

The Sources of Law Under Islamic Law

To begin with, the meaning of the term source as used in Islamic law does not differ much from its use in positive law. If we look at the sources of research method in Islamic legal research, it can be classified into two main categories:

The Primary Sources

The sources directly related to the problem are the main and primary sources. Their originality may differ in degree. For instance, studying Qur'an while working on "the Quranic view of state" is primary importance than consulting books on the problem.

The primary sources in Islamic studies are the Qur'an, Hadith, *Ijmā'* and *qiyas*.¹ A research work done on the view of school or person relates the writings of that particular school or person as its main primary source.

However, according to Imran Ahsan Khan Nyazee states that the primary sources are the Qur'an and the Sunnah, because these sources contain the law for many cases and also serve as the basis for the extension of the law. In addition, the consensus of legal opinion (*Ijma'*) also contain the law, and its provisions can be used for the extending the law. But, in some basis, we must turn to the Qur'an and Sunnah again, that's why some jurists still consider that the primary sources are Qur'an and Sunnah.²

Al-Qur'an

The Qur'an is the book revealed the messenger of Allah, Muhammad (PBUH) as written in the *Mashaf* and transmitted to us from him through authentic continuous narration (*tawatur*) without doubt.³ Other jurist defines that the Qur'an is the words of Allah (Exalted) that were revealed to the Prophet (PBUH) in Arabic through the Angel *Jibril* (PBUH).

¹ Ali, Muhammad Mumtaz Ali, (1995), *Conceptual and Methodological Issues in Islamic Research: A Few Milestones*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, Kementerian Pendidikan Malaysia), p. 204-205

² Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, (Selangor: Mutiara Majestic, 2000), p. 156.

³ Al-Bazdawi, *Usul al-Bazdawi* in 'Abd al-Aziz al-Bukhari, *Kashf al-Asrar 'an Usul al-Bazdawi*, 1st edition. p. 23

Some jurists add the words “revealed in Arabic” to emphasise that it cannot be translated, while other say that the Qur’an is the revealed and miraculous speech of Allah . . .,” to emphasise *i’jaz* (inimitable and miraculous nature) of the Book.⁴

Sunnah

The Sunnah can be defined as the saying, deeds, tacit approvals which emanated from the Prophet (PBUH). The significant element of the Hadis is that it is the collection of the narrations or texts that address that the Prophet said, did, approved or disapproved.

Ijma’ (Consensus of Legal opinion)

The word *ijma’* has literal meanings as well as a technical meaning. Literally, it be used in two senses. The first is determination and resolution. The second sense is agreement upon a matter. However, in the technical sense, *ijma’* can be defined as the consensus of the *mujtahids* (independent jurist) from the ummah of the Muhammad (PBUH), after his death, in the determined period upon a rule of Islamic law (*hukm syar’i*).⁵

Qiyas (Analogy)

Qiyas has a literal meaning as well as the technical sense. In its literal meaning the word *qiyas* means measuring or estimating one thing in terms of another. It also applies to making two things equal, that is comparing. This comparison maybe physical or it may rational. In the technical sense however, *qiyas* can be defined as the assignment of the *hukm* of the existing case found in the texts of the Qur’an, the Sunnah, or *Ijma’* to a new case whose *hukm* is not found in these sources on the basis of the common underlying attribute called the *‘Ilah* of the *hukm*.⁶

The Secondary source

⁴ Imran Ahsan Khan Nyazee, Islamic Jurisprudence, p. 157

⁵ Imran Ahsan Khan Nyazee, Islamic Jurisprudence, p. 183

⁶ Imran Ahsan Khan Nyazee, Islamic Jurisprudence, p. 214

The researches carried on previously and the interpretations put forth and the views expressed previously form the secondary source. In Islamic studies interpretations, translations, private opinions, and even the ijtiḥād can be classified as the secondary source.⁷

Furthermore, other sources based on human reason are secondary sources in the sense that, principles or rules or rulings that are extracted based on human experience called Ijtihad should not contradict any provision in the primary sources. Otherwise, any provision based on the human reason that contradicts with the provision in the primary sources must throw out of mind.

⁷ Ali, Muhammad Mumtaz Ali, (1995), *Conceptual and Methodological Issues in Islamic Research: A Few Milestones*