

ISLAMIC JURISPRUDENCE

A Historical Perspective

ISLAMIC FIQH SERIES

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Sahih Iman Publication

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PREFACE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله رب العالمين، والصلاة والسلام على سيدنا محمد وعلى آله وصحبه أجمعين

The Islamic schools of thoughts were developed as a natural evolution during the course of Islamic History. When Judges were sent by the Central Government to the newly acquired territories, they faced a totally new environment and new issues to deal with in those new territories. They tried to base their decisions on Quran and act according to Sunnah. However, when they could not relate a clear evidence about a specific case in both these resources, they had to judge cases as per their jurisprudence acumen. This practice was later known as 'Opinion or Analogical Reasoning' (Ra'y and Qiyas).

Earlier, the Usul al-Fiqh were not compiled by anyone in a written format. The first known written work on this subject is 'Risala', written by Imam Shafii. After him over centuries, scholars produced monumental works in Islamic Jurisprudence (الفقه) like Fath Al-Qadir, Hashiyat Ibn Abidin in the Hanafi School, Al-Dhakirah in the Maliki School, Al-Majmua, Al-Hawiin in the Shāfi'i School and Al-Mughni in the Hanbali School of thought.

We have briefly described in this book the historical perspective of Islamic Jurisprudence (الفقه الإسلامي).

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BRIEF HISTORY

During the Caliphate of Hazrat Abu Bakr (634-632) (رضى الله تعالى عنه) and Umer (رضى الله تعالى عنه) (644-634) (تعالى عنه) people trusted and acted upon the guidance of their Caliphs without any doubts. The atmosphere was contained and trustworthy. When Hazrat Abu Bakr (رضى الله تعالى عنه) insisted upon collecting Zakat while Muslims were still mourning the death of Prophet Mohammad (صلى الله عليه و آله وسلم), nobody revolted against him. Rather they trusted him and agreed to abide by this important Islamic obligation.

When Hazrat Umer (رضى الله تعالى عنه) asked Hazrat Khaled Ibn Al-Walid (رضى الله تعالى عنه) (who won many battles against the then super powers - Sassanid Empire of Iran and Byzantine Empire of Rome) to step down from the position of Commander-in-Chief of the Muslim Army and appointed Hazrat Abu Obaida (رضى الله تعالى عنه) in his place, not a single voice of dissent came out in open as people trusted Hazrat Omer (رضى الله تعالى عنه) in all the decisions he made.

Similarly, when during the reign of Hazrat Umer (رضى الله تعالى عنه), the ruling for divorce was made as per the requirement and understanding of the people at that time, people trusted the senior Sahabah at that time who were consulted in this context. The divorce rulings established during Hadhrat Umar's (رضى الله تعالى عنه) time is still followed throughout the Muslim world. In the same way, when Hazrat Umer (رضى الله تعالى عنه) started Taraweeh prayer in congregation in mosques, everyone appreciated. As a matter of fact, Hazrat Ali (رضى الله تعالى عنه), the greatest Jurist of Muslim Ummah, is reported to have praised Hazrat Umer (رضى الله تعالى عنه) publicly.

Why it was so? Because people knew that their religious guides will never do anything which is contrary to the teachings of Quran and Sunnah. Their trust in them was valid, which is testified by the recorded events of Islamic history.

THE REASONS FOR SUSPECTING CALIPH'S ACTIONS

It is a consensus opinion among Muslims that Hadhrat Abu Bakr, Hadhrat Umer, Hadhrat Uthman and Hadhrat Ali (رضى الله تعالى عنهم) were rightly guided Caliphs. Then why the last two Caliphs were treated badly by some people? It is because, during their times, some Muslims thought it was their right to suspect the actions of the Caliph. They started judging Caliph's decisions as per their limited knowledge and understanding.

By the time Hazrat Uthman's (رضى الله تعالى عنه) became Caliph, many new territories were conquered by Muslims. New converts joined the Islamic nation. As the super powers were subdued, lot of wealth started pouring into Islamic nation. When the atmosphere changes, the look of the nation also changes. The new converts did not have the opportunity of training as the old Sahabah had during testing times under the leadership of Prophet Mohammad (صلى الله عليه و آله وسلم). The new converts carried with them their old conventions and ways of thinking. When these two groups mixed, the atmosphere was sure to change. In this changed scenario, even the old good Muslims got carried away by the propaganda campaigns of the new converts.

It is a known fact that Sahabah are the best people among the entire Muslim Ummah. Among Sahabah the people who participated in the battle of Badr are the best. Among them, the 10 companions (Ashra-e-Mubasshirah) are the best and among them, the 4 rightful Caliphs are the best in Muslim Ummah. This shows that the goodness and understanding of people differs from one another.

The goodness and understanding abilities of rightly guided Caliphs is greater than the rest of the companions of Prophet Mohammad (صلى الله عليه و آله وسلم). Then, why the earlier two caliphs (Hadhrat Abu Bakr and Hadhrat Omer - رضى الله تعالى عنهما) did not have the kind of trouble and challenges to their rule as faced by Hadhrat Uthman and Hadhrat Ali (رضى الله تعالى عنهم)? It is because the earlier Caliphs had to deal with Muslims who had the opportunity to have the company of Prophet Mohammad (صلى الله عليه و آله وسلم). In addition, they ruled with iron hand as they knew the mindset and background of tribal Arabs. The last two Caliphs were moderate in their dealings. They gave time to trouble makers to correct themselves rather than taking decisive actions.

After the death (in plague) of Yazid Ibn Abi Sufyan (رضي الله تعالى عنه), who was Governor of Syria, Hadhrat Umer (رضي الله تعالى عنه) appointed his brother, Muawiya Ibn Abi Sufyan (رضي الله تعالى عنه) as Governor of Syria in 640 AD. Muawiya's (رضي الله تعالى عنه) rule and appointment of his son as heir apparent show the changing scenario of the Muslim nation. We have written many books about Muawiya bin Abi Sufyan (رضي الله تعالى عنه).

As has been described earlier, when new territories were conquered by Muslims, people in these territories accepted Islam, wealth started pouring in and the worldly defects started to show up in Islamic state. These things came out in open during Hadhrat Uthman's (رضي الله تعالى عنه) Caliphate (644 - 656). People started doubting the Caliph. Many new conspiracies were hatched against Hadhrat Uthman (رضي الله تعالى عنه) and finally he was martyred in his own house on July 17, 656 AD.

After the death of Hazrat Uthman (رضي الله تعالى عنه) a huge confusion was created among Muslims by vested interests. They divided the Muslim community vertically and convinced Ummul Momineen Aisha (رضي الله تعالى عنها) that the Caliph, Hadhrat Ali (رضي الله تعالى عنه) was not cooperating in arresting the assassins. When she was taken into confidence, they formed an army in her name, without any consultation with her and attempted to overthrow the Caliphate and made it look like She was fighting against the Caliph. Soon Ummul Momineen Aisha (رضي الله تعالى عنها) realized the plots of these vested interest and kept herself away from them for the rest of her life. When they did not succeed in their attempt, they declared open mutiny against the Central Authority of the Caliph and fought wars with him.

The vested interest never allowed the central authority to take control of Islamic territory. Hadhrat Ali (رضي الله تعالى عنه) spent his six years of Caliphate (656-661 AD) in internal strife created by vested interests. Finally he was martyred in 661 AD.

After the collapse of the Central Authority a dynastic rule was established which was known as Umayyad dynasty. This dynasty eliminated all possible threats to their rule by eliminating everyone who opposed them.

In their eagerness for power, they did not spare even the grandsons of Prophet Mohammad (صلى الله عليه و آله وسلم). Imam Hassan (668-624) (رضي الله تعالى عنه) was poisoned and martyred and later the entire family of Imam Hussain (680 - 626) (رضي الله تعالى عنه) was martyred in Karbala, Iraq in October 680 AD.

The turmoil in Islamic Governance also had its effects on the cultural and spiritual atmosphere of the nation. The respect of the members of the Prophet's (صلى الله عليه و آله وسلم) house hold and important Islamic icons was fast fading. Public curse and insult of Hadhrat Ali (رضى الله تعالى عنه) was officially sponsored which continued for several decades after his death. For over 65 years, between 657 and 720 the curse was an official Government policy of the Umayyad dynasty. During this period, Hadhrat Ali (رضى الله تعالى عنه) and his sons were cursed and insulted at public platforms and Juma sermons in Government-controlled mosques all over the Islamic State. Luckily there were some towering personalities during this tumultuous time who collected and preserved Prophet's (صلى الله عليه و آله وسلم) traditions in book forms for the following generations.

The first biggest blow came from traditionists (Ahle Hadith). In their inability to understand the wisdom of earlier Imams of Fiqh (Imam Abu Hanifa and Imam Malik, they alleged that these Imams depended more on their 'own opinions, and analogical reasoning' rather than Sunnah. The Traditionists failed to understand that these Imams were actually implementing Sunnah in all their actions. The traditionists debated with the adherents of the earlier Imams till Imam Shafi'i came on scene. Imam Shafi'i was the student of Imam Malik for several years but as per the requirements of the new times, he thought it necessary to write down the principles of 'Islamic Jurisprudence' in a booklet which satisfied both the traditionists and the adherents of old Imams.

Imam Abu Hanifah was born 19 years after the martyrdom of Imam Hussain (رضى الله تعالى عنه). This was the time of the first generation followers (ta'abaeen) of the companions of Prophet Mohammad (صلى الله عليه و آله وسلم). The people in power were members of Umayyad dynastic rule. But Imam Abu Hanifah was lucky. He was close to the descendants of the Prophet's (صلى الله عليه و آله وسلم) household. His teachers, among others, included Imam Mohammad Al-Baqir (رضى الله تعالى عنه) (the second son of Hazrat Imam Hussain (رضى الله تعالى عنه) who survived the Karbla episode), Imam Ja'far Al-Sadiq (رضى الله تعالى عنه), the grandson of Hazrat Hussain (رضى الله تعالى عنه), Imam Zayd Ibn 'Ali (رضى الله تعالى عنه) and Hammad Ibn Sulayman (رضى الله تعالى عنه).

Imam Abu Hanifa is the first Scholar, Scientist and Jurist of Islamic Jurisprudence who had been trained under the guidance of the members of Prophet's (صلى الله عليه و آله وسلم) household. Therefore, many Muslims refer him as Supreme Imam (Imam-e-Azam). He also had the opportunity to take guidance from first generation followers of the companions of Prophet Mohammad (صلى الله عليه و آله وسلم) who were settled in Kufa, Iraq.

During Imam Abu Hanifa's time, Muslims had not started documenting things in a written format. As a matter of fact, the most authentic Hadith collector, Imam Bukhari was the student of the students of Imam Abu Hanifa. Imams Malik and Abu Hanifa both did not document in a written format the 'Principles of Islamic Jurisprudence' (Usul-e-Fiqh) they were practicing because it was not felt necessary during their time.

Some historians say that Imam Shafi'i was born on the day when Imam Abu Hanifa died. Imam Shafi'i was the first scholar and Islamic Jurist who wrote the principles of Islamic Jurisprudence in a booklet and made it public.

When we look at the life history of Imam Abu Hanifa , we come to the conclusion that the objections of the Traditionists (Ahle Hadith) at that time were out of context. In addition, it is not possible for a Muslim to suspect that an Islamic scholar of Imam of Abu Hanifa's caliber, who was trained directly under the guidance and education of Ahle Bait-e-Rasulullah (صلى الله عليه و آله وسلم) and other Sahabah would use his personal opinions that do not match with Prophet's (صلى الله عليه و آله وسلم) commandments.

Imam Ahmad Ibn Hanbal was the student of Imam Shafi'i, but he was more inclined towards the traditionists' point of view in certain respects. Therefore, he gave more emphasis on Ahadith of Prophet Mohammad (صلى الله عليه و آله وسلم) than on 'opinion and analogical reasoning'. However, he did not yield one hundred per cent towards the traditionists point of view.

Later on, a consensus opinion was gradually evolved in Islamic nation that all the above Imams of Islamic Jurisprudence's points of views reflect the 4 corner borderline of Sharia. One end is held by Imam Abu Hanifa , the second one is held by Imam Malik, the third end is held by Imam Shafi'i, and the fourth end is held by Imam Ahmad Ibn Hanbal. Thus, it was considered that a Muslim should adhere to any of the above Imams in his following.

Imam Ahmad's observations on Quranic verses that depict Allah's (عَزَّ وَجَلَّ) attributes are misrepresented by Salafis. They quote Imam Ahmad to draw literal/textual meanings of these verses, to mean that Allah (عَزَّ وَجَلَّ) has hands, face, eyes and other limitations.

What Imam Ahmad said was 'not to ponder much on these verses and related Ahadith and let them be as they are and let us believe in the purport of Allah (عَزَّ وَجَلَّ) and His Apostle (صلى الله عليه و آله وسلم)'. His statements did not mean that people take the literal/textual meanings of these verses and claim hands, eyes and face and limitations for Allah (عَزَّ وَجَلَّ).

Some people claim that Imam Ahmad was textualist. This is misrepresentation of facts and false allegation on the Imam. If Imam Ahmad's statements really meant, what Salafis claim, then he would have easily accepted Quran as the creation of Allah (عَزَّ وَجَلَّ) and saved himself from the physical torture of the then ruler who wanted him to declare Quran as a creation of Allah (عَزَّ وَجَلَّ).

This is a consensus opinion of the Muslim nation that after Imam Hanbal , the nation did not produce Muslim Jurists of the caliber of the 4 accepted Imams. Therefore, whatever research is done in the area of Islamic Jurisprudence, it is done within the borderlines of the 4 Imams' points of view.

However, this consensus opinion was challenged by Ibn Taymiyyah (1263-1328) who described that the following of 4 Imams of Fiqh was their personal emulation (taqleed). He rejected all the 4 Imams of Fiqh en masse. He propagated his new Khariji thinking which was as per his limited understanding. Ibn Taymiyyah did not study Islamic subjects under Shuyookh during his time. He studied books on his own and misled people from his oratory skills. He became the inventor of a Khariji sect which was later known as Salafism.

The followers of Salafism were very few for almost 5 centuries until the birth of Ibn Abdul Wahhab Najdi (1703-1792) who, on the back of military conquests of Saudis, the tribal lords of Najd, spread salafism in the whole of Arabian Peninsula.

Sauds took control of the Arabian peninsula in early 20th Century and made Salafism as their official religion. Salafis, Deobandis and their like minded groups have spread far and wide in the world these days.

