



**NATIONAL OPEN UNIVERSITY OF NIGERIA**

**FACULTY OF ARTS**

**COURSE CODE: ISL835**

**COURSE TITLE: ISLAMIC LEGAL WORKS**



**ISL835**  
**ISLAMIC LEGAL WORK**

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## **NATIONAL OPEN UNIVERSITY OF NIGERIA**

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National Open University of Nigeria (2021)  
Headquarters  
Universities Village,  
Jabi, Abuja

## Introduction

You are welcome to ISL 835: ISLAMIC LEGAL WORKS which is a three-credit unit course for Masters of Arts Degree Islamic Studies programme for the students of the National Open University of Nigeria. The material has been developed to expose you into the Islamic legal works in terms of law and legislation in Islam, this course guide provides a clear picture of Islamic jurisprudence, it also makes available the background as well as the origin, reasons as well as the 4 Sunni schools of jurisprudence in the Muslim world.

## What You Will Learn in This Course

The general aim of this course is to present to you the Glorious *Qur'ān* and the Apostolic Traditions as the undisputable original, basic, primary and final sources of Muslims' laws followed by their secondary and supplementary sources. It discusses the background, scope, requirements and impact of the orthodox schools of jurisprudence in the development, expansion and explanation of the above legislations and their jurisprudential thoughts in Islam. It thrashes out the subject matter of differences of opinions, their various kinds and their operation and advantages.

## Course Aims

The specific aim of this course is to introduce you to the background, sources, guidelines and operation of the orthodox schools of jurisprudence (*fiqhu*) and (*usulul fiqhu*) in the Islamic Law (*Sharī'ah*). There are three modules, each module has four units in the course, and each unit has its objectives. You should read the objectives of each unit and be conscious of them all along your study of the course. In addition to the objectives of each unit, the overall aims of this course include:

- (i) To introduce you to the background of orthodox schools in Islam (*al-Madhab*) or (*madhahib*)
- (ii) To acquaint you with the primary and secondary sources of Islamic Law (*Sharī'ah*).
- (iii) To familiarise you with the concept, doctrine, nature and scope of Islamic legislation in accordance with the various schools (*fiqhu*) and (*usulul fiqhu*).
- (iv) To acquaint you with the roles of 4 most accepted schools of jurisprudence in the muslim world.

## Objectives of the Course

Based on the general aims of this course, some objectives of the course as a whole are set out. These are the essential things you should be able to do at your completion of this course:

- (i) Define the various terms used in connection with Islamic jurisprudence and legislation (*fiqhu*) and (*usulul fiqhu*).
- (ii) Analyse the primary and secondary sources, as well as the background of legislation and jurisprudence in Islam.

- (iii) Discuss the subject matter, guidelines, scope and impact of the 4 accepted schools of thoughts.
- (iv) Evaluate the operation, problems and prospects of *mathahib* indepently

### **Working through this Course**

It is essential that you work through the study units in this course. There are ..... (....) Units in all.

### **Course Materials**

Major components of the course are:

1. Course Guide
2. Study units
3. Text Books, including the ones listed under each unit.
4. Assignments File
5. Presentation Schedule

### **Study Units**

There are four (4) Units (in three modules) in this course. They are listed below:

#### **MODULE 1: ISLAMIC LAW (*SHARI 'AH*) IN PERSPECTIVE.**

**Unit 1** Definition and Scope of Islamic Law

**Unit 2** Significance of Islamic Law

**Unit 3** Primary Sources of Islamic Law

**Unit 4** Secondary Sources of Islamic Law

#### **MODULE 2: ISLAMIC JURISPRUDENCE (*AL-FIQHU*) IN PERSPECTIVE**

**Unit 1** Definition of (*Fiqhu*) and (*Ussulu fiqh*) as Islamic Jurisprudence

**Unit 2** Nature of Islamic law

**Unit 3** Aims and objectives of the laws (*Maqasidu-Sharī'ah*)

**Unit 4** Differences of opinion/understanding among the Sahabah as origin of *Madhahib*

#### **MODULE 3 HISTORICAL DEVELOPMENT OF THE 4 MADHAHIB AND THEIR MODE OF OPERATIONS**

**Unit 1** Al-Imam Abu Hanifah

**Unit 2** Al-Imam Malik ibn Anas

**Unit 3** Al-Imam Shafi'i

**Unit 4** Al-Imam Ahmad ibn Hanbal

### **References and other Resources**

Certain books have been recommended to deepen your understanding of the course. You are hereby provided with a list containing some of them. Try to acquire as many as possible of those material.

### **Assignment File**

In this unit, you will find all 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 assignment.

### **Assessment**

Your assessment will be based on four Tutor-Marked Assignments (TMAs) and a final examination which you will write at the end of the course.

### **Tutor-Marked Assignments (TMAs)**

Every unit contains one or more assignments. You are to work on four of them and submit them for assessment. Your tutor will assess the assignments and select best three, which will constitute 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. You should endeavour to revise the entire course before the final examination.

### **Course Marking Scheme**

This table shows how the actual Course marked allocation is broken down

Assignment	Marks
Assignments (best three assignments out of four marked)	= 30%
Final Examination	= 70%
<b>Total</b>	<b>= 100%</b>

### **How to get the Most from this Course?**

In distance learning, the study units replace the University lecture. This is one of the great advantages of distance learning. You can read and work through specially designed study materials at your own pace, and at a time and place, that suit you best. Think of it as reading the lecture instead of listening to the lecture. In the same way, a lecture might give you some reading to do; the study units tell you where to read, and which your text materials are 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 introduction to the subject matters on the units, 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. 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 coursework. If you run into difficulties with your schedule, please let your tutor know before it is too late to 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 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 date (about 4 weeks before due dates), keep in mind that you will learn a lot by doing the assignments 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 material 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 busy on schedule.
  11. When you have submitted 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).

### **Facilitators/Tutors and Tutorials**

The dates, times and location 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 those 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 fellow students. It is also an opportunity to get the help of your tutor and discuss any difficulties encountered on your reading.

### **Conclusion**

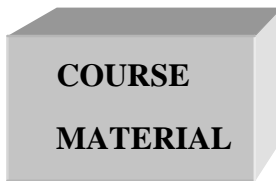
Much as I cannot promise you too-easy ride on this course, I equally do not envisage much difficulty as long as you play the roles assigned to you in the whole exercise.

### **Summary**

In this Course Guide, you have been provided with a general overview of ISL 835: ISLAMIC LEGAL WORKS in which students pursuing Masters Degree programme must earn three credit units. The Course Aims and Objectives and what learners will gain through the Course materials and its study units are stated clearly at the onset. You have also been provided with 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 organised and try to conform to presentation schedule.

I wish you success with the course and hope that you will find it both interesting and useful.





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## MODULE 1

### UNIT 1 DEFINITION AND SCOPE OF ISLAMIC LAW (SHARĪ'AH)

#### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Definition of *Shari'ah*
  - 3.2 Scope of *Shari'ah*
- 4.0 Conclusion
- 5.0 Summary
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#### 1.0 INTRODUCTION

The term “Sharī'ah” had been widely used in the pre-Islamic Arabia, not as the law of Allah, but as the popular road to water which was the most precious commodity in Arabia. However, with the advent of Islam, the usage of the word changed to the excellent Law of Allah for guiding people to the right path in all aspects of life in this world and salvation in the next world. In essence, this unit shall expose you to the definition of the term before and after the introduction of Islam. It will also underscore the various aspects covered by Islamic Law (Shariah).

#### 2.0 OBJECTIVES

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

- Understand the meaning of *Shariah* as the law of Allah to humanity.
- Analyse the perception of the Muslims about the *Shariah*.

#### 3.0 MAIN CONTENT

##### 3.1 Definition of *Shari'ah*

The word Shari'ah is derived from the Arabic root Shara'a, which means to start, to begin, to commence, to originate, to turn towards. Originally, in Arabia before Islam, the term “Sharī'ah” meant “a course to the watering place and a resort of drinkers; a water hole, a drinking place” or “an approach to a water hole”. Sharī'ah was popularly known as “the course, path or highway leading to a watering place which was permanently and clearly

marked out”. It is noteworthy that water was the most precious commodity in the pre-Islamic Arabia due to its geographical condition as a desert where water was extremely scarce.

With the emergence of Islam in Arabia in 610 AD, the term “*Sharī‘ah*” acquired a new significant meaning. In the technical language of Islam, *Sharī‘ah* means the path ordained by Allah through Prophet Muhammad (SAW) to humanity, to be followed in all private and public life as well as in all spheres of religion and mundane matters. The *Sharī‘ah* brought by Prophet Muhammad is the reformed and accomplishment of the law of Allah, which He revealed to all His Messengers in order to guide human beings to the right path. Allah has stated that:

Allah has made (*Shara‘a*) for you the same religion that He ordained for Nuh (Noah), and that which We have revealed to you, and which We ordained for Ibrahim (Abraham) and Musa (Moses) and ‘Iysa (Jesus), commanding that you should establish religion and should not make any division in it... (*Qur‘ān* 42: 13).

From the foregoing, it should be discovered that Islam is *Sharī‘ah* and *Sharī‘ah* is Islam. In essence, *Sharī‘ah* is ordained to establish and strengthen Islam.

Self-Assessment Exercise

- Define the usage of the term “*Sharī‘ah*” in the pre-Islamic Arabia and in Islam.
- Examine the position of the term “*Sharī‘ah*” in relation to Islam.

### 3.2 The Scope of *Sharī‘ah*

*Sharī‘ah* encompasses all spheres of human existence including the terrestrial (worldly) and the celestial (heavenly). The scope of *Sharī‘ah* is much wider than that of the westerners and other fabricated laws. The common law otherwise called the western law covers a part of the whole. It is only concerned with the matters of this world. It is designed to satisfy and protect the interests of the rulers and their agents. It gives room for immunity to protect certain privileged members of the society. On the other hand, Islamic law (*Shari‘ah*) covers and regulates man’s relationship with his own conscience, neighbours, the state and his God. It states the rules and regulations that would guarantee just and mutual relationship between the rulers and subjects, the employers and the employees, the masters and the servants. It covers the proper relationship that should exist between one nation and the other, the regional and the international, the Muslims and non-Muslims, as well as children and parents, wives and husbands.

All courtesies and good manners are among the concerns of *Sharī‘ah*. Daily prayers, alms giving, fasting, pilgrimage and other ritual practices, are an integral part of *Sharī‘ah* law. It is also very much concerned with ethical and legal rules. This is an indication of what every human being is entitled to or bound to do in life or refrain from doing. *Sharī‘ah* is

not merely a system of law or rituals. It covers every sphere of human life from the time he is born until he breathes his last, and from when he wakes up in the morning until he goes back to bed at night. In Islam, life or universe is treated as an organic whole. *Sharī'ah* takes proper care of all aspects of life harmoniously and perfectly in the interest of individuals and the society as a whole.

Islamic jurists have divided the scope of *Sharī'ah* into various departments of life. In other words, every action of a believer falls under one of the aspects of Islamic Law. These are beliefs or creeds (*I'tiqādāt*), Devotions (*'Ibādāt*), Moralities (*Ādāb*), Social Transactions/Civil matters (*Mu'āmalāt*) and (Punishments/Penalties (*'Uqūbāt*).

- (i) *I'tiqādāt* refers to all sorts of belief, creed or faith in Islam (*Imān* or *Tawhīd*), which is the first pillar of Islam.
- (ii) *'Ibādāt* cover the devotional aspect of the *Sharī'ah*. It therefore deals with all acts of ritual and worship in Islam. Fundamentally, it is concerned with the remaining four pillars of Islam i.e. Prayer (*Salāh*), Compulsory Charity (*Zakāh*), Fasting (*Sawm*) and Pilgrimage to Makkah (*Hajj*). *'Ibādah* (worship or devotion) is expected to be carried out by whoever possesses belief or faith (*Iman* or *Tawhid*), sanity (*'Aql*), and attain the age of puberty (*Bulūgh*). Should he neglect, the former, the latter shall be regarded as useless. Therefore, the two are strictly interrelated and interdependent.
- (iii) *Ādāb* bring about rules of conduct, decorum, etiquette and morality. It is the absolute virtue, and etiquette prescribed by Allah through revelation to make the society worthy of living. Hence, the main objective of *Sharī'ah* is to construct human life based on virtues (*Ma'rūf*) and cleanse it of vices (*Munkarāt*). It is therefore the act of doing good and forbidding evil.
- (iv) *Mu'āmalāt* (civil and legal obligations). It deals with human transactions and civil matters. It covers man's activities in the areas of politics, economy, administration, education and socialization. Others are charitable trust; juristic personality; individual freedom; equality before the law; legal representation; presumption of innocence; notion of non-retroactivity; supremacy of law; judicial independence; judicial impartiality; limited sovereignty; tolerance; democratic participation and being one's brother's keeper.
- (v) *'Uqūbāt* deals with punishments and penalties. It is a term used for criminal law in Islam. It deals with the right of Allah to punish sinners and rights of man to penalize criminals in the society. It facilitates the fulfilment of the purpose of human existence. Therefore, human life, faith, intellect, chastity and property must be protected and given due respect.

## Self-Assessment Exercise

Analyse the scope of Sharī‘ah

Examine the various divisions of Sharī‘ah

## 4.0 Conclusion

A careful study of this unit reveals the literal and technical definitions of *Sharī‘ah* as the way to success in life and salvation in the Hereafter. It traces its origin in historical and religious points of view as the law of Allah to all His Prophets and humanity. It examines the various spheres of the scope of *Sharī‘ah* and analyses its various divisions. It also examines the supremacy of Allah over all His creatures and the supremacy of his law over all His creatures. For an example, the Western law is a body of rules that were developed out of the customs and statutes of the English people by the legislature and court of law.

## 5.0 SUMMARY

1. The pre-Islamic Arabs used the Arabic word *Sharī‘ah* for a natural and popular access-path to securing water.
2. *Sharī‘ah* is the divine law and the only sure path to success in life and salvation in the next world.
3. The origin and final source of *Sharī‘ah* is Allah. It is the law of Allah given to all His Prophets (SWA), including Ibrahim, Musa, Dawud, Sulayman ‘Iysa and Muhammad.

## 6.0 TUTOR MARKED ASSIGNMENT

Analyse the meaning and scope of *Sharī‘ah*.

## 7.0 REFERENCES/FUTURE READINGS

- Ali, A. Y. (1973). *Holy Qur‘ān: Text, Translation and Commentary*, London: The Islamic Publications.
- Al-Asqalani, A. H. (1996). *Attainment of the Objective According to Evidence of Ordinances*, Riyadh: Riyadh-Saudi Arabia.
- Ali, M. M. (1986). *Religion of Islam*, Delhi: Taj Company.
- Cowan, J. M. (1974). *A Dictionary of Modern Written Arabic*, London: MacDonald & Evans Limited.
- Doi, A. R. I. (1990). *Sharī‘ah: The Islamic Law*, London: TA-HA Publishers.
- Khan, M. M. (1994). *Summarized Sahih Al-Bukhari, Arabic-English*, Saudi Arabia: Maktab Dar-Us-Salam.
- Mahmud, A. B. (n.d.). *Supremacy of Islamic Law*, Zaria: Hudahuda Publishing Company.

- Padfield, C. F. (1978). *Law Made Simple*, London: W. H. Allen, A Howard & Wyndham Company.
- Jones-Pauly, Cristina (2009). "Codes and Codification. Islamic Law". In Stanley N. Katz (ed.). *The Oxford International Encyclopedia of Legal History*. Oxford: Oxford University Press.
- Khadduri, Majid (1955). *War and Peace in the Law of Islam*. Baltimore: Johns Hopkins.
- Kamali, Mohammad Hashim (1999). John Esposito (ed.). *Law and Society. The Oxford History of Islam*. Oxford University Press (Kindle edition).
- Khadduri, Majid; Liebesny, Herbert J., eds. (1955). *Law in the Middle East*. Middle East Institute.
- Lapidus, Ira M. (2014). *A History of Islamic Societies*. Cambridge University Press (Kindle edition).
- Lewis, Bernard (1992). *Race and Slavery in the Middle East: An Historical Enquiry*. Oxford University Press.
- Mack, Gregory (2018). "*Hisbah*". In Jonathan Brown (ed.). *The Oxford Encyclopedia of Islam and Law*. Oxford University Press.
- Masters, Bruce (2009). "*Dhimmi*". In Gábor Ágoston; Bruce Masters (eds.). *Encyclopedia of the Ottoman Empire*. Infobase Publishing.
- Masud, Muhammad Khalid (2009). "*Anglo-Muhammadan Law*". In Kate Fleet; Gudrun Krämer; Denis Matringe; John Nawas; Everett Rowson (eds.). *Encyclopaedia of Islam* (3rd ed.). Brill. doi:10.1163/1573-3912\_ei3\_COM\_22716.
- Masud, Muhammad Khalid; Kéchichian, Joseph A. (2009). "*Fatwā. Concepts of Fatwā*". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.

## UNIT 2 SIGNIFICANCE OF ISLAMIC LAW (SHARI'AH)

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- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Origin of Islamic Law (Sharī'ah)
  - 3.2 Inadequacies of Human Made Laws
  - 3.3 Shaping of Human Minds by Sharī'ah
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor- Marked Assignment

## 7.0 References/Further Readings

### 1.0 Introduction

The significance of *Sharī'ah*, as the law of Islam, cannot be overestimated. Primarily, *Sharī'ah* is the sacred law of Allah (SWT) and Prophet Muhammad (SAW) to humankind. Islam and *Sharī'ah* are like flesh and bone which cannot be separated. *Sharī'ah* is the comprehensive divine law and guideline on all aspects of life and the Hereafter. As an introduction, this unit shall expose you to the definition of *Sharī'ah* as a concept and the Supreme Law of Allah to humanity.

### 2.0 Objective

At the end of this unit, you should be well informed about

- The supremacy of Islamic Law above all other human made laws.

### 3.0 MAIN CONTENTS

#### 3.1 Origin of Islamic Law (*Sharī'ah*)

The origin of Islamic Law (*Sharī'ah*) is traceable to Allah, the Creator of the universe. There are many internal evidences in the Glorious *Qur'ān* that trace the origin of Islamic Law to Allah:

Certainly, We have revealed the Book to you with truth that you may judge between people by means of what Allah has taught you. And do not be pleading the cause of dishonest (*Qur'ān* 4: 105).

The revelation and authorship of the Glorious *Qur'ān* to humanity, is here traceable to Allah. It is the Book of Law, Constitution and guidance given to all believers (Muslims) of all generations, nations, tribes and levels in the world.

Certainly, We sent Our Messengers with clear arguments, and sent down with them the Book and the measure, that humanity may conduct themselves with equity. And We sent down iron, wherein is great power and advantages to humanity, and that Allah may know who helps Him and His Messengers, unseen. Surely, Allah is Most Strong, Most Mighty (*Qur'ān* 57: 25).

The above *Qur'ānic* verse shows that the Sovereign Giver of the Law of Islam (*Sharī'ah*) is Allah. He gave it to all His Messengers, including Nuh (Noah), Ibrahim (Abraham), and Dawud (David), Sulayman (Solomon), Musa (Moses) and Isa (Jesus). He also prescribes its enforcement with justice, fear play and constant consciousness of the fact that Allah is



the Supreme Judge, Who will judge and reward all judgements and every one involved in issues of judgement.

And we have revealed to you the Book with the truth, verifying that which is before it of the Book and a guardian over it. So, judge between them by what Allah has revealed, and do not follow their desires (turning away) from the truth that has come to you. For every one of you We appointed a law and a way. And if Allah had pleased He would have made you a single people, but that He may try you in what He gave you. Therefore, vie one with another in virtuous deeds. To Allah you will return, so He will inform you of that wherein you differed (*Qur'ān* 5: 48).

Apart from the assertion that *Sharī'ah* originated with Allah and ends with Him. The glorious *Qur'ān* emphasises its proper implementation as the excellent justice and way of life to humanity. He is not only the Originator of *Sharī'ah*, He is also in constant watch and record of all the processes of implementation of *Sharī'ah* in all religious and worldly life.

### **Self-Assessment Exercise**

Trace the Origin of *Sharī'ah* ?

### **3.2 Inadequacies of Human-Made Laws**

Generally, in Islam, Allah is believed to be the Supreme Lord, the Sovereign Law Giver, and in the same token, His law is supreme and excellent. Naturally, human limitations, such as intelligence, knowledge, experiences, lifespan, background and personal ambitions constitute a great obstacle to legislating or making laws that will stand the test of time. Only Allah, the Giver of *Sharī'ah*, is the Only Omnipotent, Omnipresent and Omniscient, the Creator and the Merciful Lord, Who can give perfect law. All other laws are human made, non-perfect and often designed to serve the interests of certain people at the detriment of the less privileged. Each of them is limited in application, inferior to and can be abrogated by the *Shariah*. On the other hand, *Shariah* should not be abrogated by any power or institution. It is universal and enjoys its supremacy over all other laws. In Islam, whenever any law conflicts with *Sharī'ah*, such a law is invalid. Allah has condemned any other law different from *Sharī'ah* as invalid, and those who are involved as unbelievers, wrongdoers who would be subjected to eternal painful chastisement. Allah has extolled the supremacy of *Sharī'ah* that:

“And this (He commands): You should judge between them by what Allah has revealed, and do not follow their vain desires. But beware of them so that they do not beguile you from the path which Allah has

revealed to you. Then, if they turn away, be assured that Allah is determined to punish them for some of their sins. Surely, many of the people are transgressors. Do they desire the judgement of the ignorance that they desire? And who can give better judgement than Allah to those whose faith is assured. (Qur'ān 5: 52-53).

These verses of the Glorious Qur'ān point out the fundamental inadequacies of human made laws, which are weighing down with ambiguities, vain desires, ignorance of the rules of Allah, and creation of loopholes for criminal and immoral practices. The individual and universal interests of the people, near and far away are adequately taken care of by Sharī'ah. Hence, the sovereignty of the law of Allah over all other laws is made clear, permanence and applicable throughout the world.

### **Self-Assessment Exercise**

- Analyse the inadequacies of human-made laws.

### **3.3 Shaping of Human Minds**

Sharī'ah covers all aspects of the entire life of a Muslim. It shapes his character and personality, his moral principles, the proper social relations, economic, religious, spiritual, educational, cultural and political life. It is the most effective means of integrating the society. It makes the life of a Muslim truly worthy of living. Sharī'ah is an organic whole which accepts no division of life into private and public, secular and spiritual and so on. It seeks to regulate the life of the Muslims in a systematic, orderly and perfect manner so that neither contradiction nor confusion could creep into it. Putting the rules and regulations of Islamic Law in to practice and its enforcement is a manifestation of one's love for and obedience to Allah and Prophet Muhammad (SAW). It gives a religious undertone to all acts that are necessary to human life, thereby making the whole of man's life and activities religiously meaningful.

The entire life of the Muslims is shaped by the Sharī'ah and any move to destroy Sharī'ah is tantamount to destroying the life of the Muslims. No amount of *Salāh*, *Zakah*, *Sawm* or *Hajj* alone, can make a society truly Islamic, if the Sharī'ah is not applied as a complete, comprehensive legal system. This is because to submit to a law other than that prescribed by Allah is to submit to another 'god' beside Allah, which amounts to polytheism (*Shirk*) and rejection of Islam. The Sharī'ah is the most ideal for human society and the individual. It provides significant meaning for all human activities and integrates human life. A person who lives according to the Sharī'ah certainly lives in accordance with the Divine Will and the teachings of the Prophet Muhammad (SAW).

### **Self-Assessment Exercise**

- Assess the impact of *Sharī'ah* in shaping the minds of the Muslims.
- Analyse the position of Islam on the attitude of non-Muslims against Islamic Law (*Sharī'ah*).
- Appraise the inadequacies of human-made law

#### 4.0 CONCLUSION

*Sharī'ah* brings to the fore that it is only the Law of Allah that is supreme, it covers and shapes all aspects of the Muslim, including his moral, social, economic, political, religious and educational way of life. Any prevention of the implementation of *Sharī'ah* is tantamount to destroying the entire body of the nation in general and the Muslims in particular.

#### 5.0 SUMMARY

1. *Sharī'ah* originated from Allah, the Sovereign and it is supreme to all other human-made laws.
2. Failure to apply *Sharī'ah* to the entire life of the Muslims in particular and the nation in general is tantamount to chosen another “god” as the lawgiver and it usually spells doom, eventually.

#### 6.0 TUTOR-MARKED ASSIGNMENT

- Define the term “*Sharī'ah*” and trace its origin.
- Analyse the scope of *Sharī'ah* in relation to human made law.
- Examine the various aspects of *Sharī'ah*

#### 7.0 REFERENCES/FUTURE READINGS

- Ali, A. Y. (1973). *Holy Qur'ān: Text, Translation and Commentary*, London: The Islamic Publications.
- Ali, M. M. (1986). *Religion of Islam*, Delhi: Taj Company.
- Cowan, J. M. (1974). *A Dictionary of Modern Written Arabic*, London: MacDonald & Evans Limited.
- Doi, A. R. I. (1990). *Sharī'ah: The Islamic Law*, London: TA-HA Publishers.
- Mahmud, A. B. (n.d.). *Supremacy of Islamic Law*, Zaria: Hudahuda Publishing Company.

- Padfield, C. F. (1978). *Law Made Simple*, London: W. H. Allen, A Howard & Wyndham Company.
- Chan, Sewell (2016). "Saudi Arabia Moves to Curb Its Feared Religious Police". The New York Times.
- Coulson, Noel James; El Shamsy, Ahmed (2019). "Sharī'ah". Encyclopædia Britannica.
- Dallal, Ahmad S.; Hendrickson, Jocelyn (2009). "Fatwā. Modern usage". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.
- El Achi, Soha (2018). "Slavery". In Jonathan Brown (ed.). *The Oxford Encyclopedia of Islam and Law*. Oxford University Press.
- Esposito, John L.; DeLong-Bas, Natana J. (2018). *Shariah: What Everyone Needs to Know*. Oxford University Press.
- Gleave, R.M. (2012). "Maḳāṣid al-Sharī'a". In P. Bearman; Th. Bianquis; C.E. Bosworth; E. van Donzel; W.P. Heinrichs (eds.). *Encyclopaedia of Islam* (2nd ed.). Brill.
- Glenn, H. Patrick (2014). *Legal Traditions of the World – Sustainable Diversity in Law* (5th edition ed.). Oxford University Press.
- Hallaq, Wael B. (2009). *An Introduction to Islamic Law*. Cambridge University Press.
- Hallaq, Wael B. (2009b). *Sharī'a: Theory, Practice, Transformations*. Cambridge University Press (Kindle edition).
- Hallaq, Wael B. (2010). "Islamic Law: History and Transformation". In Robert Irwin (ed.). *The New Cambridge History of Islam*. Volume 4. Cambridge University Press.
- Harnischfeger, Johannes (2008). *Democratization and Islamic Law – The Sharia Conflict in Nigeria*. Frankfurt; New York City: Campus Verlag and Chicago: University of Chicago Press (distributor).
- Hendrickson, Jocelyn (2013). "Fatwa". In Gerhard Bowering, Patricia Crone (ed.). *The Princeton Encyclopedia of Islamic Political Thought*. Princeton University Press.
- Hodgson, Marshall G. S. (1974). *The Venture of Islam*, Volume 3: The Gunpowder Empires and Modern Times. University of Chicago Press (Kindle edition).
- Hussin, Iza (2014). "Sunni Schools of Jurisprudence". In Emad El-Din Shahin (ed.). *The Oxford Encyclopedia of Islam and Politics*. Oxford University Press.
- Jokisch, Benjamin (2015). "Origins of and Influences on Islamic law". In Anver M. Emon; Rume Ahmed (eds.). *The Oxford Handbook of Islamic Law*. Oxford: Oxford University Press.

## UNIT 3: PRIMARY SOURCES OF ISLAMIC LAW (SHARI'AH)

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.0 The Glorious *Qur'ān*
  - 3.1 The Apostolic Traditions (*Hadith and Sunnah*)
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

### 1.0 INTRODUCTION

In the last units, you have been acquainted with the usage of the term “*Sharī'ah*” in the pre-Islamic Arabia and in Islam. You have also learnt about the origin and significance of *Sharī'ah*. In this unit, attention will be focused on the Glorious *Qur'ān* as original, basic, primary, and final source of all the laws and teachings of Islam. You will also be familiar with the Apostolic Traditions as the primary, but following to the Glorious *Qur'ān* in importance in all aspects of life.

### 3.0 OBJECTIVES

At the end of the unit, it is expected that you should be able to:

- Analyse the Glorious *Qur'ān* as the basic, primary, most authoritative and final source of *Sharī'ah*.
- Evaluate the Apostolic Traditions as the next important source of *Sharī'ah* after the Glorious *Qur'ān*.

### 3.0 MAIN CONTENT

#### 3.1 The Glorious *Qur'ān*

The Islamic Law (*Sharī'ah*) has four major sources. Two of the sources are basic, primary and authoritative. They are the Glorious *Qur'ān*, the Traditions of the Prophet (*Hadith* and *Sunnah*). The remaining ones are secondary sources. They are the consensus agreement of the Muslims (*Ijmā'*) and analogical reasoning of scholars (*Qiyās*). Other sources of *Sharī'ah* include favourable construction (*Istihsan*), (*Istislah or Maslah*), (*Istishab*), (*Istidlal*), (*'Urf or 'Ādah*),

**The Glorious *Qur'ān*** is the original, final and divine chief source from which all principles and ordinances of *Sharī'ah* are drawn. It contains the revelation of Allah to Prophet Muhammad (S.A.W) through Angel Jibril for the guidance of humankind. It provides a code of conduct for every believer. It contains maxims, principles and admonitions, which are all-purpose as well as fundamental methods of approach toward human conduct. It is the sacred constitution of the Muslims and has final authority on all activities of human beings. The basic principles of law, moral, economic, political, religious, spiritual and education of Islam are derived from the Glorious *Qur'ān*. It is a distinction between what is permissible (*Halal*) is and what is wrong (*Haram*). It is divided into 114 chapters; each chapter is composed of a different number of verses. About 80 verses are concerned with law.

Allah commands the believers to act and rule with what Allah has revealed. He calls those who follow their own desires and refuse to judge by the Glorious *Qur'ān* as the transgressors, evil doers, disobedient and unjust people. Occasionally, the Glorious *Qur'ān* explains itself and leads to analogical deduction (*Qiyas*), e.g. gambling enriches certain people at the detriment of certain people, thereby creating and promoting enmity, laziness, excessive love for money. Cigarette is a slow poison, an unnecessary waste of resources and it encourages false sense of satisfaction and importance.

Although there is no aspect of this life and the Hereafter, which it does not cover, in most cases, it does not give details. For example, the Glorious *Qur'ān* only commands to observe fundamental worship (*Salah*), to pay Compulsory Charity (*Zakah*), or to perform Holy Pilgrimage (*Hajj*). The Prophet Muhammad SAW) explained and demonstrated how the duties of Islam would be performed. Among other things, it is in the Apostolic Traditions that provide guidelines on how to put them into practice universally.

The irreproachable authority of the Glorious *Qur'ān* is enshrined in its internal miracle as the divine Excellent of Allah to all generations of humanity. The Almighty Allah Himself has thrown a series of challenges to all unbelievers and strong-headed doubting Thomases that the combination of all creatures cannot produce ten chapters of the same quality (*Qur'ān* 11: 13); a chapter of the same quality (*Qur'ān* 2: 23-24), or a verse of the same quality (*Qur'ān* 52: 33-34). All the scholars, the poets, the magicians and philosophers that were challenged during the life of the Prophet (SAW) to date have failed to produce a single verse that can be compared to the Glorious *Qur'ān* in any aspect.

### **Self-Assessment Exercise**

- Evaluate the content of the Glorious *Qur'ān*
- Analyse the significance of the Glorious *Qur'ān*

### **3.2 The Apostolic Traditions (*Sunnah* or *Hadith*)**

The second primary source of the *Sharī'ah* is the *Sunnah* or *Hadith*. Both are known as the Apostolic Traditions. In Islam, the word “*Sunnah*” means the way of life, custom or habit

of Prophet Muhammad (SAW). The personal acts and sayings of the companions of the Prophet tacitly approved by him are recognised as Apostolic Traditions. The word “*Hadith*” means the sayings, teachings, explanations, commandments and comments of the Prophet (SAW). His companions (*Sahabah*) (RAA) collected hundreds of thousands of his Traditions, taught and recorded them for later generations of the Muslims. The transmitters of *Hadith* are known as *Ruwwah*. Specific commandment by Allah (SWT) to follow the Prophet is given in many portions of the Glorious *Qur’ān*. For an example, Allah (SWT) prescribes:

“O you who believe! Obey Allah and obey His Messenger and those in authority among you. If you differ in anything, refer it to Allah and His Messenger, if you are believers in Allah and the Last day. This is best and most commendable (*Qur’ān* 4: 59).

Certainly, the traditions of the Prophet (SAW) occupy a place second to the *Qur’ān* as an independent source of law under the *Qur’ānic* principles. Invariably, Islam grew throughout the world and the science of *Hadith* grew along with it in miraculous speed. Moreover, there is a special type of *Hadith*, which is directly inspired by Allah, but not part of the Glorious *Qur’ān* (*Hadithul-Qudsi*).

The basis of the use of the four sources of *Shari’ah* in chronological order is attributed to the episode concerning Mu’ādh bn Jabal, when the Prophet (SAW) decided to dispatch him as the first Governor to Yemen. In order to test his intelligence and educate him on the logic of adjudication as well as the roots of law in order of reference the Prophet (SAW) asked him a series of questions. He started by asking Mu’ādh: “How are you going to decide when asked to make a decision on a matter?” Mu’ādh answered: I will decide according to the Book of Allah”. The Prophet asked: “If you cannot find it (specific answer) in the Book of Allah?” Mu’ādh answered: “With the *Sunnah* of the Prophet” the Prophet (SAW) then asked: “If you cannot find it (specific answer) in the *Sunnah* of the Prophet?” Mu’ādh answered: “I will exert myself (make *Ijtihad*)”. The Prophet (SAW) tapped the chest of Mu’ādh and said: “Praise be to Allah, Who gives guidance to the Messenger of the Prophet of God”. It is apparent from the foregoing that the *Sunnah* of the Prophet (SAW) is the second in importance to the Glorious *Qur’ān*, followed by exertion of oneself to arrive at correct judgement (*Ijtihad*). It is noteworthy that is the *Ijtihad* that is accepted by Muslims scholars that becomes consensus opinion (*Ijma’*). Moreover, the independent reasoning is given legal authority by this report concerning Mu’ādh.

### **Self-Assessment Exercise**

- Evaluate what constitute the Apostolic Traditions
- Explain the position of Apostolic Traditions in *Sharī’ah*
- Examine the incidence of the appointment of Mu’ādh bn Jabal as Governor to Yemen.

### **4.0 Conclusion**

A careful study of this unit reveals that the Glorious *Qur'ān* is the primary, most basic, authoritative and final source of divine law. It draws attention to the contents and scope of the Glorious *Qur'ān*. It examines the roles of Apostolic Traditions (*Hadith* and *Sunnah*) as the record of the teachings and life examples of the Prophet (SAW) in all affairs of this world and the next.

## 5.0 SUMMARY

1. Islamic Law (*Shari'ah*) has two primary sources, which are the Glorious *Qur'ān* and the Apostolic Traditions.
2. The Apostolic Traditions provide the necessary record of the teachings, explanations and demonstration of the contents of the Glorious *Qur'ān*.
3. The sources of Islamic Law give robust opportunities for the Muslims in general as well as the Muslim lawyers, judges and state to act in accordance with the teachings of Islam.
4. *Sharī'ah* is the all-embracing framework for social relations and commercial transactions (*Mu'amalah*).
5. The Glorious *Qur'ān* and the Apostolic Traditions have their legitimate authority in Islam.

## 6.0 TUTOR-MARKED ASSIGNMENT

- Consider the importance of the Glorious *Qur'ān* and Apostolic Traditions as the basic sources of *Shari'ah*.

## 7.0 REFERENCES/FUTURE READINGS

- Doi, A. R. I. (1990). *Sharī'ah: The Islamic Law*, London: TA-HA Publishers.
- Mahmud, A. B. (n.d.). *Supremacy of Islamic Law*, Zaria: Hudahuda Publishing Company.
- Padfield, C. F. (1978). *Law Made Simple*, London: W. H. Allen, A Howard & Wyndham Company. Sharif, M. M. (ed) (1963). *A History of Muslim Philosophy*, Vol.1, Pakistan Philosophical Congress.
- Roshash, M. A. A. (1993). "The Islamic Alternatives to the Present Modes of Investment in African Banks and Companies", *Islam in Africa; Proceedings of the Islam in Africa Conference*, Ibadan: Spectrum Books Limited.
- Khan, M. M. (1985). *Sahih Al-Bukhari, Arabic-English*, Lebanon: Dar Al-Arabia.
- Norton, P. B. et al (1995). *The New Encyclopaedia Britannica*, vol. 22, London: Encyclopaedia Britannica, Inc,
- Padfield, C. F. (1978). *Law Made Simple*, London: W. H. Allen, A Howard & Wyndham Company.
  - Zeno, M. J. (1996). *The Pillars of Islam and What Every Muslim Must Know about His Religion*, Riyadh-Saudi Arabia: Dar-Us-Salam Publications.



- Coulson, Noel J. (1964). *A History of Islamic Law*. Edinburgh: Edinburgh University Press.
- Hallaq, Wael B. (2009). *An Introduction to Islamic Law*. Cambridge: Cambridge University Press.
- Schacht, Joseph (1964). *An Introduction to Islamic Law*. Oxford: Clarendon.
- Vikør, Knut S. (2005). *Between God and the Sultan: A History of Islamic Law*. Oxford University Press.
- Weiss, Bernard G. (2006). *The Spirit of Islamic Law*. University of Georgia Press.

## UNIT 4 SECONDARY AND SUPPLIMENTARY SOURCES OF ISLAMIC LAW

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Consensus Opinion of the Muslim Jurists (*Ijmā'*)
  - 3.2 Analogical Deductions (*Qiyās*).
  - 3.3 Supplementary Sources of Islamic Law
- 3.4 Conclusion
- 4.0 Summary
- 5.0 Tutor-Marked Assignment
- 6.0 References/Further Readings

### 1.0 Introduction

In the last unit, you have become aware that the Glorious *Qur'ān* and Apostolic Traditions are the basic and primary sources of *Shari 'ah* and other teachings of Islam. In this unit, you will learn about the consensus opinion of the Muslim Jurists and the analogical deductions as the secondary sources of *Shari 'ah*. You will also be introduced to other secondary sources of *Shari 'ah*, which are complimentary resources to the primary and secondary fountains of *Shari 'ah*.

## 2.0 Objectives

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

- Examine the consensus opinion of the Muslim Jurists and the analogical deductions as the secondary sources of *Shari'ah*.
- Appreciate the importance of the other sources of *Shari'ah* as indispensable complimentary sources of Islamic law.
- Value the importance of *Shari'ah* in the implementation of social contracts *Mua'malah* in Islam.

## 3.0 MAIN CONTENT

### 3.1 Consensus Opinion of the Muslim Jurists (*Ijmā'*)

Consensus of the companions of the Prophet (*Sahabah*) (RAA) or the Muslim scholars is known as *Ijmā'*. It is regarded by the jurists as the third main source of the *Sharī'ah*. It is defined as “the consensus of the Muslim jurists of any particular period, concerning a *Sharī'ah* value. The Prophet (SAW) approves the consensus of the jurists. Nevertheless, he stresses that they must be pious, people of integrity, free from sectarian doctrines, fanaticism, hypocrisy and any other non-Islamic attitudes.

It is noteworthy that the *Ijmā'* of the companions of the Prophet (SAW) cannot be reversed by any later generations. However, the *Ijma'* of any age can be repealed by the same age or later generation. *Ijmā'* is *Ijtihad* on a wider basis. It should be based on the Glorious *Qur'ān*, the Apostolic Tradition or an analogy. It is accomplished by those who are possessed of the necessary qualification as *Mujtahids* or lawyers of the sacred law in order to perform *Ijtihad* as given by the *Sharī'ah* methods of legal thinking and analysis. It supplies sufficient materials and scope for the justification of the doctrine of *Ijmā'*, and for this reason, consensus is considered as the third source of Islamic Law and jurisprudence.

### Self-Assessment Exercise

- State the criteria for the acceptance of *Ijmā'* as a source of Islamic Law

### 3.2 Analogical Deduction (*Qiyās*)

*Qiyās* is an Arabic term. Literarily, it means to compare, to guess or to estimate, i.e. measuring or comparing. In the language of Islamic Law, it signifies a process of deduction by which the law of a text is applied to cases, which, though not covered by the language, are governed by the reason of the text. The function of *Qiyās* is to discover the cause or *'Illah* of the revealed law so as to extend it to similar cases. It equates the legal position of a matter that has no verdict from either the Glorious *Qur'ān* or the Apostolic Traditions. *Qiyās* 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 the Glorious *Qur'ān*, *Sunnah* and *Ijmā'*. It is noteworthy that *Qiyās* has four components: the root of law, to which analogy is made

(*ʿAṣl*); the branch for which analogy is sought (*Farʿ*); the reason or the basis of which analogy is made (*ʿIllah*) and the judgment to which the analogy leads (*Hukm*).

The Muslims Jurists always refer to the Glorious *Qurʿān* and the Prophetic Traditions as the basis of their analogical deduction (*Qiyās*) in order to arrive at a solution to a new matter. Hence the authority for *Qiyās* is derived from the two primary sources of Islam.

### SELF-ASSESSMENT EXERCISE

- State the meaning and the components of *Qiyās*

### 3.3 Supplementary Sources of Islamic Law

In addition to the four major sources of Islamic Law, some Muslim jurists recognize other sources, which are supplementary. These include *Istihsān*, *Istiṣlah* or *Maslahah*, *Istiḥāb*, *Istidlāl* and *ʿUrf*, which shall be explained briefly in the following passages.

***Istihsān*** means favourable construction advocated by the Hanafi School, the people of opinion (*Raʿy*). Technically, it denotes the neglect of the opinion to which reasoning by *Qiyās* would lead, in favour of different opinions supported by stronger evidence. It is a desire for beauty, removal of discrepancies or inequities in law. ***Istihsān*** stands for freedom in the use of one's own reason or analogy to protect *Sharīʿah* against unguarded use of reason.

***Istiṣlah* or *Maslahah*** is a name given to the methodology of the law contained in the *Maslahah*. Imam Malik introduced it to serve the necessities and needs of circumstances. It consists of prohibiting or permitting a thing simply because it serves a “useful purpose” or *Maṣlahah*. Though there is no express evidence in the revealed sources to support the action, it has been defined as the establishment of a legal principle or *Hukm*. It is recommended because of being advantageous.

***Istiḥāb*** or concordance, relates to the deduction by presumption of continuity, which may at best, be a principle of evidence rather than the source of law. Literarily, is the seeking for a link i.e. some authority of proof. It had a logical connection with Maliki's *Istiṣlah* and Hanafi's *Istiḥān*. It was introduced by Imam *Shafīʿ* as the concept of the seeking for a link, according to which a practice once proved to be widespread may be presumed to be both traditional and continuing. Being a principle of evidence, its application is restricted to substantive law and is to be justified unless the contrary is proved. When the present is judged in the light of the past, it is *Istiḥābu ʿl-hāl* otherwise; it is termed *Istiḥāb al-Mādi* or past.

***Istidlāl*** is the art of deducting from or striving after a basis for a rule. It is expressive of the connection that exists between one proposition and another. For example, sale is contract and the basis of every contract is consent, therefore consent is the basis of sale. The term connotes a special source of law derived from reason and logic, not from the

textual side of the law. In this process, there is the deduction by *Istishāb* noted above and deduction by a logical process as by *Istidlāl*.

‘*Urf* or ‘*Ādah* is a custom that conveys a sense to know, while in the *fiqh* rules, it is a practice of the people. It is acknowledged that the customs prevailing at the time of the Prophet, which were not abrogated by the *Qur’ān* and the *Sunnah*, amounted to recognition on the point of their validity. The practices and usages of the people springing up after the death of the Prophet were justified along with other essential conditions on the authority of the text laying down that, what else the people in general consider to be good is so before Allah. Hence, the custom or usage of the society concerned, both in word and deed, constitutes another supplementary source of law. The contemporary Islamic law, as applied in various parts of the Muslim world has been modified to various degrees in order to accommodate the indigenous customs and local tradition, which are not inimical to the *Sharī‘ah*.

### Self-Assessment Exercise

- Analyse the objectives of the supplementary sources of *Sharī‘ah*.

### 4.0 CONCLUSION

A vigilant study of this unit discloses that consensus opinions of the Muslims (*Ijmā‘*) and analogical deduction (*Qiyās*) are indispensable secondary sources of law in Islam. It also reveals that the supplementary sources of *Sharī‘ah* are crucial to the understanding and carrying out of the injunctions of *Sharī‘ah*. Moreover, the unit draws attention to other sources of Islamic law, which enhances its implementation, and adaptation to different localities and backgrounds in the Islamic world.

### 5.0 SUMMARY

1. Apart from the primary and secondary sources of *Sharī‘ah*, there are other secondary sources which are supplementary and do play significant roles in the understanding and putting of Islam into daily practice.
2. An in-debt understanding of the roots (*Uṣūl*) and contents of *Sharī‘ah* is a pre-requisite for proper and successful social relations and business transactions (*Mu‘amalah*).

### 6.0 TUTOR-MARKED ASSIGNMENT

- Examine the significance of *Sharī‘ah* in the life of the Muslims in general and business transactions in particular.

### 7.0 REFERENCES/FUTURE READINGS

- Ali, M. M. (1986). *Religion of Islam*, Delhi: Taj Company.
- Cowan, J. M. (1974). *A Dictionary of Modern Written Arabic*, London: MacDonald & Evans Limited.

- Doi, A. R. I. (1990). *Sharī'ah: The Islamic Law*, London: TA-HA Publishers.
- Abiad, Nisrine (2008). *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*. British Institute of International and Comparative Law.
- Ali, Kecia (2010). *Marriage and Slavery in Early Islam*. Harvard University Press.
- Amanat, Abbas (2009). "Preface". In Abbas Amanat; Frank Griffel (eds.). *Shari'a: Islamic Law in the Contemporary Context*. Stanford University Press (Kindle Edition).
- An-Na'im, Abdullahi Ahmed (1996). "Islamic Foundations of Religious Human Rights". In Witte, John Jr.; Van der Vyver, Johan David (eds.). *Religious Human Rights in Global Perspective: Religious Perspectives*. 1. The Hague / Boston / London.
- Berger, Maurits S. (2014). "Fatwa". In Emad El-Din Shahin (ed.). *The Oxford Encyclopedia of Islam and Politics*. Oxford University Press.
- Berkey, Jonathan Porter (2003). *The Formation of Islam: Religion and Society in the Near East, 600-1800*. Cambridge University Press.
- Brown, Jonathan A. C. (2009). "Maṣlaḥah". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.
- Calder, Norman; Hooker, Michael Barry (2007). "*Sharī'a*". In P. Bearman; Th. Bianquis; C.E. Bosworth; E. van Donzel; W.P. Heinrichs (eds.). *Encyclopaedia of Islam*. 9(2nd ed.). Brill.
- Calder, Norman (2009). "Law. Legal Thought and Jurisprudence". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.

## **MODULE 2: ISLAMIC JURISPRUDENCE (*AL-FIQHU*) IN PERSPECTIVE**

### **Unit 1 Definition of (*Fiqhu*) and (*Usulu fiqh*) as Islamic Jurisprudence**

### **Unit 2 Nature of Islamic legislation**

### **Unit 3 Aims and objectives of Islamic laws (*Maqasidu-Sharī'ah*)**

### **Unit 4 Differences of opinion/understanding among the Sahabah and Tabi'un on certain points**

## **UNIT 1 Definition of (*Fiqhu*) and (*Usulu fiqh*) as Islamic Jurisprudence**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents

- 3.1 Definition of (*Fiqhu*) the jurisprudence
- 3.2 Meaning of (*Usulu fiqh*) and its development
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

## 1.0 INTRODUCTION

In the last two units, you have learnt about the primary, secondary and supplementary sources of Islamic Law and their importance in the understanding and practising Islam. In this unit, you should be able to understand the meaning and historical development of (*Fiqhu*) and (*Usulu fiqh*) as 2 important methods of understanding the rules and instructions from the sources of the Shari'ah with a view to put it into practice.

## 2.0 OBJECTIVES

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

- Understand the meaning and historical development of (*Fiqhu*)
- Appreciate the meaning of (*Usulu fiqh*) and its roles in guiding the practice of Islamic jurisprudence.
- Examine the distinction between (*Fiqhu*) and (*Usulu fiqh*) under the Islamic jurisprudence.

## 3.0 MAIN CONTENTS

### 3.1 Definition of (*Fiqhu*) the jurisprudence

*Fiqh* is the term for Islamic jurisprudence, is a process by means of which jurists derive sets of guidelines, rules and regulations from the rulings laid down in the Qur'an and the teachings and living example of the Prophet Muhammad (SAW), the Sunnah. Over the centuries, these have been formulated and elaborated upon by successive generations of learned jurists, through interpretation, analogy, consensus and disciplined research.

Islamic jurisprudence may be defined as a process by means of which jurists derive sets guidelines, rules and regulations (the *Shariah*) from the principles of the Qur'an and the Sunnah. Over the centuries, these have been formulated and elaborated upon by successive generations of learned jurists, through interpretation, analogy, consensus and disciplined research.

While the principles of the Qur'an and the Sunnah are permanent, it is the nature of Islamic jurisprudence to facilitate for human beings the application of those principles to their activities and dealings.

The universality and permanence of Islam as a civilisation are intrinsically linked to the fact that the Qur'an and the Sunnah have introduced general principles and guidelines.

These give Muslims the opportunity to develop practical solutions in order to regulate their continuous changing environment. Besides the Qur'an and the Sunnah, the sources of law in Islam are *qiyas* (analogy), *ijma'* (consensus) and *ijtihad* (disciplined, academic research).

### Self-Assessment Exercise

- Examine the meaning of *fiqhu* and its role in the early era of Islam.

## 3.2 Meaning of (*Usulu fiqh*) and its development

Principles of Islamic jurisprudence, also known as *uṣūl al-fiqh* (Arabic: الفقه أصول, lit. roots of *fiqh*), are traditional methodological principles used in Islamic jurisprudence (*fiqh*) for deriving the rulings of Islamic law (*sharia*).

Traditional theory of Islamic jurisprudence elaborates how the scriptures (Quran and Hadith) should be interpreted from the standpoint of linguistics and rhetoric. It also comprises methods for establishing authenticity of hadith and for determining when the legal force of a scriptural passage is abrogated by a passage revealed at a later date. In addition to the Quran and Hadith, the classical theory of Sunni jurisprudence recognizes two other sources of law: juristic consensus (*ijma'*) and analogical reasoning (*qiyas*). It therefore studies the application and limits of analogy, as well as the value and limits of consensus, along with other methodological principles, some of which are accepted by only certain legal schools (*madhhabs*). This interpretive apparatus is brought together under the rubric of *ijtihad*, which refers to a jurist's exertion in an attempt to arrive at a ruling on a particular question. The theory of Twelver Shia jurisprudence parallels that of Sunni schools with some differences, such as recognition of reason (*'aql*) as a source of law in place of *qiyas* and extension of the notions of hadith and sunnah to include traditions of the imams.

*Usul al Fiqh* according to the Sunnis is the collection of principles pertaining to the methodology for the extraction of *Fiqh*. The concept of *Usul al Fiqh* is comparable to adhering to a methodology when conducting a scientific experiment. Similarly, adhering to a methodology in deriving *Fiqh* (rulings) is referred to as *Usul al Fiqh*. This methodology provides a way for a person to derive Islamic rulings from the legislative sources in Islam. The collection of principles related to *Usul al Fiqh* are many:

A. Legislative Sources: Adopting specific sources to derive laws is a major subject in *Usul al Fiqh*. The Quran, Sunnah, *Ijma* as Sahabah (consensus of the companions), and *Qiyas* (analogical deduction) are four sources in Islam, which are accepted by almost all of the

scholars. However, there are other additional sources such as *Maslaha al Mursalah* (benefit) or *Ijma al Ummah* (consensus of the Ummah), which are not widely accepted.

B. Arabic Language: Within the Arabic language, there are rules for understanding the structure of an Ayah or Hadith. The rules of grammar in the Arabic language define the meaning of the Ayah or Hadith. Therefore, understanding the rules of grammar and their application is one use of the Arabic language in *Usul al Fiqh*.

C. Interpreting the text of Quran and Sunnah: Unless the text of the Quran and Sunnah is correctly understood, no ruling can be deduced from it. The linguistic structure of the text in Quran and Sunnah varies from one style to another. Some examples of these linguistic styles are: *Thanniy* (speculative text), *Qatai* (definitive text), *Amm* (general text), *Khass* (specific text), *Haqiqi* (literal text), and *Majaazi* (metaphorical text). The rules to distinguish and differentiate between these styles is an important subject in *Usul al Fiqh*.

Another essential aspect involved in interpreting the text of the Quran and Sunnah are issues surrounding abrogation of rulings from the Quran and Sunnah. The study of abrogation involves issues such as, what constitutes abrogation, how to understand it in relation to other Ayahs or Ahadith, and how to reconcile these differences. Some Muslims claim there is no need for *Usul al Fiqh*, thinking one can directly go to the text of the Quran and Sunnah and derive laws. Such a claim really illustrates the ignorance in understanding Islam. It is impossible to derive laws without being equipped with the necessary tools. These tools enable us to understand the text of the Quran and Sunnah, and without understanding the text, one would not be able to extract laws. As an example, without being aware of the rules of Arabic grammar for interpreting the text of Quran and Sunnah, one would not be able to differentiate whether the command in the Ayah or Hadith for a certain action is *Haram* (forbidden) or *Makruh* (undesirable). Therefore, *Usul al Fiqh* is a definite prerequisite to derive rulings.

Since rulings are derived based on *Usul al Fiqh*, a variation in *Usul al Fiqh* may result in different rulings. This is one of the reasons that there might exist more than one ruling on some issues. The end product of *Usul al Fiqh* is *Shariah* (or *Fiqh*). The difference between *Usul al Fiqh* and *Shariah* is that the latter is concerned with the rulings related to our actions, and *Usul al Fiqh* is concerned with the methodology applied to deduce such rulings.

### **Self-Assessment Exercise**

- Analyse the role of *usulul fiqh* in the value and limits of *ijma* and *qiyas*.
- Distinguish between *fiqhu* and *usulul fiqh* in Islamic jurisprudence.

## **4.0 CONCLUSION**



From the foregoing, you would have been able to discover that *Fiqh* is the term for Islamic jurisprudence, is a process by means of which jurists derive sets of guidelines, rules and regulations from the rulings laid down in the Qur'an and the teachings and living example of the Prophet Muhammad (SAW), the Sunnah. You would have also ascertained that *usulul fiqh* is the principles of Islamic jurisprudence with traditional methodological principles used for deriving the rulings of Islamic law.

## 1.0 SUMMARY

2.0 The *fiqhu* as a platform for understanding the rulings of the *Shariah* as contained in its sources.

3.0 The *usulul fiqh* as the guiding rules and principles on how to apply the rules as contained in the sources of the *Shariah*.

4.0 There is a strong bond between *usulul fiqh* and *ijtihad*.

5.0 Muslim scholars did their best to ensure that rules of Islamic law were compiled together for the benefit of all, as its not every body that can read from the original sources of the *Shariah*.

## 6.0 TUTOR-MARKED ASSIGNMENT

- Examine the roles of *fiqhu* and *usulul fiqhu* in the development of Islamic law, *Shariah*.

## 6.0 REFERENCES/FUTRE READINGS

- Ali, M. M. (1986). *Religion of Islam*, Delhi: Taj Company.
- Cowan, J. M. (1974). *A Dictionary of Modern Written Arabic*, London: MacDonald & Evans Limited.
- Doi, A. R. I. (1990). *Sharī'ah: The Islamic Law*, London: TA-HA Publishers.
- Abiad, Nisrine (2008). *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*. British Institute of International and Comparative Law.
- Brown, Jonathan A. C. (2009). "*Maṣlaḥah*". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.
- Calder, Norman (2009). "*Law. Legal Thought and Jurisprudence*". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.
- Gleave, R.M. (2012). "*Maḳāṣid al-Sharī'a*". In P. Bearman; Th. Bianquis; C.E. Bosworth; E. van Donzel; W.P. Heinrichs (eds.). *Encyclopaedia of Islam* (2nd ed.). Brill.
- Glenn, H. Patrick (2014). *Legal Traditions of the World – Sustainable Diversity in Law* (5th edition), Oxford University Press.

- Hallaq, Wael B. (2009). *An Introduction to Islamic Law*. Cambridge University Press.
- Hussin, Iza (2014). "Sunni Schools of Jurisprudence". In Emad El-Din Shahin (ed.). *The Oxford Encyclopedia of Islam and Politics*. Oxford University Press.
- Kamali, Mohammad Hashim (1999). John Esposito (ed.). *Law and Society*. The Oxford History of Islam. Oxford University Press (Kindle edition).
- Opwis, Felicitas (2007). Abbas Amanat; Frank Griffel (eds.). *Islamic Law and Legal Change: The Concept of Maslaha in Classical and Contemporary Legal Theory. Shari'a: Islamic Law in the Contemporary Context* (Kindle ed.). Stanford University Press.
- Rabb, Intisar A. (2009). "Law. Civil Law & Courts". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.
- Rabb, Intisar A. (2009b). "Fiqh". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.
- Rabb, Intisar A. (2009c). "Ijtihād". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.
- Schneider, Irene (2014). "Fiqh". In Emad El-Din Shahin (ed.). *The Oxford Encyclopedia of Islam and Politics*. Oxford University Press.
- Vikør, Knut S. (2014). "Sharī'ah". In Emad El-Din Shahin (ed.). *The Oxford Encyclopedia of Islam and Politics*. Oxford University Press.
- Ziadeh, Farhat J. (2009). "Uṣūl al-fiqh". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.
- Ziadeh, Farhat J. (2009b). "Law. Sunnī Schools of Law". In John L. Esposito (ed.). *The Oxford Encyclopedia of the Islamic World*. Oxford: Oxford University Press.

## UNIT 2 Nature of Islamic law

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Nature of Islamic law
  - 3.2 Distinction between *Shariah* and western legal system
  - 3.3 The first Muslim community and its legal development
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

### 1.0 INTRODUCTION

In the last module, you have become acquainted with the difference between *Usul al Fiqh* and *Shariah* is that the latter is concerned with the rulings related to our actions, and *Usul al Fiqh* is

concerned with the methodology applied to deduce such rulings. In this unit, you will be exposed to the distinction between *Shariah* and western legal system and the mode of operation from the first Muslim community established under the Prophet (SAW) in Madinah.

## 2.0 OBJECTIVES

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

- Understand *Shariah* and its nature
- Distinguish between the *Shariah* and the western legal system and
- Examine the first Muslim community established under the Prophet (SAW) in Madinah

## 3.0 MAIN CONTENT

### 3.1 Nature of Islamic law

The religious law of Islam is the expression of Allah's command for Muslims and, in application, constitutes a system of duties that are incumbent upon all Muslims by virtue of their religious belief. Known as the *Shariah*, the law represents a divinely ordained path of conduct that guides Muslims toward a practical expression of religious conviction in this world and the goal of divine favour in the world to come.

Muslim jurisprudence is known as *fiqh*, while the science of ascertaining the precise terms from the sources is known as *Usulul fiqh*. Beginning in the second half of the 8th century, oral transmission and development of this science gave way to a written legal literature devoted to exploring the substance of the law and the proper methodology for its derivation and justification. Throughout the medieval period, the basic doctrine was elaborated and systematized in a large number of commentaries, and the voluminous literature thus produced constitutes the traditional textual authority of *Shariah* law.

In classical form, the Sharī'ah differs from Western systems of law in two principal respects. In the first place, the scope of the Sharī'ah is much wider, since it regulates the individual's relationship not only with neighbours and with the state, which is the limit of most other legal systems, but also with Allah and with the individual's own conscience. Ritual practices—such as the daily prayers, almsgiving, fasting, and pilgrimage—are an integral part of Sharī'ah law and usually occupy the first chapters in legal manuals.

#### Self-Assessment Exercise

Explain the nature of the *Shariah*, the Islamic law.

### 3.2 Distinction between *Shariah* and the western legal system

The Sharī'ah is concerned as much with ethical standards as with legal rules, indicating not only what an individual is entitled or bound to do in law but also what one ought, in conscience, to do or to refrain from doing. Accordingly, certain acts are classified as praiseworthy (*mandūb*), which means that their performance brings divine favour and their omission divine disfavour, and others

as blameworthy (*makrūh*), which has the opposite implications. However, in neither case is there any legal sanction of punishment or reward, nullity or validity. The Sharī‘ah is thus not merely a system of law but also a comprehensive code of behaviour that embraces both private and public activities.

The second major distinction between the Sharī‘ah and Western legal systems is a consequence of the Islamic concept of the law as the expression of the divine will. With the death of the Prophet Muhammad (SAW) in 632, direct communication of the divine will to human beings ceased, and the terms of the divine revelation were henceforth fixed and immutable. The overall image of the Sharī‘ah is thus one of unchanging continuity, an impression that generally holds true for some areas of the law, such as ritual law. However, revelation can be interpreted in varying ways, and, over time, the diversity of possible interpretations has produced a wide array of positions on almost every point of law. In the premodern period, the ‘*ulamā*’ (Muslim religious scholars) held a monopoly over interpretation of the law, but, since the 19th century, their monopoly has been challenged by Westernized elites and laypeople. The question of which interpretations become normative at any given time is complex. Early Western studies of Islamic law held the view that while Islamic law shaped Muslim societies, the latter had no influence on Islamic law in return. However, this position has become untenable. Social pressures and communal interests have played an important role in determining the practice of Islamic law in particular contexts—both in the premodern period and to an even greater extent in the modern era.

### **Self-Assessment Exercise**

- Analyse the uniqueness of *Shariah*, the Islamic law
- Differentiate between *Shariah* and the western laws

### **3.3 The first Muslim community and its legal development.**

For the first Muslim community, established under the leadership of the Prophet Muhammad (SAW) at Medina in 622, the Qur’ānic revelations laid down basic standards of conduct. But the Qur’ān is not alone the complete and comprehensive legal code: only about 10 percent of its verses deal with legal issues. During his lifetime, Muhammad (SAW), as the supreme judge of the community, resolved legal problems as they arose by interpreting and expanding the general provisions of the Qur’ān, thereby establishing a legal tradition that was to continue after his death.

With the rapid expansion of the Islamic realm under Prophet Muhammad(SAW)’s political successors, the Muslim polity became administratively more complex and came into contact with the laws and institutions of the lands that the Muslims conquered. With the appointment of judges, or *qadis*, to the various provinces and districts, an organized judiciary came into being. The *qadis* were responsible for giving effect to a growing corpus of administrative and fiscal law, and they pragmatically adopted elements and institutions of Roman-Byzantine and Persian-Sāsānian law into Islamic legal practice in the conquered territories. Depending on the discretion of the individual *qadi*, judicial decisions were based on the rules of the Holy Qur’ān where these were relevant, but the sharp focus in which the Qur’ānic laws were held in the Medinan period was lost with the expanding horizons of activity.

Although the Muslims generally apply the Islamic law according to the principles and details laid down by the original sources, legal situations keep arising from time to time for which there are no clear answers in these primary sources or early pronouncements of the law. To cope with this changing aspect of Islamic society, particularly in the light of new facts, specialists in the field of Islamic law are asked to give their decisions using the traditional tools of legal science such as *ijtihad* and *Qiyas* (analogical deduction). Such a decision is called a fatwa and the religious scholar who gives this decision is called a mufti and that gave birth to the formation of various schools of thoughts based on the understanding of the particular scholar called *Madhahib*.

### **Self-Assessment Exercise**

- State the reasons behind the formation of *Madhahib*.
- Analyse the establishment of the first Muslim community in Madinah and the challenges of its legal development.

## **4.0 CONCLUSION**

A careful study of this unit shows that Islam has its own distinctive way has its laws that are far enriching and wide coverage that the western laws. Invariably, in line with its cherished system of justice, the law developed into a comprehensive law. It makes provisions for virtually everything you can think of. At the same time, it directs the attention of the believers to the divine obligation. It leads to the understanding of the fact that Islamic legal system is the best.

## **5.0 SUMMARY**

1. The Arabic/Islamic term for school of law/thought is *Madhabah*.
2. the law gradually developed by the establishment of Muslim community in Madinah
3. Islamic law is not comparable to the western laws the the former is wider and most comprehensive.

## **6.0 TUTOR-MARKED ASSIGNMENT**

- State the main distinction between the *Shari'ah* and western laws.

## **7.0 REFERENCES/FURHTHER READINGS**

- Rabb, Intisar A. (2009). "Fiqh". In John L. Esposito (ed.). The Oxford Encyclopedia of the Islamic World. Oxford: Oxford University Press.
- Hussin, Iza (2014). "*Sunni Schools of Jurisprudence*". In Emad El-Din Shahin (ed.). The Oxford Encyclopedia of Islam and Politics. Oxford University Press.
- Vikør, Knut S. (2014). "*Sharī'ah*". In Emad El-Din Shahin (ed.). The Oxford Encyclopedia of Islam and Politics. Oxford University Press.

- Calder, Norman (2009). "Law. Legal Thought and Jurisprudence". In John L. Esposito (ed.). The Oxford Encyclopedia of the Islamic World. Oxford: Oxford University Press.
- Messick, Brinkley; Kéchichian, Joseph A. (2009). "Fatwā. Process and Function". In John L. Esposito (ed.). The Oxford Encyclopedia of the Islamic World. Oxford: Oxford University Press.

## UNIT 3 AIMS AND OBJECTIVES OF THE LAWS (*MAQASIDU-SHARI'AH*)

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Definition and Maqasid al-Shari'ah in general
  - 3.2 The significant of maqasid in Ijtihad
  - 3.3 Classification and the hierarchy of maqasid al-shari'ah
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

### 1.0 INTRODUCTION

In this part of the course material we shall be looking at the aims and objectives of the Shariah, the Islamic law. We shall also be looking at the significances of such aims and objectives in relation to ijihad, the independent reasoning. The hierarchical classification of the aims and objectives shall also be discussed.

### 2.0 OBJECTIVES

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

- Understand the definition and Maqasid al-Shari'ah in general
- Assess the significant of *maqasid Shariah*
- Pinpoint the classification and the hierarchy of maqasid al-shari'ah

### 3.0 MAIN CONTENT

#### 3.1 Definition and Maqasid al-Shari'ah in general

Maqasid (Arabic: مقاصد, lit. goals, purposes) or *maqāṣid al-sharī'a* (goals or objectives of sharia) is an Islamic legal doctrine. Together with another related classical doctrine, *maṣlaḥa* (welfare or public interest), it has come to play an increasingly prominent role in modern times. The notion of *maqasid* was first clearly articulated by al-Ghazali (d. 1111), who argued that *maslaha* was Allah's general purpose in revealing the divine law, and that its specific aim was preservation of five essentials of human well-being: religion, life, intellect, lineage, and property.

*Maqasid al-Shari'ah* is the aims or goals intended by Islamic law for the realization of benefit to mankind. The primary objective of Islamic law is the realization of benefit to mankind, concerning their affairs both in this world and the hereafter. It is generally held that Islamic law in all its branches aims at securing benefit for the people and protecting them against corruption and evil.

Although most classical-era jurists recognized *maslaha* and *maqasid* as important legal principles, they held different views regarding the role they should play in Islamic law. Some jurists viewed them as auxiliary rationales constrained by scriptural sources (Quran and hadith) and *qiyas* (analogical reasoning). Others regarded them as an independent source of law, whose general principles could override specific inferences based on the letter of scripture.

While the latter view was held by a minority of classical jurists, in modern times it came to be championed in different forms by prominent scholars who sought to adapt Islamic law to changing social conditions by drawing on the intellectual heritage of traditional jurisprudence. These scholars expanded the inventory of *maqasid* to include such aims of sharia as reform and women's rights (Rashid Rida); justice and freedom (Mohammed al-Ghazali); and human dignity and rights (Yusuf al-Qaradawi).

### **Self-Assessment Exercise**

Examine the aims and objectives of Islamic law *Maqasid al-Shari'ah*.

## **3.2 The significant of *Maqasid Shariah***

Reading through the sources of Shari'ah, i.e., the Glorious Qur'an and the tradition of Allah's Messenger (SAW), one would find that Shari'ah promotes a set of values through all of its teachings, rulings, laws, and guidance. Erudite scholars found a reason and wisdom behind what it teaches and there is a set of major objectives it aims to achieve. Muslim scholars such as Imam Abu Hamid Al-Ghazali and Ash-Shatibi paid special attention to the values and objectives of Shari'ah.

Those objectives are explicitly mentioned in some Shari'ah rulings. They are also implicitly understood through deep examination of the Qur'an and the Sunnah of the Prophet (SAW).

Scholars expended great effort to come up with a set of major objectives Islamic Shari'ah aims to achieve. Though written and articulated differently, almost all of them arrive at a very similar set of objectives. Sheikh Mohamed Abu Zahra stated that Shari'ah came as a mercy to humanity. This mercy demonstrates itself in achieving three major goals: nurturing the righteous individual, establishing justice, and realization of benefits. (Sheikh Mohamed Abu Zahrah, Usul Al-Fiqh)

### **Three Major Goals of Islamic Shari'ah**

#### **Nurturing the righteous individual**

Looking at this heavenly law, one would realize that the first goal it aim to achieve is to develop and nurture the righteous human being to be a source of good for himself or herself and for the community, and to reduce and eliminate any bad that may occur from him or her that may harm

himself or herself or people in the community. This takes place through the rituals and moral systems that aim mainly at developing the righteous human being.

This human being knows the Creator, is conscious of Him, obedient to Him, and observant of His orders. These human beings are beneficial to others, such as their families and their societies. This human being is a manifestation of the mercy of Islam to humanity.

#### Establishing justice

Secondly, *Shari`ah* came to establish justice between people within the community of believers, and with other communities and groups. {Indeed, Allah commands justice ...} (An-Nahl 16:90) as He said in the Qur'an and commands people to {stand firmly for justice.} (An-Nisaa' 4:135)

Justice in Islam is a noble goal and is comprehensive. Islam promotes justice in court, justice in dealing with each other, justice to family members, and justice with oneself. *Shari`ah* considers people to be equal, no one has superiority over another because of race, wealth, or family. *Shari`ah* even obligates Muslims to be just with their enemies during war. *Shari`ah* establishes justice between men and women and makes women peers to men in terms of rights and responsibilities. {And women shall have rights similar to the rights upon them, according to what is equitable; ...} (Al-Baqarah 2:228) as Allah (SWT) mentioned.

#### Realization of benefit (*Maslahah*)

Thirdly, *Shari`ah* came to achieve benefits. *Shari`ah* never states anything except to achieve a real benefit (*maslahah*). Muslim scholars observed that all the teachings of *Shari`ah* aim at preserving and protecting five major benefits, namely, religion, life, intellect, progeny, and property (or wealth). Those five benefits (or necessities as some call them) are essential to the honourable human life. As Abu Hamid Al-Ghazali said, on top of the necessities that *Shari`ah* came to preserve and protect is religion.

#### **Self-Assessment Exercise**

State the determining significance of the *Shariah*

Examine the aims and objectives of the *Shariah*.

### **3.3 Classification and the hierarchy of *Maqasid al-shari'ah***

Bringing about benefits and removing harm is essential to people. However, what we mean by the benefit is what the *Shari`ah* aims at five objectives for people; that is to protect their religion, life, intellect, progeny and property. Anything that protects these is a benefit and anything that emaciates them is a harm and overcoming it is a benefit.

#### Protection of Religion

On top of the necessities that *Shari`ah* came to preserve and protect is religion. Religion is what differentiates human being from the other creations of Allah (SAW). It is part of the honour that Allah gives to humanity. Therefore, it has to be protected. First, *Shari`ah* protects religion by establishing the ruling that {There is no compulsion in religion.} (Al-Baqarah 2: 256)



*Shari`ah* makes it forbidden to afflict people in their faith or to force them to embrace another religion even if this other religion is Islam. Allah (SWT) said in the Qur'an that this action, known as *fitnah*, is worse and more severe than killing (Al-Baqarah 2:217). A general look at the rituals of Islam reveals that a major goal behind them is to strengthen people's faith and the relationship between people and their Creator. *Shari`ah*, for example, legislates fighting (known as Jihad) to protect against many types of transgression, foremost of which is transgression over people's religion.

#### Protection of Life

Saving the life of one person is as if the life of all humanity is saved.

It should be well established that life is sacred because it is a gift that Allah (SWT) gives humans. One of the miracles of this universe is the creation of the human being, {And among His Signs is this, that He created you from dust, and then - behold you are human beings scattered!} (Ar-Rum 30:20) says Allah in one of many verses that describe the sacredness of life.

The *Shari`ah* makes the life of a single human being so valuable and Allah (SWT) in the Qur'an said that killing one person is equivalent to killing the whole of humanity and saving the life of one person is as if the life of all humanity is saved (Al-Ma'idah 5:32). *Shari`ah* forbids killing and dictates the most severe punishment for it in this life and in the hereafter. It also prohibits injuring people, harming them physically or even symbolically. It allows and encourages people to live honourably, gives them the right to move, think, and speak freely and responsibly.

#### Protection of Intellect

Intellect is also a gift. It is what differentiates humans from animals. Protecting the intellect from any disease is a genuine objective of Islamic *Shari`ah*. *Shari`ah* makes sure intellect is a source of benefit to the society. It promotes education for all and makes it a right for everyone. *Shari`ah* also states that if the intellect gets corrupted, it becomes harmful to the individual and to the society and *Shari`ah* fights strongly against such corruption. One of the main reasons behind the impermissibility of intoxicants is that they have a strong influence on corrupting the intellect.

#### Protection of Progeny

In order to maintain life and pass the torch to generations to come, *Shari`ah* aims to protect progeny. Every child has the right to grow amongst a family. This family is obligated to take care of the children and develop them. Marriage is very valuable in Islam and it has a big share in Islamic *Shari`ah* teachings and rulings. Sexual relations other than in marriage are impermissible and same-sex marriage is strictly forbidden.

Marriage is protected by law from the abuse of either of the spouses, or the abuse of people outside the family. Accusing someone, especially women, of having unlawful sexual relations deserves a strong punishment since spreading such rumours demolishes marriages and is dishonourable. Men and women in society are obligated to protect their chastity, lower their gaze, and deal with one

another professionally and in a brotherly fashion. All these teachings are to make sure healthy families are established and children grow up in healthy families.

Divorce, although allowed, is discouraged by demanding spouses to endure patience. Divorce is a final resort to fix an unsuccessful family. Resolving marriage conflicts as stated in the Qur'an, is another example of how *Shari`ah* pays extra attention to the family.

An orphan is very valuable, and taking care of an orphan has a reward no less than the company of the Prophet (SAW) in Paradise. One cannot consider his children as a burden, and cannot kill them out of fear of poverty or dishonour (as people used to do).

Mothers are given a special care especially when they are pregnant or nursing for they are the ones who nurture the next generation. *Shari`ah's* teachings, when followed, guarantees the righteous upbringing of new generations and the real protection of progeny.

### Protection of Wealth

People have the right to own and protect their property. *Shari`ah* aims to protect people's wealth and property. Theft is strictly prohibited and punished by the law. *Shari`ah* also regulates transactions between people, and states clearly that it has to be built on complete freedom and willingness. *Shari`ah* also encourages us to increase our wealth and it ensures that wealth does not reach the hands of those who waste it. The poor have rights in the wealth of the rich through charity. Usury is forbidden as it is a cause of wasting wealth and putting it in the hands of a few rich people.

### Self-Assessment Exercise

Analyse in brief the five main objectives of the *Shariah*.

## 4.0 CONCLUSION

All true Muslims are eager to have the *Shariah* as their law that will be guiding their engagements in in compliance with the injunctions of Allah as well as the benefits of compliance and the reprisals of non-compliant to one's obligation and the society in general. The aim and objectives of the *Shariah* is to protect human life, dignity, religion and property.

## 5.0 SUMMARY

In this unit, we have looked into

- The specific area protected by the *Shariah* as part of its major aims and objectives.
- The essence of the *Shairah* is for the betterment of the human life, property etc.

## 6.0 TUTOR-MARKED ASSIGNMENT

- Analyse the significance of the *Maqasid of Shariah*.
- Examine the five important aims to be protected by the *Shariah*
- Examine the principle of *Maslaha* as it affects the human dignity, right to life and own a property under the *Shariah*.

## 7.0 REFERENCES/FUTURE READINGS

- Doi, A. R. I. (1990). *Sharī'ah: The Islamic Law*, London: TA-HA Publishers.
- Khan, M. M. (1994). *Summarized Sahih Al-Bukhari, Arabic-English*, Saudi Arabia: *Maktaba Dar-Us-Salam* Publications.
- Mahmud, A. B. (n.d.). *Supremacy of Islamic Law*, Zaria: *Hudahuda* Publishing Company.
- Khan, M.F. and Ghifari, N.M. (1985), *Shatibi's Objectives of Shariah and some Implications for Consumer Theory*. Islamabad: International Institute of Islamic Economics and International Islamic University.
- Al-Raysuni, A. (1997) *Nazariyyat Al-Maqasid 'inda Al-Imam Al-Shatibi* (Dar Al-Kalimah, Mansoura, Egypt. Cited in: el-Gamal, Mahmoud A. (2006). *Islamic Finance: Law, Economics, and Practice*. New York, NY: Cambridge.
- Brown, Jonathan A. C. (2009). "*Maṣlaḥah*". In John L. Esposito (ed.). *The Oxford Encyclopaedia of the Islamic World*. Oxford: Oxford University Press.
- Gleave, R.M. (2012). "*Maḳāṣid al-Sharī'a*". In P. Bearman; Th. Bianquis; C.E. Bosworth; E. van Donzel; W.P. Heinrichs (eds.). *Encyclopaedia of Islam* (2nd ed.). Brill.
- Opwis, Felicitas (2007). Abbas Amanat; Frank Griffel (eds.). *Islamic Law and Legal Change: The Concept of Maslaha in Classical and Contemporary Legal Theory. Shari'a: Islamic Law in the Contemporary Context* (Kindle ed.). Stanford University Press.
- Ziadeh, Farhat J. (2009). "*Uṣūl al-fiqh*". In John L. Esposito (ed.). *The Oxford Encyclopaedia of the Islamic World*. Oxford: Oxford University Press.

## UNIT 4 DIFFERENCES OF UNDERSTANDING AMONG THE SAHABAH AS ORIGIN OF MADHAHIB

### CONTENTS

#### 1.0 Introduction

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3.1 Differences in understanding among the Sahabah during the time of the Prophet SAW.

3.2 Meaning of *Madhahib*

3.3 Formation of *Madhahib*

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

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## 1.0 INTRODUCTION

In the last unit, you have examined the Islamic doctrines of *maqasid al shariah* and the role of *Maslahah*. You have also studied the nature of *shariah*, as well as the distinction between same and the western legal system. In this unit we shall see why did the *sahaba* have differences in opinion, this is because there isn't a one way of doing things. So the prophet SAW want us to get different answers as there are alternatives and He SAW wanted all alternatives conveyed. That is why from day one the companions will differ on a given instruction and the Prophet SAW will agree with them so long they did not err. We shall herein see the origin of *madhahib* and the way they were formed.

## 2.0 OBJECTIVES

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

- Meaning of *Madhahib*
- Formation of *Madhahib*
- Differences in understanding among the Sahabah during the time of the Prophet SAW.

## 3.1 DIFFERENCES IN UNDERSTANDING AMONG THE SAHABAH DURING THE TIME OF THE PROPHET SAW.

After the Battle of *al-Khandaq/al-Ahzab* [Battle of the Trench], Prophet Muhammad SAW was told by Angel Jibreel that there was still fighting to be done. He said that this fighting was to be with the last Jewish tribe in Madinah, Banu Quraidah:

Narrated 'Aisha RA: When Allah's Apostle returned on the day (of the battle) of *Al-Khandaq* (i.e. Trench), he put down his arms and took a bath. Then Gabriel whose head was covered with dust, came to him saying, "You have put down your arms! By Allah, I have not put down my arms yet." Allah's Apostle said, "Where (to go now)?" Gabriel said, "This way," pointing towards the tribe of Banu Quraidah. So Allah's Apostle went out towards them. [Sahih Bukhari. Book: 52, Hadith: 68]

Thus, Prophet Muhammad SAW rushed to his Sahaba. He said, "No one among you should pray 'Asr except at Banu Quraida". [Tarikh Ibn-Kathir]

The Sahabah immediately gathered their supplies and embarked on their journey. Prophet Muhammad SAW was not with this group.

Soon, Maghrib was drawing near. The Sahabah were discussing what to do. On one hand Prophet Muhammad SAW gave a clear order, but on the other, they were risking missing Asr on time.

Two different opinions arose:

1. When Prophet Muhammad SAW said they should not pray Asr except in Banu Quraidah, he meant it metaphorically. In other words, he was simply telling them to rush towards Banu Quraidah right away. They felt they should pray now, instead of actually getting there and risking missing the Salah.

2. Others took Prophet Muhammad's SAW word literally. When he said they should not pray 'Asr except in Banu Quraidah, they were not supposed to pray anywhere else, even if they risked praying late.

Both groups did what they thought was correct. Some stopped and prayed, others went on and prayed when they arrived to the general area of Banu Quraidah.

When they returned to Prophet Muhammad SAW, they told him what had happened and how two different opinions arose. He did not say that either of them was wrong, and that both were acceptable.

This shows that there is room for the difference of opinion in Islam. We can see that even in the time of The Prophet Muhammad SAW himself, different people interpreted the same instruction differently. And according to the Prophet SAW himself, both opinions were acceptable.

Similarly, when it comes to *Fiqh* today [especially differences in *Madhahib* like Shafi'i vs. Hanafi vs. Hanbali vs. Maliki], more than one opinion can be valid. The only condition is that the opinions are derived because that is what the scholar feels to be most correct in the eyes of Allah and His Messenger SAW; the opinion cannot be chosen out of desire because it's easier or satisfies your Nafs more, or because it "makes more sense". Finally, it must not stray from the already accepted opinions unless you have adequate proof and adequate scholarship.

This does not mean to say that anyone can grab a copy of the Quran and Sahih Bukhari and derive rulings. It means that when you see that scholars have differing opinions on a topic, one of them doesn't necessarily have to be wrong. So have respect for your brothers of different *Madhahib* (as long as they are within Ahl us-Sunnah) and different opinions, and love them as you would love the people of your opinions and Madhab.

### **Self-Assessment Exercise**

Evaluate how an opinion is derived/formed by a scholar.

## **3.2 MEANING OF MADHAHIB**

A madhhab (Arabic: مذهب *madhab*, "way to act"; pl. مذاهب *madāhib*) is a school of thought within fiqh (Islamic jurisprudence).

For lack of a better term, "legal school" is the most acceptable translation of madhhab, and it is preferable to all as the terms which have been used in earlier works. A legal school implies a body of doctrine taught by a leader, or imam, and followed by the members of that school. The imam must be a leading mujtahid, one who is capable of exercising independent judgment. In his teaching, the imam must apply methods and principles which are peculiar to his own school independent of others. A madhhab must also have followers who assist their leader in the elaboration and dissemination of his teachings. A madhhab does not imply, however, a definite organization, a formal teaching, or an official status, nor is there a strict uniformity of doctrine within each madhhab.

The membership of the present-day madhhab s is ascertainable on the basis of both individual confession and a loosely defined association of a country or a group to a particular madhhab. Legal school is a fitting description of madhhab simply because law is the main area in which the schools have widely disagreed. Their differences on the principles of the faith, at least among the Sunnī schools, are negligible. But disagreement on subsidiary matters (furūʿ) extends to almost every subject.

### **Self-Assessment Exercise**

Comment fully on meaning of a madhab, duty of the leader as well as followers

## **3.3 FORMATION OF MADHAHIB**

The real formation of Islamic law schools starts, at the hands of individual jurists, in the latter part of the first century AH (seventh century ce). This period is followed in the early second/eighth century by the emergence of two geographical centres of juristic activity in the Hejaz and Iraq.

Each of these was further divided into two centres: Mecca and Medina in the Hejaz, and Basra and Kufa in Iraq. Of these four centres, usually referred to as the ancient schools of law, Medina and Kufa were the most important. With their further development in the latter half of the second century, geographical schools gave way to personal schools, named after an individual master whom the members of the school followed.

The ancient schools of law adopted two different approaches to jurisprudence. The jurists of Mecca and Medina, cities where the Prophet had lived and Islam had its origin and early development, laid emphasis on tradition as their standard for legal decisions. They thus acquired the name *ahl al-ḥadīth*, or "partisans of tradition." Being away from the Hejaz and culturally more advanced, the Iraqi schools, on the other hand, resorted more readily to personal opinion (*raʾy*), which is why they acquired the name *ahl al-raʾy*, or "partisans of opinion." This group had a tendency to imagine hypothetical cases in order to determine their legal solutions. They had a flair for scholasticism and technical subtlety. The *ahl al-ḥadīth*, on the other hand, were averse to abstract speculation; they were more pragmatic and concerned themselves with concrete cases. Abū Ḥanīfah was the leading figure of the Iraqi school, whereas Mālik, and after him al-Shāfiʿī, led the Hejazi school of legal thought.

### **Self-Assessment Exercise**

Analyse how the early *madhahib* are formed

## 4.0 CONCLUSION

The

## 5.0 SUMMARY

1.

## 6.0 TUTOR-MARKED ASSIGNMENT

- Give a highlight of how the early *madhahib* are formed
- Comment fully on general meaning of *madhahib*
- Examine the origin of differences of opinion and why they became schools of thought.

## 7.0 REFERENCES/FURTHER READINGS

- Cowan, J. M. (1974). *A Dictionary of Modern Written Arabic*, London: MacDonald & Evans Limited.
- Doi, A. R. I. (1990). *Sharī'ah: The Islamic Law*, London: TA-HA Publishers.
- Abiad, Nisrine (2008). *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*. British Institute of International and Comparative Law.
- Khan, M.F. and Ghifari, N.M. (1985), *Shatibi's Objectives of Shariah and some Implications for Consumer Theory*. Islamabad: International Institute of Islamic Economics and International Islamic University.
- Al-Raysuni, A. (1997) *Nazariyyat Al-Maqasid 'inda Al-Imam Al-Shatibi* (Dar Al-Kalimah, Mansoura, Egypt, Cited in: el-Gamal, Mahmoud A. (2006). *Islamic Finance: Law, Economics, and Practice*. New York, NY: Cambridge university press.
- Coulson, Noel J. (1964). *A History of Islamic Law*. Edinburgh: Edinburgh.
- Hallaq, Wael B. (2009). *An Introduction to Islamic Law*. Cambridge: Cambridge university press.
- Schacht, Joseph (1964). *An Introduction to Islamic Law*. Oxford: Clarendon

- Vikør, Knut S. (2005). *Between God and the Sultan: A History of Islamic Law*. Oxford University Press.
- Weiss, Bernard G. (2006). *The Spirit of Islamic Law*. University of Georgia Press

## **MODULE 3 HISTORICAL DEVELOPMENT OF THE 4 MADHAHIB AND THEIR MODE OF OPERATIONS**

**Unit 1 *Madhabu*** Al-Imam Abu Hanifah (Hanafiya)

**Unit 2 *Madhabu*** Al-Imam Malik ibn Anas (*Malikiya*)

**Unit 3 *Madhabu*** Al-Imam Shafi’I (*Shafi’iya*)

**Unit 4 *Madhabu*** Al-Imam Ahmad ibn Hanbal (*Hanbaliya*)

### **UNIT 1: *Madhabu* Al-Imam Abu Hanifah (Hanafiya)**

#### **CONTENTS**

1.0 Introduction

2.0 Objectives

3.0 Main Content

3.1 the personality of the founder of the Hanafiya school

3.2 the the development of the school

3.3 the special approach of the school and its peculiarities

4.0 Conclusion

5.0 Summary

6.0 Tutor-Marked Assignment

7.0 References/Further Readings

#### **1.0 INTRODUCTION**

In this unit, we shall be looking at the historical development of the Hanafiya school, the founder and the peculiarities of the school and legal approach in Islamic jurisprudence.

#### **2.0 Objectives**

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

- the personality of the founder of the Hanafiya school
- the the development of the school
- the special approach of the school and their peculiarities

#### **3.0 MAIN CONTENT**



### 3.1 the personality of the founder of the Hanafiya school

A great intellectual and scholar Nu'man Ibn Thabit called Abu Hanif was born in 699 in Kufa to a family of a rich silk trader and received perfect general and theological education. Biographers of Abu Hanifa are inclined to think that in childhood he saw a follower of the Prophet (SAW), Anas Ibn Malik, but they argue if he heard hadithes in his interpretation. Possibly, Abu Hanifa also encountered with Abu Tufail Amir Ibn Vasil, another follower. Specialists name the following representatives of the Prophet's (SAW) family as teachers of Abu Hanifa, whom he met and communicated with: Nuhammad al-Baqir, whose hadith Abu Hanifa quoted; his brother Zayd Ibn Ali, whom Abu Hanifa was in close contact with; and Jafar as-Sadiq.

By the age of 40 Abu Hanifa became the most authoritative faqih of Iraq. Caliph al-Mansur offered him to hold an office of qadi (religious lawyer) in the new capital, Baghdad, but Abu Hanifa resolutely denied this offer. In response the caliph ordered to imprison and swish him, regardless his age and highest authority, after that Imam al-A'zam (the Highest Imam), as he was called, passed away in 767.

Abu Hanifa was the first scholar, who developed the system of Muslim jurisprudence (fiqh), which corresponded the demands of everyday life and was based on the laws of the Quran and the Sunnah. For this end he used deep logic substantiation of judicial sources, to which he referred consensus of religious authorities over a certain question and a decision by analogy with the Quran and the Sunnah. Claiming his decision on a certain debatable or unclear issue, Abu Hanifa not just literally interpreted a source (an ayat or a hadith), but brought forward arguments in favor of social welfare (naturally, without confronting Islamic principles), honing thus the ra'i (a private opinion) technique, which was first widely used by a qadi of Iraq Ibn Mas'ud (RA), to perfection. Abu Hanifa left a small collection of hadithes ("Musnad"); a work on Islamic dogmatic principles "al-Fikr al-Akbar" is also ascribed to him, although, in general, his heritage is available to us in the form of quotations in the works of his nearest followers Aby Yusuf (738-798) and ash-Shaybani (749 – app.804).

#### Self-Assessment Exercise

- Comment fully on the founder and formation of the Ḥanafīyah school of jurisprudence.

### 3.2 the development of the school

Abu Hanifah's teachings were documented and compiled mainly by two of his disciples, Abū Yūsuf and al-Shaybānī. The Ḥanafī school was favored by the ruling Abbasid dynasty. Abū Yūsuf, who became the chief justice of the caliph Hārūn al-Rashīd (r. 786–809), composed, at Hārūn's request, a treatise on fiscal and public law, the Kitāb al-kharāj.

Muḥammad ibn Ḥasan al-Shaybānī, a disciple of both Abū Ḥanīfah and Abū Yūsuf, compiled the corpus juris of the Ḥanafī school. Six of his juristic works, collectively called the Zāhir al-rawāyah, or works devoted to principal matters, became the basis of many future works on jurisprudence. All of the six works were later compiled in one volume entitled Al-kāfī (The concise), by al-Marwazī, better known as al-Ḥākim al-Shahid (d. 965). This was subsequently

annotated by Shams al-Din al-Sarakhsi in thirty volumes, entitled *Al-mabsūtt* (The comprehensive). Hanafi law is the most humanitarian of all the schools concerning the treatment of non-Muslims and war captives, and its penal law is considered to be more lenient.

The Hanafiyah has the largest following of all the schools, owing to its official adoption by the Ottoman Turks in the early sixteenth century. It is now predominant in Turkey, Syria, Jordan, Lebanon, Pakistan, Afghanistan, and among the Muslims of India, and its adherents constitute about one-third of the Muslims of the world.

### Self-Assessment Exercise

- Examine the development of the Hanafiya school and reason for its spread.

### 3.3 the special approach of the school and its peculiarities

Since the beginning of the Islamic call, Muslims have always paid great attention to social discussions over behaviour in unknown and complicated cases (civil, criminal, financial, political etc.) in accordance with the principles of Islam.

It resulted in appearance of a system of religious laws based on the Quran and the Sunnah and a complex of judicial norms, derived from the Sharia laws. Basing on the statement, that the Quran (as the everlasting Celestial Tablet, Revelation of the Almighty Allah, the All-knowing) and the Sunnah of Prophet Muhammad (SAW) (as a collection of quotations and actions of this outstanding man, an elect of Allah, the leader of the nation, a Prophet and a state leader), in general, include answers on all questions, the *faqih*s' – experts in religious laws – task was “extracting” these prescriptions. For this end they used consensus of scholars (*ijma'*), including the followers of the Prophet (SAW); decision by analogy with the Quran and the Sunnah (*qiyas*); not making decision by analogy or its correction in case of its inexpediency (*istihsan*, minted by Abu Hanifa); making decision in accordance with its usefulness for society (*istislah*, minted and used by imam Malik); and local law (*urf* or *adats*) as an additional source.

Despite the fact that scholars were initially separated into categories of “Asahaba al-hadith” (“traditionalists”, who followed the literal meaning of hadithes) and “Asahaba ar-ra'i” (“people of free decision”, who logically interpreted the hadithes), this classification later became vague, due to the achievements of Abu Hanifa and his followers, as well. At the same time, even nowadays there are fanatic followers of a highly puritan approach to different problems. The element of consensus, an obligatory condition of the Sharia, has made this system flexible and adoptive and has provided its operation and development for several centuries until the present time on a huge territory. Religious legislation system embraces all spheres of life of a Muslim.

Abu Hanifa was the first to use deep logic substantiation of judicial sources, to which he referred consensus of religious authorities over a certain question and a decision by analogy with the Quran and the Sunnah. According to the formula of Abu Hanifa, the sense of fiqh is in “understanding the faith in Allah, Divine laws, traditions (the Sunnah), Divine limits [i.e. limits of prohibited and allowed], difference and unity in the views of Muslim scholars”. The inner essence of fiqh is interpreted by him in the following way: “nobody of the people of qibla [i.e. Muslims] must be

accused of atheism because of sins; it is necessary to call to good and restrain from evil; to believe in predestination; not to deny any of the Prophet's followers, and to leave the case of Uthman and Ali [i.e. arguments leading to the first civil war in the Caliphate] to Allah's decision".

### **Self-Assessment Exercise**

- Discuss the special approach of the Hanafiya school in the development of fiqhu?

## **4.0 CONCLUSION**

## **5.0 SUMMARY**

1.

## **6.0 TUTOR-MARKED ASSIGNMENT**

- Comment fully on the

## **7.0 REFERENCES/FURTHER READINGS**

- al-Quduri, Ahmad ibn Muhammad (2010). *Mukhtasar al-Quduri*. Translated by Tahir Mahmood al-Kiani (First ed.). Ta-Ha Publishers Ltd.
- Nu'mani, Shibli (1998). *Imām Abū Ḥanīfah – Life and Works*. Translated by M. Hadi Hussain. Islamic Book Service, New Delhi.
- A.C. Brown, Jonathan (2014). *Misquoting Muhammad: The Challenge and Choices of Interpreting the Prophet's Legacy*. Oneworld Publications.
- Cyril Glasse, "*The New Encyclopedia of Islam*", Published by Rowman & Littlefield, 2008.
- Hisham M. Ramadan, *Understanding Islamic Law: From Classical to Contemporary*, (AltaMira Press: 2006).
- "Oxford Islamic Studies Online". Abu Yusuf. Oxford University Press.
- Burak, Guy (2015). *The Second Formation of Islamic Law: The Ḥanafī School in the Early Modern Ottoman Empire*. Cambridge: Cambridge University Press.
- Wensick, A.J. (1932). *The Muslim Creed*. London: Cambridge University Press.
- Ibn Yusuf Mangera, Mufti Abdur-Rahman (November 2007). *Imam Abu Hanifa's Al-Fiqh Al-Akbar Explained* (First ed.). California, USA: White Thread Press.

## **Unit 2 *Madhabu* Al-Imam Malik ibn Anas (*Malikiya*)**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 the personality of the founder of the Malikiya school
  - 3.2 the the development of the school
  - 3.3 the special approach of the school and its peculiarities
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/Further Readings

### **1.0 INTRODUCTION**

In the unit, we shall be discussing the Maliki school of law which was named after the traditionalist and lawyer Malik ibn Anas (died 795) of Medina

### **2.0 Objectives**

At the end of this unit, it is expected that you should be able to

- the personality of the founder of the Malikiya school
- the the development of the school
- the special approach of the school and its peculiarities

### **3.0 MAIN CONTENT**

#### **3.1 the personality of the founder of the Malikiya school**

Malik was born the son of Anas ibn Malik (who is not the Sahabi with the same name) and Aaliyah bint Shurayk al-Azdiyya in Medina. His family was originally from the al-Asbahi tribe of Yemen, but his great grandfather Abu 'Amir relocated the family to Medina after converting to Islam in the second year of the Hijri calendar, or 623 CE. His grandfather Malik ibn Abi Amir was a student of the second Caliph of Islam Umar and was one of those involved in the collection of the parchments upon which Quranic texts were originally written when those were collected during the

Caliph Uthman era. According to Al-Muwatta, he was tall, heavyset, imposing of stature, very fair, with white hair and beard but bald, with a huge beard and blue eyes.

Malik bin Anas (Arabic: أنس بن مالك, 711–795 CE / 93–179 AH), whose full name is Mālik bin 'Anas bin Mālik bin 'Abī 'Āmir bin 'Amr bin al-Ḥārith bin Ghaymān bin Khuthayn bin 'Amr bin al-Ḥārith al-Aṣḥabīy, reverently known as Imam Mālik, was an Arab Muslim jurist, theologian, and hadith traditionist. Born in the city of Medina, Malik rose to become the premier scholar of prophetic traditions in his day, which he sought to apply to "the whole legal life" in order to create a systematic method of Muslim jurisprudence which would only further expand with the passage of time. Referred to as the Imam of Medina by his contemporaries, Malik's views in matters of jurisprudence were highly cherished both in his own life and afterwards, and he became the founder of one of the four schools of Sunni law, the Maliki, which became the normative rite for the Sunni practice of much of North Africa, Spain, a vast portion of Egypt, and some parts of Syria, Yemen, Sudan, Iraq, and Khorasan.

Living in Medina gave Malik access to some of the most learned minds of early Islam. He memorized the Quran in his youth, learning recitation from Abu Suhail Nafi' ibn 'Abd ar-Rahman, from whom he also received his Ijazah, or certification and permission to teach others. He studied under various famed scholars including Hisham ibn Urwah, Ibn Shihab al-Zuhri and Abu Hanifa, the founder of the Hanafi Sunni Madh'hab.

Malik's chain of narrators was considered the most authentic and called Silsilat al-Dhahab or "The Golden Chain of Narrators" by notable hadith scholars including Muhammad al-Bukhari. The 'Golden Chain' of narration (i.e., that considered by the scholars of Hadith to be the most authentic) consists of Malik, who narrated from Nafi' Mawla ibn 'Umar, who narrated from Ibn Umar, who narrated from Muhammad SAW.

#### SELF-ASSESSMENT EXERCISE

- Analyse the strength of Maliki school of law vis a vis the personality of the founder.

### 3.2 the the development of the school

The Maliki school of law was named after the traditionalist and lawyer Malik ibn Anas (died 795) of Medina (in today's Saudi Arabia). Malik's active career fell at a time when the prophetic sunna (record of the utterances and deeds of the Prophet) had not yet become a material source of the law on equal footing with the Qur'an and when hadith (prophetic traditions) were still relatively limited in number. In his legal reasoning, therefore, Malik made little reference to prophetic traditions and more often resorted to the amal (normative practice) of Medina in justification of his doctrines. As expressed in his Muwatta, in which he recorded the customary Medinese doctrine, Malik's reliance on traditions as well as his technical legal thought lagged behind those of the Iraqis.

Once the transition from the geographical to the personal schools took place, Malik became the eponym of the former Hijazi or Medinan school. This may be explained by the fact that Malik's writings represented the average doctrine of that geographical area, coupled perhaps with the high esteem in which he was held as a scholar.

Like the namesake of the Hanafi school of law, but unlike the founder of the Shafi'i school of law, Malik did not provide his school with a developed body of legal doctrine. It was left for his successors, chiefly in the ninth and tenth centuries, to articulate a legal system particular to the school. Among the most important positive law works of the school are: al-Mudawwana al-Kubra by Sahnun (died 854); al-Risala by Ibn Abi Zayd al-Qayrawani (died 996); al-Tahdhib, an authoritative synopsis of al-Mudawwana, by Abu Sa'id al-Baradhi'i (died probably after 1039); al-Bayan, a commentary by Ibn Rushd (died 1126) on al-Utbiyya of al-Utbi (died 869); Bidaya al-Mujtahid wa Nihaya al-Muqtasid by Ibn Rushd al-Hafid (died 1189); al-Mukhtasar by Sidi Khalil (died 1365); al-Mi'yar al-Mughrib wa al-Jami al-Mu'rib by al-Wansharisi (died 1508), one of the most important fatwa collections in the school. Further, in writing on legal theory (usul al-fiqh), the Malikis were not as prolific as their Hanafi and Shafi'i counterparts. Three of their most distinguished legal theoreticians are: Ibn Khalaf al-Baji (died 1081), the author of Ihkam al-Fusul; al-Qarafi (died 1285), whose main work on the subject is Sharh Tanqih al-Fusul, a commentary on the work of the Shafi'i jurist and theologian Fakhr al-Din al-Razi; and Abu Ishaq al-Shatibi (died 1388), who elaborated in his Muwafaqat one of the most innovative legal theories that is highly regarded by modern legal reformers.

Since early medieval Islam, Malikism succeeded in spreading mainly in the Maghrib (North Africa) and Muslim Spain, being now the dominant doctrine in all Muslim African countries. In Egypt, Maliki presence may also be found today in Bahrain and Kuwait.

#### SELF-ASSESSMENT EXERCISE

- Analyze the development and spread of the Maliki school of law

### 3.3 the special approach of the school and its peculiarities

The Mālikī Madhhab is characterized with regard to legal theory by a number of advantages and special characteristics. According to Sheikh Muhammad al-Tawil; among the most important of them are:

[1] The abundance and proliferation of its legal sources represented in the Kitāb, the Sunna, the Consensus of the Umma (Ijmā'), the Practice of the Scholars of Medina ('Amal Ahl al-Madīna), Legal Analogy (Qiyās), Analogous Departure (Istihsān), the Statement of the Companion (Qawl al-Ṣahābī), the Sacred Laws of Previous Nations (Shar' man qablanā), the Law of Presumption (istiṣhāb), Unspecified Interests (Al-Maṣāliḥ Al-Mursala), the Barring of Means (Sadd al-Dharā'i'), Custom ('Urf), Axiomatic Application (Istiqrā'), Abiding by what is Most Cautious (Al-Akdh bi al-Aḥwat), and the Observation of Legitimate Points of Disagreement (Mura'āt al-Khilāf).

These are the foundational sources. Added to them are the secondary overarching legal axioms that branch out from these foundations, and those that some Mālikis have numbered to reach one thousand and two hundred (1200) overarching legal axioms that cover all chapters of fiqh and its different fields.

This great abundance has enriched Mālikī fiqh, given its strength and vivacity, and placed before its scholars a means for scholarly endeavour and tools of legal extrapolation whereby they can acquire qualification for reaching the level of scholarly endeavour (ijtihād), enable them to practice it, and facilitate for them their duty.

While some schools share with the Mālikī madhhab some of these legal foundations, the advantage the Mālikī fiqh is hidden in the acceptance of all of these legal foundations, while others have only accepted some of them and rejected the remainder.

[2] The [second advantage is the] diversity of these legal sources. Indeed they fluctuate between the confirmed transmitted reports and the sound employment of reason procured from the scripture (sharʿ) and rests upon it, like legal analogy (qiyās) and analogous abandonment (istihsān). This diversity in legal sources and marriage between reason and revelation, transmitted knowledge and mental reflection, the lack of stiffness in clinging to transmitted reports or being steered by mere reason is the special characteristic that has made the Mālikī Madhhab distinct from the school of the scholars of ḥadīth and the school of the people of reflective opinion (raʿy). It is the secret of its centrality between extremes (wasāṭiyya), its spread, the strong interest in it, and why the livers of camels were beaten to reach its Imam during the days of his life.

[3] [The third advantage is] its broad expansion in the profitable use of the agreed upon legal sources in a manner that has helped and still helps to fill in the blanks that the mujtahid may be faced with when involved in scholarly endeavor and legal extrapolation. Thus, we find it in the interaction with the Kitāb and the Sunna not sufficing itself with explicit texts (naṣṣ) or those that are pseudo-explicit (ẓāhir). Rather, it accepts all contrasting indications (mafāhīm al-mukhālafā), conforming indications (mafāhīm al-muwāfaqa), and what is indirectly alerted to by the address (tanbīh al-khitāb); just as it accepts contextual indications (dalāla al-siyāq), associative indications (dalāla al-iqtirān) as well as incidental indications (dalāla al-tabaʿiyya).

Mālik—may Allah show him mercy—even used His statement—the most high, “And (He made) horses and mules and donkeys that you might ride upon them and as an ornament; and He creates what you do not know” (16:8) as evidence of the non-compulsoriness of Zakāt on horses due to it being associated with donkeys for which no Zakāt is due by consensus and unambiguous text. Likewise, he opened wide the door of legal analogy, to the point of accepting types of legal analogy that others did not accept. And he did not apply that to only one chapter of fiqh nor to only one kind of legal ruling.

#### SELF-ASSESSMENT EXERCISE

- Analyse the Credibility social contracts

#### 4.0 CONCLUSION

An in-depth study of this unit reveals that

#### 5.0 SUMMARY

- 1.

## 6.0 TUTOR-MARKED ASSIGNMENT

- Define ‘*Silsilatu zahbiya*’ with explanation
- Explain the peculiarities of the Maliki school of law.
- Identify the similarities and differences between Iraqi school and Medinan school.

## 7.0 REFERENCES/FURTHER READING

- Chouki El Hamel (2012), *Slavery in Maliki School in the Maghreb, in Black Morocco: A History of Slavery, Race, and Islam*, Cambridge University Press.
- Hisham M. Ramadan (2006), *Understanding Islamic Law: From Classical to Contemporary*, Rowman Altamira.
- Bernard Lewis (2001), *The Muslim Discovery of Europe*, WW Norton.
- Fierro, "The Introduction of Hadith in al-Andalus (2nd/8th - 3rd/9th centuries). *Der Islam*, vol. 66, 1989.
- Jamal Nasir (1990), *The Islamic Law of Personal Status*, Brill Academic.
- Mansoor Moaddel, *Islamic Modernism, Nationalism, and Fundamentalism: Episode and Discourse*, pg. 32. Chicago: University of Chicago Press, 2005.
- Reuben Levy, *Introduction to the Sociology of Islam*, pg. 237, 239 and 245. London: Williams and Norgate, 1931–1933.
- Cilaro, Agostino (2014), *Maliki Fiqh, in Muhammad in History, Thought, and Culture: An Encyclopedia of the Prophet of God* (2 vols.), Edited by C. Fitzpatrick and A. Walker, Santa Barbara, ABC-CLIO
- Thomas Eich (2009), *Induced Miscarriage (Abortion) in Early Maliki and Hanafi Fiqh*, *Islamic Law & Society*, Vol. 16.
- FH Ruxton (1913), *The Convert's Status in Maliki Law*, *The Muslim World*, Vol 3, Issue 1.

## Unit 3 *Madhabu Al-Imam Shafi’I (Shafi’iya)*

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 the personality of the founder of the Shafi’iya school
  - 3.2 the development of the school
  - 3.3 the legacies of Imam Shafi’i
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/ Further Reading

### 1.0 INTRODUCTION



## 2.0 OBJECTIVES

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

- the personality of the founder of the Shafi'iya school
- the development of the school
- the legacies of Imam Shafi'i

## 3.0 MAIN CONTENTS

### 3.1 the personality of the founder of the Shafi'iya school

Abū 'Abdillāh Muhammad ibn Idrīs al-Shāfi'ī (Arabic: *أَبُو مُحَمَّدٍ أَلْحَافِي إِدْرِيسَ بْنَ مُحَمَّدٍ أَللَّهُ عَبدُ أَبُو*, 767–820 CE) was an Arab Muslim theologian, writer, and scholar, who was the first contributor of the principles of Islamic jurisprudence (Uṣūl al-fiqh). Often referred to as 'Shaykh al-Islām', al-Shāfi'ī was one of the four great Imams, whose legacy on juridical matters and teaching eventually led to the Shafi'i school of fiqh (or Madh'hab). He was the most prominent student of Imam Malik ibn Anas and he also served as the Governor of Najaf. Born in Gaza, he also lived in Mecca, Medina, Yemen, Egypt and Baghdad.

The biography of al-Shāfi'ī is difficult to trace. Dawud al-Zahiri was said to be the first to write such a biography, but the book has been lost. The oldest surviving biography goes back to Ibn Abi Hatim al-Razi (died 327 AH/939 CE) and is no more than a collection of anecdotes, some of them fantastical. A biographical sketch was written by Zakarīya b. Yahya al-Sājī was later reproduced, but even then, a great deal of legend had already crept into the story of al-Shāfi'ī's life. The first real biography is by Ahmad Bayhaqī (died 458 AH/1066 CE) and is filled with what a modernist eye would qualify as pious legends. The following is what seems to be a sensible reading, according to a modern reductionist perspective.

Al-Shāfi'ī belonged to the Qurayshi clan of Banu Muttalib, which was the sister clan of the Banu Hashim, to which the Prophet Muhammad SAW and the 'Abbasid caliphs belonged. This lineage may have given him prestige, arising from his belonging to the tribe of Muhammad SAW, and his great-grandfather's kinship to him. However, al-Shāfi'ī grew up in poverty, in spite of his connections in the highest social circles.

He was born in Gaza by the town of Asqalan in 150 AH (767 CE). His father died in Ash-Sham while he was still a child. Fearing the waste of his sharīf lineage, his mother decided to move to Mecca when he was about two years old. Furthermore, his maternal family roots were from Al-Yemen, and there were more members of his family in Mecca, where his mother believed he would better be taken care of. Little is known about al-Shāfi'ī's early life in Mecca, except that he was brought up in poor circumstances and that from his youth he was devoted to learning. An account states that his mother could not afford to buy his paper, so he would write his lessons on bones, particularly shoulder-bones. He studied under Muslim ibn Khalid az-Zanji, the Mufti of Mecca then, who is thus considered to be the first teacher of Imam al-Shāfi'ī. By the age of seven, al-Shāfi'ī had memorized the Qur'an. At ten, he had committed Imam Malik's Muwatta' to heart,

at which time his teacher would deputize him to teach in his absence. Al-Shāfi‘ī was authorized to issue fatwas at the age of fifteen.

Al-Shāfi‘ī moved to Al-Medinah in a desire for further legal training, as was the tradition of acquiring knowledge. Accounts differ on the age in which he set out to Medina; an account placed his age at thirteen, while another stated that he was in his twenties. There, he was taught for many years by the famous Imam Malik ibn Anas, who was impressed with his memory, knowledge and intelligence. By the time of Imam Mālik's death in 179 AH (795 CE), al-Shāfi‘ī had already gained a reputation as a brilliant jurist. Even though he would later disagree with some of the views of Imam Mālik, al-Shāfi‘ī accorded the deepest respect to him by always referring to him as "the Teacher".

Al-Shāfi‘ī died at the age of 54 on the 30th of Rajab in 204 AH (20 January 820 CE), in Al-Fustat, Egypt, and was buried in the vault of the Banū ‘Abd al-Hakam, near Mount al-Muqattam. The qubbaḥ (Arabic: قُبَّة, dome) was built in 608 AH (1212 CE) by the Ayyubid Sultan Al-Kamil, and the mausoleum remains an important site today.

### **Self-Assessment Exercise**

Examine the early life of Imam Shafi’I and his apprenticeship before Imam Malik.

## **3.2 the development of the school**

At the age of thirty, al-Shāfi‘ī was appointed as the ‘Abbasid governor in the Yemeni city of Najran. He proved to be a just administrator but soon became entangled with factional jealousies. In 803 CE, al-Shāfi‘ī was accused of aiding the 'Alids in an Alid revolt, and was thus summoned in chains with a number of 'Alids to the Caliph Harun ar-Rashid at Raqqa. Whilst other conspirators were put to death, al-Shāfi‘ī's own eloquent defense convinced the Caliph to dismiss the charge. Other accounts state that the famous Hanafī jurist, Muḥammad ibn al-Ḥasan al-Shaybānī, was present at the court and defended al-Shāfi‘ī as a well-known student of the sacred law. What was certain was that the incident brought al-Shāfi‘ī in close contact with al-Shaybānī, who would soon become his teacher. It was also postulated that this unfortunate incident impelled him to devote the rest of his career to legal studies, never again to seek government service.

Al-Shāfi‘ī traveled to Baghdad to study with Abu Hanifah's acolyte al-Shaybānī and others. It was here that he developed his first madh'hab, influenced by the teachings of both Imam Abu Hanifa and Imam Malik. His work thus became known as "al Madhhab al Qadim lil Imam as Shafi'i," or the Old School of al-Shāfi‘ī.

It was here that al-Shāfi‘ī actively participated in legal arguments with the Hanafī jurists, strenuously defending the Mālikī school of thought. Some authorities stress the difficulties encountered by him in his arguments. Al-Shāfi‘ī eventually left Baghdad for Mecca in 804 CE, possibly because of complaints by Hanafī followers to al-Shaybānī that al-Shāfi‘ī had become somewhat critical of al-Shaybānī's position during their disputes. As a result, al-Shāfi‘ī reportedly

participated in a debate with al-Shaybānī over their differences, though who won the debate is disputed.

In Mecca, al-Shāfi'ī began to lecture at the Sacred Mosque, leaving a deep impression on many students of law, including the famous Hanbali jurist, Ahmad Ibn Hanbal. Al-Shāfi'ī's legal reasoning began to mature, as he started to appreciate the strength in the legal reasoning of the Hanafī jurists, and became aware of the weaknesses inherent in both the Mālikī and Hanafī schools of thought.

Al-Shāfi'ī eventually returned to Baghdad in 810 CE. By this time, his stature as a jurist had grown sufficiently to permit him to establish an independent line of legal speculation. Caliph Al-Ma'mun is said to have offered al-Shāfi'ī a position as a judge, but he declined the offer.

In 814 CE, al-Shāfi'ī decided to leave Baghdad for Egypt. The precise reasons for his departure from Al-'Iraq are uncertain, but it was in Egypt that he would meet another tutor, Sayyidah Nafisah bint Al-Hasan, who would also financially support his studies and where he would dictate his life's works to students. Several of his leading disciples would write down what al-Shāfi'ī said, who would then have them read it back aloud so that corrections could be made. Al-Shāfi'ī biographers all agree that the legacy of works under his name are the result of those sessions with his disciples.

### **Self-Assessment Exercise**

State with examples the various stages of life passed by Imam Shafi'i before the formation of his madh'hab

## **3.3 the legacies of Imam Shafi'i**

Al-Shāfi'ī is credited with creating the essentials of the science of fiqh (the system of Islamic jurisprudence). He designated the four principles/sources/components of fiqh, which in order of importance are:

The Qur'an;

Hadith. i.e collections of the words, actions, and silent approval of Muhammad. (Together with the Qur'an these make up "revealed sources".);

Ijma. i.e. the consensus of the (orthodox) Muslim community;

Qiyas. i.e. the method of analogy.

Scholar John Burton goes farther, crediting Al-Shafi'i not just with establishing the science of fiqh in Islam, but its importance to the religion. "Where his contemporaries and their predecessors had engaged in defining Islam as a social and historical phenomenon, Shafi'i sought to define a revealed Law."

With this systematization of shari'a, he provided a legacy of unity for all Muslims and forestalled the development of independent, regionally based legal systems. The four Sunni legal schools or madhhabs keep their traditions within the framework that Shafi'i established. One of the schools – Shafi'i fiqh – is named for Al-Shāfi'ī. It is followed in many different places in the Islamic world: Indonesia, Malaysia, Egypt, Ethiopia, Somalia, Yemen as well as Sri Lanka and southern parts of India, especially in the Malabar coast of North Kerala and Canara region of Karnataka.

Al-Shāfi'ī emphasized the final authority of a hadith of Muhammad SAW so that even the Qur'an was "to be interpreted in the light of traditions (i.e. hadith), and not vice versa." While traditionally the Quran is considered above the Sunna in authority, Al-Shafi'i "forcefully argued" that the sunna stands "on equal footing with the Quran", (according to scholar Daniel Brown) for – as Al-Shafi'i put it – "the command of the Prophet is the command of God."

Al-Shāfi'ī "insists time after time that nothing can override the authority of the Prophet, even if it be attested only by an isolate tradition, and that every well-authenticated tradition going back to the Prophet has precedence over the opinions of his Companions, their Successors, and later authorities."

Al-Shāfi'ī influence was such that he changed the use of the term Sunnah, "until it invariably meant only the Sunnah of the Prophet" (according to John Burton this was his "principle achievement"). While earlier, sunnah had been used to refer to tribal manners and customs and while Al-Shāfi'ī distinguished between the non-authoritative "sunnah of the Muslims" that was followed in practice, and the "sunnah of the Prophet" that Muslims should follow, sunnah came to mean the Sunnah of Muhammad SAW.

In the Islamic sciences, Burton credits him with "the imposition of a formal theoretical distinction" between `the Sunnah of the Prophet` and the Quran, "especially where the two fundamental sources appeared to clash".

Al-Shafi'ee had a lot of talented students, some of whom become prominent masters. Among his best students are:

1. Imam Abu Yaqub Al-Buwayṭi
2. Abu Ibrahim Isma'il ibn Yahya Al-Muzani
3. Rabi bin Sulayman Al-Muradi
4. Abu Ali Al-Karabisi
5. Ibrahim bin Khalid Abu ThawrH
6. He also met Imam Ahmad bin HambaI and took mutual knowledge between the two. Imam Ahmad bin Hambal once said: "Had it not been for Ash-Shafi'ee, we would not have known the understanding of Hadith."

He authored more than 100 books. Some of which are as follows:

1. Kitab al-Umm
2. Al-Risalah
3. Ikhtilaf Al-Hadith
4. Al-Imla
5. Ikhtilaf Al-Iraqiyani
6. Jima Al-Ilm

7. Ikhtilaf Malik wa Al-Shafi'ee
8. Kitab Al-Hujjah

### **Self-Assessment Exercise**

- Analyse the personality of Imam Shafi'i.
- State and discuss the legacies of Imam Shafi'i.
- Examine the contribution of Imam Shafi'i to Islamic law

## **4.0 CONCLUSION**

### **7.0 SUMMARY**

- 1.
- 2.

### **6.0 TUTOR-MARKED ASSIGNMENT**

- Define
- Analyse

### **7.0 REFERENCES/FURTHER READINGS**

- Hallaq, Wael B. (2009). *An Introduction to Islamic Law*. Cambridge University Press.
- Hashim Kamali, Mohammad (2008). *Shari'ah Law: An Introduction*. Oneworld Publications.
- Yahia, Mohyiddin (2009). *Shafi'i et les deux sources de la loi islamique*, Turnhout: Brepols Publishers.
- Rippin, Andrew (2005). *Muslims: Their Religious Beliefs and Practices* (3rd ed.). London: Routledge.
- Calder, Norman, Jawid Mojaddedi, and Andrew Rippin (2003). *Classical Islam: A Sourcebook of Religious Literature*. London: Routledge. Section 7.1.
- Schacht, Joseph (1950). *The Origins of Muhammadan Jurisprudence*. Oxford: Oxford University.
- Khadduri, Majid (1987). *Islamic Jurisprudence: Shafi'i's Risala*. Cambridge: Islamic Texts Society.
- al-Shafi'i, Muhammad b. Idris, "The Book of the Amalgamation of Knowledge" translated by A.Y. Musa in *Hadith as Scripture: Discussions on The Authority Of Prophetic Traditions in Islam*, New York: Palgrave, 2008.
- Joseph Lowry (translator), *Al-Shafi'i: The Epistle on Legal Theory (Risalah fi usul al-fiqh)*, New York University Press, 2013.
- Cilardo, Agostino, "Shafi'i Fiqh", in *Muhammad in History, Thought, and Culture: An Encyclopedia of the Prophet of God* (2 vols.), edited by C. Fitzpatrick and A. Walker, Santa Barbara, ABC-CLIO, 2014.

## **Unit 4 *Madhabu Al-Imam Ahmad ibn Hanbal (Hanbaliya)***

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 the personality of the founder of the Hanafiya school
  - 3.2 the the development of the school
  - 3.3 the special approach of the school and its peculiarities
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor-Marked Assignment
- 7.0 References/ Further Reading

### **1.0 INTRODUCTION**

#### **2.0 OBJECTIVES**

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

- the personality of the founder of the Hanbali school
- the development of the school
- the legacies of Imam Ahmad ibn Hanbal

#### **3.0 MAIN CONTENT**

##### **3.1 biography of Imam Ahmad ibn Hanbal**

Abū ‘Abdillāh Aḥmad Ibn Muḥammad Ibn Ḥanbal Ash-Shaybānī (Arabic: **ابن أحمد الله ع بد أد و**; الشيباني ح ن بل ن محمد; 780–855 CE/164–241 AH), often referred to as Aḥmad ibn Ḥanbal or Ibn Ḥanbal for short, was an Arab Muslim jurist, theologian, ascetic, hadith traditionist, and founder of the Hanbali school of Sunni jurisprudence — one of the four major orthodox legal schools of Sunni Islam.

Ahmad ibn Hanbal's family was originally from Basra, Iraq, and belonged to the Arab Banu Shaybah tribe. His father was an officer in the Abbasid army in Khurasan and later settled with his family in Baghdad, where Ahmad was born in 780 CE.

Ibn Hanbal had two wives and several children, including an older son, who later became a judge in Isfahan.

Imam Ahmed studied extensively in Baghdad, and later travelled to further his education. He started learning jurisprudence (*Fiqh*) under the celebrated Hanafi judge, Abu Yusuf, the renowned

student and companion of Imaam Abu Hanifah. After finishing his studies with Abu Yusuf, ibn Hanbal began traveling through Iraq, Syria, and Arabia to collect hadiths, or traditions of the Prophet Muhammad. Ibn al-Jawzi states that Imam Ahmad had 414 Hadith masters whom he narrated from. With this knowledge, he became a leading authority on the hadith, leaving an immense encyclopaedia of hadith, the al-Musnad. After several years of travel, he returned to Baghdad to study Islamic law under Al-Shafi'i. He became a mufti in his old age, and founded the Hanbali madhhab, or school of Islamic law, which is now most dominant in Saudi Arabia, Qatar, and the United Arab Emirates.

Ahmad Ibn Hanbal passed away on Friday, 12 Rabi-ul-awwal, 241 AH/ 2 August, 855 at the age of 74-75 in Baghdad, Iraq. Historians relate that his funeral was attended by 800,000 men and 60,000 women and that 20,000 Christians and Jews converted to Islam on that day.

### **Self-Assessment Exercise**

## **3.2 the the development of the school**

The Hanbali school is one of the four traditional Sunni schools of Islamic jurisprudence. It is named after the scholar Ahmad ibn Hanbal (d. 855), and was institutionalized by his students. The Hanbali madhhab is the smallest of four major Sunni schools, the others being the Hanafi, Maliki and Shafi'i.

The Hanbali school derives sharia predominantly from the Quran, the Hadiths (sayings and customs of Muhammad), and the views of Sahabah (Muhammad's companions). In cases where there is no clear answer in sacred texts of Islam, the Hanbali school does not accept jurist discretion or customs of a community as a sound basis to derive Islamic law, a method that Hanafi and Maliki Sunni fiqhs accept. Hanbali school is the strict traditionalist school of jurisprudence in Sunni Islam. It is found primarily in the countries of Saudi Arabia, Kuwait and Qatar, where it is the official fiqh. Hanbali followers are the demographic majority in four emirates of UAE (Sharjah, Umm al-Quwain, Ras al-Khaimah and Ajman). Large minorities of Hanbali followers are also found in Bahrain, Syria, Oman and Yemen and among Iraqi and Jordanian bedouins.

## **3.3 the special approach of the school and its peculiarities**

Like all other schools of Sunni Islam, the Hanbali school holds that the two primary sources of Islamic law are the Qur'an and the Sunnah found in Hadiths (compilation of sayings, actions and customs of Muhammad SAW). Where these texts did not provide guidance, Imam Hanbal recommended guidance from established consensus of Muhammad's SAW companions (Sahabah), then individual opinion of Muhammad's SAW companions, followed in order of preference by weaker hadiths, and in rare cases qiyas (analogy). The Hanbali school, unlike Hanafi and Maliki schools, rejected that a source of Islamic law can be a jurist's personal discretionary opinion or

consensus of later generation Muslims on matters that serve the interest of Islam and community. Hanbalis hold that this is impossible and leads to abuse.

Ibn Hanbal rejected the possibility of religiously binding consensus (Ijma), as it was impossible to verify once later generations of Muslims spread throughout the world, going as far as declaring anyone who claimed as such to be a liar. Ibn Hanbal did, however, accept the possibility and validity of the consensus of the Sahaba, the first generation of Muslims. Later followers of the school, however, expanded on the types of consensus accepted as valid, and the prominent Hanbalite Ibn Taymiyyah expanded legal consensus to later generations while at the same time restricting it only to the religiously learned. Analogical reasoning (Qiyas), was likewise rejected as a valid source of law by Ibn Hanbal himself, with a near-unanimous majority of later Hanbalite jurists not only accepting analogical reasoning as valid but also borrowing from the works of Shafi'ite jurists on the subject.

Ibn Hanbal's strict standards of acceptance regarding the sources of Islamic law were probably due to his suspicion regarding the field of Usul al-Fiqh, which he equated with speculative theology (kalam). In the modern era, Hanbalites have branched out and even delved into matters regarding the upholding (Istislah) of public interest (Maslaha) and even juristic preference (Istihsan), anathema to the earlier Hanbalites as valid methods of determining religious law.

In comparison to the Hanafis and the Malikis, in the absence of a consensus, the opinion of a Sahabi is given priority over Qiyas (which early Hanbalis rejected) or al-'urf, which is completely rejected by Hanbalis. Where Hanbalis require a unanimous consensus, Hanafis tend to follow the consensus of Kufa and Malikis that of al-Madina.

### **Self-Assessment Exercise**

### **3 Conclusion**

This unit shows

### **Summary**

### **6.0 Tutor-Marked Assessment**

- Define Joint Social Contract and Credibility Social Contract
- Analyze the theory of Advance Payment Contract

### **7.0 REFERENCES/FUTURE READINGS**



- Hisham M. Ramadan (2006), *Understanding Islamic Law: From Classical to Contemporary*, Rowman Altamira.
- Gregory Mack, Jurisprudence, in Gerhard Böwering et al (2012), *The Princeton Encyclopedia of Islamic Political Thought*, Princeton University Press.
- Sunnite Encyclopædia Britannica (2014).
- Ziauddin Sardar (2014), *Mecca: The Sacred City*, Bloomsbury.
- Daryl Champion (2002), *The Paradoxical Kingdom: Saudi Arabia and the Momentum of Reform*, Columbia University Press.
- Barry Rubin (2009), *Guide to Islamist Movements*, Volume 2, ME Sharpe.
- Zaman, Muhammad (2012). *Modern Islamic thought in a radical age*. Cambridge University Press.
- Michael Cook, "On the Origins of Wahhābism," *Journal of the Royal Asiatic Society*, Third Series, Vol. 2, No. 2 (Jul., 1992).
- Christopher Melchert, *The Ḥanābila and the Early Sufis*, Arabica, T. 48, Fasc. 3 (Brill, 2001); cf. Ibn al-Jawzī, *Manāqib al-imām Aḥmad*, ed. ‘Ādil Nuwayhid, Beirut 1393/1973.
- Joel L. Kraemer, *Humanism in the Renaissance of Islam: The Cultural Revival During the Buyid Age*, pg. 61. Volume 7 of *Studies in Islamic culture and history*. Leiden: Brill Publishers, 1992.
- Mansoor Moaddel, *Islamic Modernism, Nationalism, and Fundamentalism: Episode and Discourse*, Chicago: University of Chicago Press, 2005.
- Christopher Melchert, *The Formation of the Sunni Schools of Law: 9th-10th Centuries C.E.*, Leiden: Brill Publishers, 1997.
- Christopher Melchert, *The Formation of the Sunni Schools of Law: 9th-10th Centuries C.E.*, Leiden: Brill Publishers, 1997.
- Halverson, Jeffrey R. (2010). *Theology and Creed in Sunni Islam: The Muslim Brotherhood, Ash'arism, and Political Sunnism*. Palgrave Macmillan.