

Sources and school of Muslim law

Family law is a set of laws which are framed in relation to matters such as marriage, divorce inheritance, succession, adoption, minority and guardianship. the laws relating to such matters in India are governed through different types of personal law namely, Hindu law[regulating all Hindus including Jain, Buddhist and Sikhs] Muslim law, Christian law, Parsi law and a special law comprising of special Marriage Act.

Who is a Muslim?

Muslim is a person whose faith is in Islam. Islam means submission to the will of God. In Islam it is believed that Allah is one and Muhammad is his messenger. Thus it can be said that a person who believes in one God and the prophet hood of Muhammad is a Muslim.

The Shariat Act 1937

Application of Muslim personal law is regulated by the **Shariat Act 1937**

Section 2 of the act provides that in case of both the parties are Muslim; the rule for decision shall be Muslim personal law if the case involves any of the following matters

- a) intestate succession
 - b) special property of females
 - c) Marriage
 - d) dissolution of marriage
 - e) Maintenance
 - f) Dower
 - g) Guardianship
 - h) Gift
 - i) trust and trust properties
 - j) Wakf
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History

- ✓ Muslim law is divine law as opposed to manmade law which is passed by legislatures.
- ✓ Muslims believe in ones of god unlike Hindus which believe in plurality of gods.
- ✓ Muslims believe that Mohammed was the last prophet sent by god (Allah) and Quran is the only revealed book of Allah.
- ✓ **Prophet Mohammed**
- ✓ Born in 571 A.D., father died at Medina before Mohammed's birth.
- ✓ Raised by his mother till the age of 6, after his mother died his grandfather Abdul Muttalib took care of him.
- ✓ Prophet at the age of 35 married **Kadija** and had six children. (2 sons and daughters), the sons died during infancy.
- ✓ One of Prophet daughter (**Fatima**) married **Ali** (prophets' cousin)
- ✓ At age 40 when the Prophet Mohammed was meditating in a cave called 'Hira' he received his first revelation (Wahi) or we can call it 'message of god'.
- ✓ First of his followers who believed him were Kadija, Waraqa (a blind scholar) and his father in law **Abu-Bakr** followed by Umar (2nd caliph) and Usman (3rd caliph)
- ✓ He also faced opposition; Abu lahab (uncle of prophet and son of Abdul Muttalib) persecuted him and humiliated him. He was abused and dragged by his hair from the temple of Mecca.
- ✓ Later the Prophet with his followers fled to Medina in 622Ad. This marked the start of a new era called 'Hijrah' (migration) because at medina the prophet the prophet formed a political group called 'Unna'
- ✓ Later after a war between the supporters of Mohammed and the opposers, Mohammed emerged triumphant and finally became the ruler for state which grew to be the empire of Aabria in ten years and gradually many tribes joined his empire.
- ✓ He died at the age of 63 till then he remained the supreme ruler of the huge empire of Arabia.
- **After Prophet Mohammed (Shia vs. Sunni)**

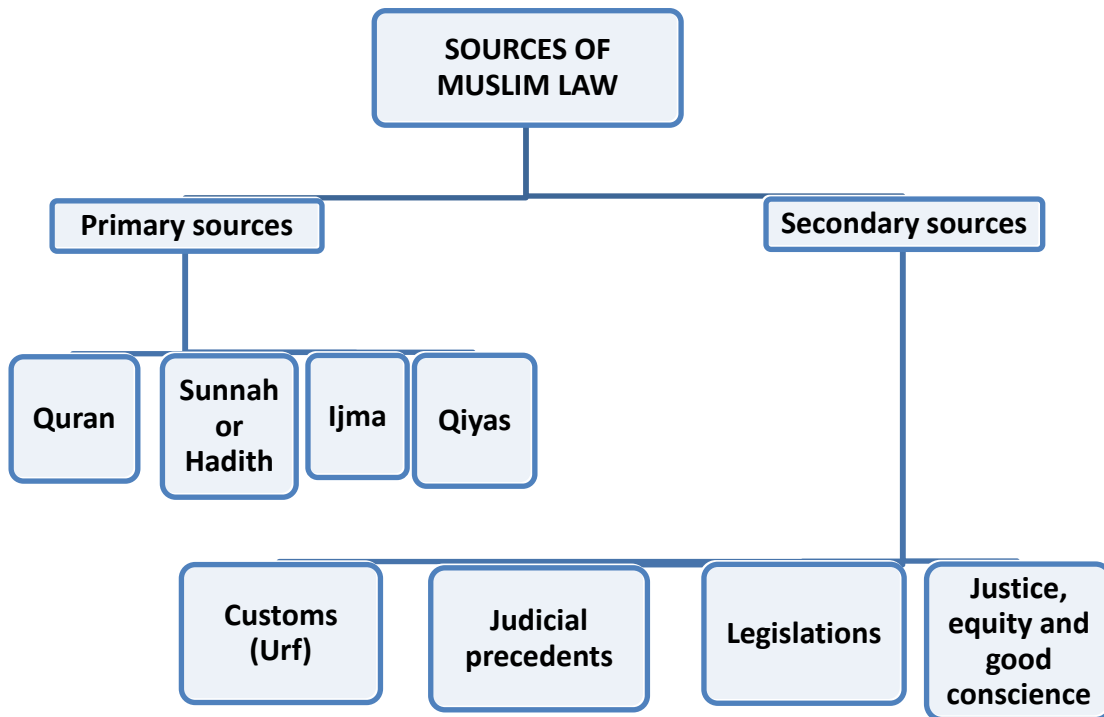
- ✓ After the death of Prophet Mohammed the question as to who would be the new successor as the ruler of Arabia arose.
- ✓ Prophet did not leave an heir and the closest to him at that time was Ali, his son in law, friend and cousin.
- ✓ Two groups were formed which were formed which were on political basis rather than religious basis.

- ✓ **Group one wanted Ali to be the successor – Shias**
- ✓ **Group two wanted an election – Sunnis**

- ✓ Sunnis held the election and **Abu Bakr** (father in law of prophet, father of Kadija) was elected as their leader and became the **1st Caliph**.
- ✓ (caliph is the chief Muslim religious and civil ruler who is considered as the successor of Mohammed)
- ✓ All swore allegiance to Abu Bakr, but Abu Bakr was assassinated in 2 years after his election.
- ✓ Umar became the 2nd caliph (ruled for 10 years then he was also assassinated)
- ✓ Usman became the 3rd caliph (ruled for 12 years and then assassinated)
- ✓ **Ali finally elected as the 4th caliph** (ruled for 5 years and he was also murdered in a battle in 661 A.D)
- ✓ This bloodshed over all the years led to more differences between shias and sunnis.
- ✓ After Ali, his elder son Hasan became the 5th caliph but later resigned in favor of **Mouvia** (leader chosen by Sunnis) but even after resigning he was assassinated.
- ✓ After **Hasan** was murdered Ali's younger son Hussain was regarded by the Shias as their religious leader (not political just religious)
- ✓ But Hussain was also murdered by the forces of Yazid (Son of Mouvia)
- ✓ By this time the differences between Shias and Sunnis became very wide and almost irreparable.
- ✓ Muharram is observed to remember the death of Hussain in the battle of Karbala in 680 A.D.

- ✓ After that the power was held in the hands of Sunnis, Mouvia introduced hereditary succession rule and founded the Umayyad Dynasty and the religious kingdom became a Dynastic rule.
 - ✓ Later after many caliphs and change of dynasties the caliphate was finally abolished in 1924 by the National Assembly of Ankara (Angola)
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Sources of Muslim law



Formal Sources (primary)

1. The Quran (Koran)

- Derived from the Arabic word '**Quarra**' which means '**to read**'
- The Qur'an is the first and most important source of Islamic law. Believed to be the direct word of God as revealed to Muhammad through angel Gabriel in form of messages (wahi) over 23 years in Mecca and Medina, the scripture specifies the moral, philosophical, social, political and economic basis on which a society should be constructed.

- Quran is basis of Muslim law, around 6000 verses out of which 200 deal with legal principles such as marriage, matrimonial remedies, maintenance, acknowledgement of paternity, transfer of property, gifts, wills, inheritance etc.

2. The Sunnah (Sunnat and hadis)-

- Meaning ‘**sunnah**’ means **practice** ,‘**hadis**’ means **utterance**
- **Second** source of Muslim law and are supplementary to Quran.
- The term sunnah literally means some kind of practice, precedent or path of action. In Muslim law means the deeds and practices of Prophet. But sunnah not only includes the traditions of the Prophet, but also of his companions, Successors etc. Hadis are the utterances, occurrences or sayings of Prophet
 - ✓ whatever the prophet said in words- ‘**Sunnat-ul-qaul**’
 - ✓ whatever he did-‘**Sunnat-ul-fail**’
 - ✓ Whatever he allowed to be done without actually saying it (tacitly)- ‘**Sunnat-ul-tuqrir**’

3. Ijmaa [unanimous thinking]

- It means consensus or opinion of jurists (Mujtahids) on any point of law in absence of any rule laid down in Quran or Sunnah.
- The literary meaning of ijma is unanimous thinking of agreement among the followers of disciples of prophets in a particular age or on a particular question of law, religion and personal matters. Therefore whatever was considered good for the entire society and the community was laid down as principles and Ijma includes the principle of Living that has been unanimously accepted by the entire society.
- This source has been validated by both the Quran and the prophet (Via sunnat)

4. Qiyas (reasoning) (shias don't recognize it)

- It is called analogical deductions. If there is any problem on which Quran, Sunnah or Ijma are silent then the analogical deductions are applied to ascertain the law
- It is Collection of rules and principles deductible by the methods of analogy and interpretation from the Quran Sunnat and Ijmaa. Shias believe that if the scope of law has to be widened it should be only done by imam and no one else.

Informal Sources (Secondary)

5. Customs and usages having force of law. –

- Custom was never formally recognized as a source of law by Muslim jurist but occasionally referred as a supplementary law. Muslim law includes many rules of Pre Islamic customary law. Customs do not command any spiritual authority like Ijma. Custom hold the same rank as in absence of Expressed text.

6. Judicial Decision-

- The Muslim law has been supplemented on many points by judicial decisions. on some points of judicial decisions have modified the pure Muslim law for example under the pure Muslim law no interest was allowed on a Dower but in **Hamira Bibi Vs Zubaida Bibi**, the privy Council allowed interest on Dower

7. Legislation

- Though most of Muslim law is not codified but some of it is codified like. Shariat Act, 1937 Dissolution of Muslim marriage act, 1939 etc. The Muslim Women (Protection of Rights on Divorce) ACT, 1985

8. Justice Equity and good conscience.

- Under Muslim law principle of justice equity and good conscience can also be regarded as one of the source. Abu Hanifa, the founder of the Hanifi sect, expounded the principle that rule of law based on analogy could be set aside at

the option of the judge on the liberal construction. whenever there is a conflict of opinion and there is no specific rule to guide the court, the court follows that opinion which is more in accordance with justice, equity and good conscience

SCHOOLS OF MUSLIM LAW

Two Major Schools – Sunni and Shia sects

- Main difference – Shias reject all traditions or words of any jurists which were handed down by anyone other than Ali (Successor of prophet), therefore they are called Shia –t –i- Ali or ‘Fraction of Ali’
- Sunnis consider the traditions and also Decisions of the Imams and the general body of knowledge given by jurists which supplement the rules of the quran.
- The division between the Sunni and Shia sects happened due to dispute concerning the question of succession after the death of Prophet.
- **Sunni sect:** This sect advocated for method of election for determining the successor of Prophet This view was advocated by Ayesha Begum, the youngest wife of Prophet.
- Elections were held and **Abu Bakr** was elected. He became the **first Caliph.**
- **Shia sect:** Minority believed that elections are not the suitable method and it emphasized on the spiritual leadership of Prophet. They argued that quality comes from nobility of blood and hence principle of succession should be adopted rather than principle of election.
- This view was advocated by Fatima, the daughter of Prophet. Consequently Ali was appointed as first Imam.
- **Motazila sect:** They are defectors from Shia sect. However, they do not associate themselves with any of the above two sects. It emerged in 9th Century A.D. as was established by Ata-al-Ghazzal.
- This division later resulted in separation of legal principles as well.

Two major Schools of Shia

- Ithana Asharia [two sects- Akhbari and Usuli]
- Ismaili [khojas and bhoras]
- Zyadis school

Four Major School of Sunnis:

- Hanafi [Founder- Imam Abu Hanifa]
- Shafei [Founder- Ash Shaefi]
- Maliki [Founder- Imam Malik-Ibn-Anas]
- Hanbali [Founder- Ibn Hanbal]

