

## THE SYSTEM OF LEGISLATION IN ISLAMIC CULTURE

**Islamic** decrees safeguard the rights of people and assure their success in this world and in the hereafter. Following are the sources of Islamic legislation:

### 1- The Holy Qur'an

The Holy Qur'an is the first source of legislation in Islam. Allah says in the Qur'an:

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنزَلَ اللَّهُ إِلَيْكَ﴾  
المائدة: ٤٩

Translation of Meaning: “So judge between them by that which Allah hath revealed, and follow not their desires, but beware of them lest they seduce thee from some part of that which Allah hath revealed unto thee.” (Al-Maedah:49)

Falsehood cannot come at it from before it or from behind it. But it is a *Shari'ah* revealed by Allah. It is not allowed for anyone to follow any constitution whatsoever other than this. If a person follows a *shari'ah* which is contrary to Allah's *shari'ah*, declares *halal*(lawful) what Allah has declared *haram*(unlawful) and declares *haram* what Allah has declared *halal*, he becomes outside the fold of Islam.

That is why Allah has counted such legislators among the false gods who are worshipped instead of Allah. In reply to a question by Hadrat Adi bin Hatim (*RadhiAllahuAnhu*), the Prophet (ﷺ) explained this. The hadith goes on:

Adi bin Hatim (*RadhiAllahuAnhu*) narrated; I came to the Prophet (ﷺ) while I wore round my neck a cross made of gold. He said to me, “Adi, remove this idol from you.” And I heard him recite from surah al-Bara'ah:

﴿اتَّخَذُوا أَحْبَارَهُمْ وَرُهَبَانَهُمْ أَرْبَابًا مِنْ دُونِ اللَّهِ وَالْمَسِيحَ ابْنَ مَرْيَمَ وَمَا أُمِرُوا إِلَّا لِيَعْبُدُوا إِلَهًا وَاحِدًا لَا إِلَهَ إِلَّا هُوَ سُبْحَنَهُ عَمَّا يُشْرِكُونَ﴾  
التوبة: ٣١

Translation of Meaning: "They have taken as lords beside Allah their rabbis and their monks and the Messiah son of Mary, when they were bidden to worship only One God. There is no God save Him. Be HeGlorified from all that they ascribe as partner (unto Him)!" (At-Taubah:31)

Then Adi bin Hatim(*RadhiAllahuAnhu* ) exclaimed that they did not worship the gods. The prophet (ﷺ) said, "Surely, they declared halal as haram and haram as halal. Then people would follow them. And this is their worship."

The Holy Qur'an includes rulings on all things. These commandments are derived from the *nass* (the original Arabic texts of the Qur'an or hadith) either directly or on the basis of the rules based on the *nass*. Allah says,

﴿ مَا فَرَّطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ ۚ ﴾ الأنعام: ٣٨

Translation of Meaning: "We have neglected nothing in the Book (of Our decrees)." (Al-An'aam : 38)

The decrees of the Qur'an fall under two categories:

**The Proved Commandments:** These are the commandments mentioned in Qur'anic *nass* clearly. Here the texts are available for direct deduction and inference. Logic is not to be applied here.

**The Unproved Common Commandments:** Those with command over deduction have the right to do *Ijtihad*\* and legislate provided that they do not conflict with the common Islamic rules. Such commandments also include what Islam has contributed in the fields of politics and economics.

## 2- Hadith of the Prophet (ﷺ):

After the Holy Qur'an, the *Saheeh* (authentic) *hadith* of the Prophet (ﷺ) are the second source of Islamic legislation. Allah says,

﴿ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا ۚ ﴾ الحشر: ٧

Translation of Meaning: "And whatsoever the messenger giveth you, take it. And whatsoever he forbiddeth, abstain (from it)." (Al-Hashr:7)

And Allah says at another place, Allah says:

﴿ فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا ﴾ النساء: ٦٥

Translation of Meaning: “But nay, by thy Lord, they will not believe (in truth) until they make thee judge of what is indispute between them and find within themselves no dislike of that which thou decidest, and submit with full submission.” (An-Nisa:65)

Therefore, in case there is no evident proof from the Qur'an we must return to the *Sunnah* and accept unhesitatingly the sound *Sunnah*. The *Sunnah* either describes the decrees present in the Qur'an or details the brief orders or describes new commandments. To take an example, the Qur'an has mentioned the obligatory five-time prayers but it did not detail how to do it or how many *rak'ats* are to be performed. But the *Sunnah* describes all these minutes. We may come across various such examples in the chapters of worship and behaviour.

### 3: *Ijma'a* (Consensus)

*Ulama* (Islamic Scholars) are unanimous over *Ijma'a* being the third source of Islamic legislation besides the Qur'an and Saheeh *Sunnah*. *Ijma'a* refers to post-prophetic era agreement of all the *mujtahideen* over a *Shari'ah* issue. This issue is not proven directly from the *nass* (Text) of Qur'an or Hadith. According to the jurisprudents, *Ijma'a* will not be valid until it has its base in the Qur'an or hadith.

The *mujtahideen* are the *ulama* who are well aware about the proofs of the Holy Qur'an and the *Sunnah* as well as about the opinions of other *ulama*. Besides, they necessarily have command over deduction and inference. There are various proofs for *Ijma'a*.

### Qur'anic Evidence:

Allah, the Exalted, says,

﴿ وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا نَبَيَنَّ لَهُ الْهُدَىٰ وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّىٰ وَنُصْلِهِ جَهَنَّمَ ۖ وَسَاءَتْ مَصِيرًا ﴾ النساء: ١١٥

Translation of Meaning: “And whoso opposeth the messenger after the guidance (of Allah) hath been manifested unto him, and followeth other than the believer's

way, We appoint for him that unto which he himself hath turned, and expose him unto hell – a hapless journey's end!”(An-Nisa:115)

*Sabilul Mu'mineen* (believer's way) is that way of the believers upon which the *mujtahidulama* of the *Ummah* have agreed.

### Proof from the Sunnah

ثَلَاثٌ لَا يُغِلُّ عَلَيْهِنَّ قَلْبُ مُسْلِمٍ: إِخْلَاصُ الْعَمَلِ لِلَّهِ، وَمُنَاصَحَةُ أئِمَّةِ الْمُسْلِمِينَ، وَلُزُومُ جَمَاعَتِهِمْ، فَإِنْ دَعَوْتَهُمْ تَكُونُ مِنْ وَرَائِهِمْ. (الترمذى و ابن ماجة)

Translation: There are three things in which the heart of the believer does not betray: sincerity of action for the sake of Allah, offering sincere advice to the rulers of the Muslims, and adhering to the Jama'ah (main body of the Muslims). Their supplication is answered (i.e. encompassing every good, and all of the people).” (Tirmizi, Ibn-e-Majah)

At another place he (ﷺ) said:

إِنَّ اللَّهَ لَا يَجْمَعُ أُمَّتِي عَلَى ضَلَالَةٍ وَيَدُ اللَّهِ مَعَ الْجَمَاعَةِ وَمَنْ شَذَّ شَذَّ إِلَى النَّارِ (الترمذى)

Translation: “Indeed Allah will not gather my Ummah upon deviation, and Allah's Hand is over the Jama'ah, and whoever deviates, he deviates to the Fire.” (Tirmizi)

### 4- Qiyas: 00

Besides the Qur'an, Hadith and *Ijma'a*, *Qiyas*\*\* is the fourth source of Islamic legislation. The hadith:

”أَنَّ امْرَأَةً مِنْ جُهَيْنَةَ جَاءَتْ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَتْ : إِنَّ أُمِّي نَذَرَتْ أَنْ تَحُجَّ فَلَمْ تَحُجَّ حَتَّى مَاتَتْ أَفَأَحُجُّ عَنْهَا ؟ قَالَ : نَعَمْ حُجِّي عَنْهَا أَرَأَيْتِ لَوْ كَانَ عَلَى أُمِّكَ دَيْنٌ أَكُنْتَ قَاضِيَةً أَقْضُوا اللَّهَ فَإِنَّهُ أَحَقُّ بِالْوَفَاءِ.” (البخارى و مسلم)

Narrated Ibn‘Abbas: A woman from the tribe of Juhaina came to the Prophet (ﷺ) and said, “My mother had vowed to perform Hajj but she died before performing it. May I perform Hajj on my mother's behalf?” The Prophet (ﷺ) replied, Translation of Meaning: “Perform Hajj on her behalf. Had there been a debt on

your mother, would you have paid it or not? So, pay Allah's debt as He has more right to be paid.” (Bukhari, Muslim)

This hadith shows that the Prophet (ﷺ) used *Qiyas*. He applied the condition of Hajj to debt. If the woman could pay her mother's debt, she could also perform hajj on her behalf.

If a situation is presented before a *mujtahid* about which he cannot find explicit *nass* from the Qur'an or hadith nor there is *Ijma'* of *ulama* over it, the *mujtahid* will search for a similar case with a known commandment and look for any *illat* (shared essential reason) between them, (if the reason is found) then the decree about the new case will be the same as about the original known case. And it is *Qiyas*.

The majority of the jurists agree that also *Qiyas* is a proof. This is supported by the Qur'an, hadith and the actions of the companions of the Prophet (ﷺ).

### Proof from the Qur'an:

﴿يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِيَ الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا﴾ النساء: ٥٩

Translation of Meaning: “O ye who believe! Obey Allah, and obey the messenger and those of you who are in authority; and if ye have a dispute concerning any matter, refer it to Allah and the messenger if ye are (in truth) believers in Allah and the Last Day. That is better and more seemly in the end.” (An-Nisa:59)

“Referring to Allah and His Messenger” means turning to Allah and His Messenger in the issues over which a consensus has not been arrived. When a shared reason has been found between the new and the old cases, the commandment of the old case will apply to the new one.

**Proof from the *Sunnah* of the Prophet:** There are countless evidences including the one mentioned in the beginning of *Qiyas*.

**Evidence from the Actions of the Companions of the Prophet:** The companions (may Allah be pleased with them) elected Abu Bakr (*Radhi Allahu Anhu*) their caliph and swore allegiance to him. The reason was that the Prophet (ﷺ) had chosen him to lead the prayer. The Muslim looked for a similarity between the

*Imamat-e-Kubra* (The Big Leadership meaning here political leadership) and *Imamat-e-Sughra* (The Small Leadership meaning here leading daily prayers). They said, “The Prophet (ﷺ) had selected Abu Bakr (*RadhiAllahuAnhu*) for our religious affair, then why should we not select him for our worldly affair.”

Besides these four sources, the *ulama* have mentioned other sources and origins for inference. Among them are *Masalih-e-Mursala* (legislating a law with public interest, whether religious or worldly, in view), *Istihsan* (every evidence as compared to apparent *Qiyas* is *Istihsan*. And some have defined it: leaving *Qiyas* and adopting that which is more suitable for public), *Istishab* (applying any proven decree to the other ages until any hadith has rejected it), the *Shari'ats* before us, that which is not against our *Shari'ah*, the saying of a *Sahabi* (Prophet's companion) if it does not go in contrast to the spirit of the *Shari'ah*.

So, uniqueness of Islam's legislative system and its effect in construction of a civilization becomes crystal clear.

\* **Ijtihad** (diligence) is an Islamic legal term that means “independent reasoning” or “the utmost effort an individual can put forth in an activity.” As one of the four sources of Sunni law, it is the decision-making process in *Shari'ah* through personal effort which is completely independent of any school of jurisprudence (*fiqh*). It requires a thorough knowledge of theology, revealed texts and legal theory (*Usoolul-Fiqh*); an exceptional capacity for legal reasoning; thorough knowledge of Arabic. By using both the Qur'an and hadith as resources, the scholar is required to carefully rely on analogical reasoning to find a solution to a legal case.

\*\* **Qiyas** is taking an established ruling from Islamic Law and applying it to a new case, in virtue of the fact that the new case shares the same essential reason for which the original ruling was applied. It is a method that Muslim jurists use to derive a ruling for new situations that are not addressed explicitly by the Qur'an and the Sunnah.

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