmad b. Hanbal, his contributions to the development of the Islãmic Law, his school of Law and itsfollowing in the Muslim world.

2.0   OBJECTIVES

At the end of this Unit, students are expected to be able to:

•   discuss the life history of Imãm Ahmad b. Hanbal with particular reference tohis birth, upbringing and education
•   explain the contributions of Imãm Ahmad b. Hanbal to the development of *Sharĩ'ah*
•   identify the distinctive characteristics of the Hanbali School of Law.

3.0   MAIN CONTENT

3.1   Imãm Ahmad b. Hanbal: his birth and upringing

Imãm Abū ᶜAbdullah Ahmad bn Hanbal was born at Baghdad in 164 H. (d. 241 H.). He was of pure Arab extraction and, through ᶜAdnān Shaibānī; his family joins the Prophet in hierarchy. However, Imãm
Hanbal in his early childhood was, by nature, independent and scholarly. The untimely death of his father exposed him to poverty. As such, he learnt to be self-reliant, confident, patient, prudent, honest and pious. All these qualities and others not mentioned here took him a long way to face challenges later in his life. He was brought up at Baghdad, then a centre of learning and high civilization. He learnt the *Qur'ān* by heart at an early age and began to study linguistics and writing at the age of fourteen years. He also specialized in other branches of learning such as mathematics, philosophy, *tasawwuf*, etc. He started to study the science of Traditons under Imãm Abū Yūsuf, and other *Muhaddithūn* (experts in the study of Hadīth). He studied law under the ʾIrāqī jurists and, getting further training from different traditionists, developed a bias for *Ḥadīth* sciences as compared to *Fiqh*. He also studied sciences under Imãm Shāfi'ī and other noted personalities.

In his quest for knowledge and Traditions, the Imãm undertook long journeys to Syria, Hejaz, Yemen, Kūfah, Basrah and other places.
During the course of his educational pursuits, he got familiarized with the Persian language. He developed a special taste for following the *Sunnah* of the Prophet and intensively undertook to collect the Traditions. As a result of his keen interest in matters of religion, he became a disciple of

Shāfiᶜī and Dāwūd al‑Zāhirī and leaned towards Mālikī thoughts. He

became the severest opponent of the "people of opinion" and made use of *Rā'y* (personal reasoning) by basing his opinion only on the textual aspects of the law. His career as a specialist started at the age of forty years when he began his teaching.

The pious Imãm led a life of austerity, poverty and virtue. He was a living example of a life full of hard labour and patience without accepting others' assistance. He refused to take presents even from
authorities and was ever prepared to perform manual labour to secure lawfully earned food. He was of the opinion that a scholar worth his salt should be disciplined and put materialistic tendencies under effective check.

The Imãm received learning from about one hundred great scholars. However, the most noted personalities who affected the methodology of

Hanbal were two: Hāfiz Hashim and Imãm al-Shāfiᶜi. At the age of sixteen, the Imãm enrolled as a student under Hāfiz Hashīm b. Bashīr b. Abī Hāzim and for five years studied under him learning all the sciences of Traditions. He later studied law under Imãm Shāfiᶜī. Thus, he had formal training in Traditions and jurisprudence of the Islãmic Law. He was an inspired follower of Sufyãn Thawrī and Ibn Mubārak, though he did not have an opportUnity to study under them.

The religious life of the I. Imãm

Imãm Ahmad was staunch in religion and very firm in faith. It is no surprise that he rejected the theory of the "creation" of the *Qur'ān* when he was called upon to accept it in the days of Caliph Wāthiq of the ᶜAbbasid Dynasty. The particular heretical or ultra innovatory dogma, for which the Imãm and others suffered being whipped and imprisonment, was that the *Qur'ān* was created. The Imãm and others insisted on the uncreatedness of the *Qur'ān* fearing that acceptance of the cretedness of the *Qur'ān* would lead to the belief that the time might come – nay, might be close at hand – when its exclusive authority would come to an end; or one precept after another might be quietly shelved as of merely temporary application, suitable perhaps first to Medina and later to all lands. The dogma initiated by royal authority was propagated and acted upon for its practical enforcement on all the Muslims, authorities and others, under impunity and sanction; even some of the *Muhaddithūn* accepted it. Mā'mūn's policy (starting from 218AH) was bitterly opposed by the pious and the faithful at serious cost of terrible persecution and Ahmad b. Hanbal continuously rejected the same. Its preaching and forcible imposition by curtailment of the human right of freedom of conscience and expression continued till 233AH when Mutawakkil put an end to it. The Imãm became a historic model as a fighter for Muslim belief, freedom of fundamental human rights, and dignity of man and safety of religious institutions in Islãm.

The contributions of Imãm Ahmad to the development of *Sharī'ah*

The *Fiqh* of Imãm Ahmad was a system raised and enriched under reliance placed upon the Traditions of the Prophet with an underlying emphasis on the opinions of the Companions. The methodology in legal development adopted by the Imãm (especially in "transactions") was a reliance upon principles of permissibility in cases where no direct authority was available in the *Qur'ān*ic and Ḥadīth texts or reports information credited to the Companions, and where nothing was found against the exercise of *Ijtihād*.

The Imãm considered the *Sunnah* as an explanation of the *Qur'ān* and in cases of difference of opinion among the Companions of the Prophet; he preferred the view of the rightly-guided Caliphs. Nevertheless, it is an established fact that the Imãm accepted the action and practice of the Companions, but he preferred Traditions from the Prophet on religious matters and sacred principles.

The Writings of the Imãm

The efforts of Imãm al-*Shāfi'ī* to reconcilie the science of law mechanized by Imãm *Mālik*, have been a landmark in the history of Islãmic jurisprudence. Studying the interior legal treatises of his forerunners, he gave the Muslim law a polished shape and provided a scope for further elaboration in the footsteps of other Schools. The *Usūl al- Fiqh*, originated by the great Imãm Abū Hanīfah, and develped by his disciples, Imãm Abū Yūsuf (*Kitāb al-Kharāj)* and Imãm Muhammad Shaybānī (*Usūl al-Fiqh*), was made a specific subject of scholarly acumen of al-Shāfiʿī.

Perhaps he was the foremost legal thinker who, by personal journeys, continuously gave out his thoughts to the people and dictated books to his disciples. His methodology in the science of law was received with greater appreciation in Egypt and was thus instrumental in the later modern reformation in the country. His companionship with Shaybānī
gave the Imãm a new impetus and he developed an additional base in the law. His *Fiqh* influenced the learned and eminent lawyers of the time. He wrote his *Risālah* in Iraq. He later revised and updated it in Egypt on the basis of personal experimentations. The book is a landmark in legal research with particular reference to *Sharĩ'ah*. It paves the way for systematic study of *Sharĩ'ah* mechanism and systematization.

4.0   CONCLUSION

You have learnt that Imãm Ahmad b. Hanbal was born in Baghdad in 164 A.H and died in 241 A.H. at the age of 87 years. He lost his father early in life, a situation which exposed him to a lot of the hardships of auster life. He memorized the *Qur'ān* early in life and studied many branches of knowledge common in those days relating to language, mathematical and theological studies. He distinguished himself in the study of *Sunnah* and Islãmic Law. Although a student of Imãm alShāfiʿi, he was independent in his approach to *Sharĩ'ah*. He ended up founding the Hanbali School of Law renowned for its emphasis on the importance of the *Sunnah* as a source of *Sharĩ'ah* and an indispensable basis for deducing *Sharĩ'ah* provisions on novel problems. The School is also known for its stout

defence of Islãm against innovations and unorthodox ideas. It holds sway at present in Saudi Arabia, Syria, Palesline, Iraq, Pakistan and India.

5.0   SUMMARY

Imãm Ahmad b. Hanbal, the founder of the Hanbali School of Law, was a model of the teachings of Islãm on self-discipline, courage and selfindependence. Having been born in Baghdãd then the theatre of political
activities among the ruling class, on the one hand, and theological dsputations, on the other, the Imãm went through a lot of persecutions as a result of his resistance against the Muᶜtazilite doctrine of the createdness of the *Qur'ān* and brazen abuse of power. Nevertheless, he did not oppose Government openly. He was an accomplished scholar of the *Sunnah* and *Sharĩ'ah*, no wonder then that some people regard him as a Traditionist rather than a Theologian. However, he was both. At least, his work, *Musnad*, shows him as such. He studied under Imãm alShãfiᶜi but asserted his independence as far as the interpretation of *Sharĩ'ah* is concerned. He eventually founded the Hanbali School of Law with a large following in Sandi Arabia and some other countries in the Middle East and Asia.

6.0   TUTOR-MARKET ASSIGNMENT

1.   "Imãm Ahmad b. Hanbal was an epitome of self-discipline and independence". Discuss.
2.   Explain the contributions of Imãm Ahmad b. Hanbal to the development of *Sharĩ'ah.*
3.   Write a comprehensive note on the Hanbali School of Law.

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UNIT 6   SHĨ'AH AND *SHARĨ'AH*

CONTENTS

1.0   Introduction
2.0   Objectives
3.0   Main Contents 3.1   Origin of *Shĩ'ah* and their Imãmate doctrine *Shī'ah* and *Sharī'ah*
4.0.   Conclusion
5.0   Summary
6.0   Tutor-Marked Assignment
7.0   References/Further Reading

1.0   INTRODUCTION

In recent times, Shĩ'ah has become a force to be reckoned with not only in the Muslim world but also in the global affairs. There have been moving towards bridging the gab between Shi'ism and Sunnism. The sect which spreads all over the Muslim world now has appreciable adherents in Nigeria. We used to be familiar with four schools of Islamic law studied in the four units above but now a work has been written which includes Shiite school and entitled *Al-Fiqh 'alā `l-Madhāhib alKhamsah* (Islãmic Jurisprudence according to the Five Schools). In this Unit our focus shall be the Shi'ites, their origin, doctrine and contributions to *Sharĩ'ah*.

2.0   OBJECTIVES

By the end of this unit, you will be able to:

- explain the origin of *Shĩ'ah* group among Muslims, their doctrine and thoughts
- explain the contributions of *Shĩ'ah* to the development of *Sharĩ'ah*
- explain the differences between *Sunni* and *Shĩ'ah*   Schools of Law.

3.0   MAIN CONTENT

3.1   Origin of *Shĩ'ah* and their Imãmate doctrine

The word *Shĩ'ah* literally means "party" or "group". At the beginning, it was known as *Shĩᶜat* ʾAlī (the Group or Supporters of ᶜAlī). It was later shortened to *Shĩ'ah*. The term stands for the followers of ʾAlī, the fourth of the Rightly-Guided Caliphs in the Republican Islãm, including his descendants. They later ended up being a sect in Islãm.

Originally, the Shĩᶜites were simply partisans of ʾAlī and his descendants, but in course of time, when the whole of Persia took up the cause of the family of 'Alī, Shĩᶜism became a receptacle of all religious ideas of the Persians such as Dualism, Gnosticism, and Manichaeism. Even in the lifetime of ᶜAlĩ, a Jew convert to Islãm, ᶜAbdullah b. Sabā', had striven to introduce foreign elements into Islãm. He alleged that ʾAlī was to be adored as an incarnation of the Deity. These ideas, though rejected with horror by ʾAlī himself and by the greater part of the first

Shĩᶜites, gradually made way; and all the direct descendants of ʾAlī became veritable deities in the eyes of their partisans. Through allegorical interpretation of the textual side of religion, permission was secured to

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see in the sacred texts of the *Qur'ān* a meaning sought by choice. It was carried out at a later date by founders of the different subsects of the parent sect. Whatever may be the historical argument, it is susceptible that there has been a multiplicity of sub-sectarian movements; some of them reached the stage of heresy.

To the *Shĩ'ah*, the concept of Imãm *ate* is not a general (public) interest to be delegated to the Muslim nation for consideration and appointment of a person to fill it. It is the pillar and fundamental article of Islãm. No Prophet is permitted to neglect it or to delegate the appointment of an I. Imãm to the Muslim nation. It is incumbent upon him to appoint an Imãm for the Muslims. The Imãm cannot commit sins, minor or major, for the simple reason given by the sect that he is *maᶜşūm*. This view offers an interesting field of vast information and explanation. The *Shĩ'ah* give pre-eminence to Hadrat ʾAlī on their sectarian interpretation of the textual side of religion. Historical researches date the *Shĩ'ah s'* dogmatic veneration showed to ʾAlī before the year 11H. (632CE). Many of the poets, for

example, Abu'l-Aswad al-Duʿalī, who fought by the side of ᶜAlī at Şiffīn, praised him with more than ordinary infatuation" "When I looked into the face of Abu'l-Husayn, I was the full moon, which filled the spectators with reverent wonder. The Quraysh now know, wherever they may be, that thou art the noblest in merit and religion.

The Imãm *īyyah Shĩ'ah*:

The sect is named I. Imãm *īyyah* for the reason that it attached fundamental importance to the Imãm , held by the doctrine of infallibility of the Imãm s and believed in the coming of al-Mahdī. It is the largest of the *Shĩ'ah* sects and its thirteen million followers are spread over in Iran, the Indo-Pakistan subcontinent, Iraq, Lebanon, Syria and in other parts of the Muslim world. In Syria and Lebanon, they are known as al-Muta'awwilah and (also by other names as Jaᶜfarīyyah, Ithnā' ᶜAshrīyyah). Iran has made it State religion with specification of

Imãm Mahdī's advent.

The sect interprets the textual law in support of the preference given to ʾAlī by the Prophet on the question of Imãm ate (cf. Yaᶜqūbī, *Tā'rīkh* (Leiden, 1883), II, 138). Further, it is contended that the texts prove both the personal appointment of ʾAlī and the fact that the Imãm ate is transmitted from him to his successors. Consequently, there follow a natural denouncement of the Caliphates of Abū Bakr and ʾUmar, who, according to them, do not need any oath of allegiance. Among recent *Shĩ'ahs,* the name of Imãm īyyah is often restricted to the Twelvers or Ithanā' ᶜAsharīyyah. After ʾAlī they acknowledge ᶜAlī's son al-Hasan,

Hasan's brother al-Husain, Husain's son ᶜAlī Zayn al- ʾĀbidīn, ('Alī's) son Muhammad al-Bāqir, and (Muhammad's) son Jaᶜfar al-Sādiq, (Sadiq's) son Mūsā al-Kāzim, later ᶜAlī ar-Ridā', Muhammad al-Taqī, ᶜAlī al-Hasan al- ʾAskarī and, lastly, Muhammad b. al-Hasan al-ᶜAskarī – the expected Mahdī as his successors to the Imãm ate. The Imãm ate is considered as one of the pillars of faith and psychological and religious arguments go to estanblish the sanctity of the institution. Upon the same are focused the hopes of the world, the love and devotion and other things.

SELF-ASSESSMENT EXERCISE

Trace the origin of Shi'ism and highlight its Imãm ate doctrine.

The *Shī'ah* and the *Sharī'ah*

The sources of the law, according to the sect, are the *Qur'ān*, the *Sunnah,* and the consensus of opinion. The *Qur'ān*, according to some, contains inaccuracies (the generality denies distortions), and only those Traditions are accepted which are reported through a chain of authorities going to the family of the Prophet or *al-Akhbār*. On a particular statement, the opinion of the infallible Imãm is accepted, not alone of the jurists' consensus. The use of *Qiyās* is forbidden by some groups (as by *Akhbārīyyah*), though other groups (as the *Uşūlī* Shĩ'ah) accept it.

In comparison with the *Sunnī* bases in the *Fiqh* or science of law, the Imãm īyyah methodology approaches jurisprudence under preconceived bases having been divinely ordained or inspired. Learning being a continuous process, the formation of opinion on legal problems, according to them, differs vitally from the *Sunnī* theory on *Ijtīhād*.
Through belief in the innocence of the Imãm, all the bases of the *Sharĩ'ah* evidences remain unstained and are perfect. The role played by Imãm
Bāqir and Imãm Jaᶜfar aʾş- Şādiq in the science of law is said to have been accomplished under Divine inspiration which they received for propagation among the people. However, the Imãm s gave out a methodology in the system of jurisprudence and its bases, though they did not lay down the principles of the science of the law or *Usūl al-Fiqh*.
By attributing any particular method to the Imãm s, the jurisprudential methodologies took material shape. Though no books have come from the Imãm s such as Imãm Bāqir, Imãm Mūsā Kāzim on the point under discussion, the later jurists of the sect compiled works on the basis of sayings or performances heard or received in any other manner. In this

developing process, the jurisprudence of the sect has similarity of approach with other schools, with traditionists or with dogmatics.

In the light of what has been stated above, it is important to remark that the place and function of the *Mujtahids* or *Faqīhs* differ vitally in the *Shī'ah* jurisprudence from that of the *Sunnī*s. The scope of *Ijtīhād* is thus circumscribed in the system for the simple reason that the lawyer is restricted, under the set-up of inspired inheritance; to be adopted by the Imãm ate doctrine. The jurisprudents of the sect submit that, after a primary search for finding a basis in the Book and the *Sunnah*, if there is no direct authority, it is permitted to use wisdom (rationalism) as against analogical deduction. Nevertheless, it is said that the sectarian jurists are not unanimous on confiding in wisdom. Some take the view that reliance on wisdom should not be put for the reason that what the Imãm has said is binding and, thus, what is known is sufficient. They rely on what is provided in such books as *al-Kāfī, al-Tahdhīb, al-Istabsār*, etc., containing the compilations of the predecessors and consider them to contain information on all legal problems. The branches of the *Sharī'ah* sciences are covered by what is written in the *Qur'ān* or what the earlier Imãm s and acknowledged persons have explained. However, the sayings or performances attributed to the Imãm s, on which reliance is placed by the jurists of the sect, contain different versions and meanings.

Illustration: On the question of *Mut-'ah* or temporary marriage, it is held by the *I. Imãm īyyah Shī'ah*, that Imãm Jaᶜfar al-Sādiq permitted it.

However, the *Zaydīyyah Shī'ah* hold on the basis of sayings of the same Imãm Jaᶜfar al-Sādiq as contained in their books that *Mutāᶜ* was fornication or adultery.

In spite of the above methodological difference, it cannot be denied that the system and approach of the jurists of the sect hold a contributory place in the jurisprudence of Islãm. The principles enunciated by the sect, if in consonance with the fundamental *Sharī'ah* evidences, have played a vital role in the process of legal development and juristic analysis of the law. Thus, Egypt, Pakistan and other Muslim countries adopted the process of legal acumen as adopted by the jurists of the

Shī'ah sects along with their own systems. The most immediate illustration is furnished in the codification of the views of Ibn Taimīyyah who, in turn, borrowed *Shī'ah* system of counting three successive divorces at one time as one divorce in the family laws of these countries. It had been the historical contribution of the jurists of *Shī'ah* sects that in their genius of legal research, they remained wider in operation and took benefit from the good and beneficial aspects of others' methods and

approaches. The literature on the jurisprudence of Islãm has become richer by the contributions of the *Shĩ'ah* legal theories which are a living heritage of Islãmic legal or technical juristic thoughts.

The sect of *I. Imãm īyyah Shĩ'ah*, similar to other Shĩ^cite sects, is divided into many groups on points of details in religious matters. Some of them are said to be Hasan Nafsiyyah, Hakĩmiyyah, Salĩmīyyah, Shayţãnĩyyah, Zarārĩyah, Yūnusĩyyah, Badā^cīyyah, Mafuzah, Bāqirĩyyah, Mūsāwĩyyah, Ahmadĩyyah (followers of Ahmad b. Mūsā Kāzim), Akhārĩyyah (traditionists), etc. They had peculiar beliefs as, for example, the Salāmĩyyah view that God can take the shape of man, or

that He has a body (by Shaitanĩyyah or Nu^cmānĩyyah), that Imãm Bāqir is not dead but is waiting (adopted by the Baqĩrĩyyah), and similar beliefs. However, the majority of the Imãm īyyah sect is nto outside the limits of religion. They are considered Muslims without any religious rancor.

It is contended by the jurists of the sect that in the process of the compilation of the Traditions of the Prophet, the first work of its kind was by Imãm ʿAlī b. Abĩ Tālib. The collection was called *Sahĩfah ʿAlī*.

The first work on *Usūl* of the *Imãm īyyah* was *al- Kāfi* containing 6099 traditions (cf. Sayyid Hasan al-Sadar, *Tā^csīs al-Shĩ'ah*, 88) and written by Kulaynī. Some other works are: the books *al-Tawhĩd; al-Tahdhĩb* and *al-Istibsār* by Abū Ja^cfar Muhammad b. ʿAlī Tūsī (d. 460 H.), also his book *al-Fihrist; a`d- Duriyyah fĩ ^cIlm Uşūl al-Sharĩ'ah* by Sayyid Sharĩf Murtadā (d. 443 H.); *al-Maşādir fĩ Uşūl al-Fiqh,* and *Tanqĩħ ^can Taħsīn wa'l-Tasbĩh* by Muhammad b. ʿAlī al-Hamsī; *al- Nihāyah* and *Tahdhĩb al-Uşūl* by Āyatullah ^cAllāmah Jamāluddīn al-Mutahhar (also his book *Sharh Ghāyat al-Usūl ila-'Ilm-ul-Usūl);* and *Sharā^ci al-Islãm* by Ja^cfar al-Hillī. There are many other works on law, bases of jurisprudence and even commentaries on the *Qur'ān* written by specialists of the sect.

SELF-ASSESSMENT EXERCISE

What are the sources of Shĩites sources of Sharī'ah?

4.0   CONCLUSION

You have learnt in this Unit the meaning of *Shĩ'ah as* a lexical item in Arabic and a technical term referring to the group of Muslims who supported ^cAli b. Abĩ Ţālibs in the crisis that engulfed the Islãmic Empire at an early stage. You have also learnt that belief in I. Imãm ate is the exclusive right of the descendants of the Prophet through her only surviving daughter, Fatimah, married to ʿAli. You have also been taught

that the *Shĩ'ah* do not recognize *Qiyãs* as a source of the *Sharĩ'ah*. They recognize only Ḥadīths reported by or traced to the family of the Prophet as reporters.

5.0   SUMMARY

The *Shĩ'ah are* the supporters ofᶜAli b. Abī Ţālib, the fourth orthodox caliph, in his contention with Muᶜāwiyah as the legitimate leader of

Muslims. The group believes that the post of Imãm, the leader or ruler of the Islãmic Empire should exclusively belong to the members of the family of the Prophet by descent. Such an Imãm is *Maᶜşūm*, immune to errors or mistakes and his devcisions are binding on all Muslims. They recognize the *Qur'ān* and *Sunnah* as the primary sources of the *Sharĩ'ah* except that they do not recognize the *Ḥadīths* not related by or traced to the members of the Prophets family. They also accept *Ijmāᶜ* but differ from the *Sunni* schools by recognizing only their members for the purpose of reaching concensus on any legal issue. They do not recognize *Qiyãs as* a source of the *Sharĩ'ah* but allows for individual jurisconsults to embark on *Ijtihād* to solve any legal difficulty. As a result of the importance *Shĩ'ah* members attach to the personality of ʿAli b. Abī Ţālib, they recorded and codified his sayings as those of other leaders among them. This influenced other Muslims to codify legal verdicts a good example of which was Ibn Taymiyyah in his Fatāwā.

6.0   TUTOR-MARKED ASSIGNMENT

1.   Define Shīism providing a clear picture of its distinctive doctrine as a Muslimsect.
2.   Explain the sources of the *Sharĩ'ah* recognized by the *Shĩ'ah*.

7.0   REFERENCES / FURTHER READING

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