SOURCES OF THE ISLAMIC LAW

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The study deals with the sources of the Islamic law. The primary sources of the law are the Qur´án, the *Sunna*, *Qijás* and ^{c}*ijmá* and secondary sources of the law are *istihsán, istisláh – maslaha* and ^{c}*urf.*

Primary sources – The Qur´án, the Sunna, ijmá and qijás

The first source of the Islamic law - Sharia is the **Qur´án**. Qur´án literally means „reading“ or „recitation“ and may be defined as the book containing the speech of God revealed to the Prophed Muhammad in Arabic and transmitted to us by continuous testimony. Qur´án is the principal source of the Shariah and lays dawn general guidelines on almost every major topic of the Islamic law. There are 114 súras („chapters“) and áyát (verse) of unequal length in the Qur´án. The ájat on varios topics appear in unexpected places, and no particular order can be ascertained in the sequence of its text. In the Qur´án are close to 80 or 60 legal ájat. This legal contents of the Qur´án constitute the basis of what is known as fiqh al- Qur´án.

Literally, **Sunna** means a clear path or a beaten track but it has also been used to imply normative practice, or an established course of conduct. To the scholar, *Sunna* refers to all that is narrated from the Prophet, his acts, his sayings and whatever he has tacitly approved. *Sunna* refers to a source of the Sharia and a legal proof next to the Qur´án. *Sunna* has been classified in various ways, depending, of course, on the purpose of classification ant the perspective of the investigator. The *Sunna* may be divided into two types: non-legal and legal *Sunna*. Non-legal *Sunna* do not constitute legal norms. As Sunna is the second source of the Sharia next tu the Qur´án, the scholar is bound to observe an order of priority between the Qur´án and *Sunna*. Hence in his search for a solucion to a particular problem, the jurist must resort to the *Sunna* only when he fails to find any guardiance in the Qur´án. Shuld there be a

clear text in the Qur´án, it must be followed and be given priority over any ruling of the Sunna which may happen to be in conflict with Qur´án.

ᶜIjmá ist the next source of Islamic law and means universal consensus of the scholars of the Muslim community of any period following the demise of the Prophet on any matter. *ᶜIjmá* enhances the authority of rules which are of speculative origin. Speculative rules do not carry a binding force, but once an ijmá is held in their favour, they become definite and binding. Once an *ᶜijmá* is established it tends to become an authority in its own right. It then becomes common practice to quote the law without a reference to the relevance sources. This is one of the reasons which induced the jusrist to recognise ijmá as the third source of the Sharia.

Qiyás means measuring or ascertainig the lenght, weight, or quality of something. *Qiyás* also means comparison, with a view to suggesting ecquality or close similarity between two things, one of which is taken as the criterion for evaluating the other. Technically, qiyás is the extension of a Sharia value from an original case to an new case, because the latter has the same effective cause as the former. The oroginal case is regulated by a given text, an qiyás seeks to extend the same textual ruling to the new case. A recourse to analogy is only warranted if the solution of a new case cannot be found in the Qur´án, the *Sunna* or definite *ᶜijmá*.

Secondary sources – istihsán, istisláh-maslaha and urf

Istihsán means "to approave, or to deem something preferable". In its juristic sence is it a method of excercising personal opinion in order to avoid any rigidity and unfairness that might result from the literal enforcement of the existing law. The jurist are not in agreement on precise definition for *istihsán*. "Juristic preference" is fitting description of *istihsán*, as it involves setting aside an established analogy in favour of an alternative ruling which serves the ideals of justice ans public interst in a better way. *Istihsán* as a source of Islamic law is controversy over the validity, some scholars reject this principle. Some scholars say that istihsán is inclueded in *qijás* and some say it a variety of *qijás*.

Maslaha means "benefit" or "(public) interest" and it refers to unrestricted public interest in the sence of its not having been regulated by the Law giver insofar as no textual authority can be found on its validity or otherwise. It is synonymous with *istisláh*. The majority of scholars maintain that istisláh is a proper ground for legislation. When the interest is identified and the scholar does not find an explicit ruling, he mus act in its pursuit by taking

the necessary steps to secure it. Also *maslaha* (plural masálih) is devided into many types (essential, complementary etc.). Essential *masálih* consist of the five essential values, namely religion, life, intellect, lineage and property. Also *maslaha* or *istisláh* is not unproblematic source of the law. Some take a view maslaha don´t constitute a valid ground for legislation, and do not accept *istisláh* as an indepedent proof.

ᶜUrf means "that which is known". In its primary sence, it is the known as opposed to unknown, the familiar ans customary as opposed to the unfamiliar and strange. *ᶜUrf* is defined as "recurring practices which are acceptable to people of sound nature". Hence recurring practices among some people in which there is no benefit or which partake in prejudice and corruption are excluded from the definition ᶜurf. Custom which does not contravene the principles of Sharia is valid and authoritative.

The above sources of islamic law are not unproblematic. There are a polemics over the common validity some of them and over the conditions of valid which must be fulfiled. The paper deals also with these polemics and show the gaps of scholars and four sunna schools of law.

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