

HISTORICAL DEVELOPMENT OF ISLAMIC LAW: A DYNAMIC AND EVOLVING LEGAL SYSTEM

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ABSTRACT

This research paper discusses the evolutionary stages of Islamic law, how Islamic law has defined historical periods and in what form it exists before us today. The historical wheel of Islamic law has kept moving, rolling through the paths or different periods, without any stagnation.

During the Prophetic era, Islamic law depended on revelation. In the post-Prophetic era, the sources of law remained the same, but gradually the need for jurists became apparent.

This research describes the styles and character traits of jurisprudential eras and clarifies the character traits of the judicial system. In particular, this research is a clear demonstration to those who consider Islamic law static, how Islamic law is dynamic and not static.

Islamic law goes through various stages, so it is dynamic. Dynamism shows that Islamic law is stable and faces the challenges of all times. The evolutionary nature of Islamic law proves that it provides solutions to all kinds of difficult cases of any era and keeps the legal system sustainable.

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INTRODUCTION

It is clear as day that the revelation of Allah Almighty is the basis for the formation of Islamic law and it began with the mission of The Prophet Muhammad Peace and Blessings of Allah be Upon Him. During the era of the Prophethood, the judicial system, law and government were centered on a single source, the Holy Prophet Muhammad Peace and Blessings of Allah be Upon Him.

During this period, the *Quran* was the first source and the *Sunnah* of The Prophet Muhammad Peace and Blessings of Allah be Upon Him was the second source of Islamic law. Later, during the time of the Companions, Islamic law was derived from the *Quran* and *Sunnah* and consensus was also included.

As the Islamic empires expanded, the number of cases that arose as a result of this expansion of government increased, and these cases were resolved through *Ijtihad* (اجتهاد) which is the great sign of dynamism. Thus, the sources of law in Islamic law gradually increased, which brought legal authority to the fore in a unique way and this became the basis of the evolving legal system (Al Mawardi, 1996, p. 12).

THE PERIODS THROUGH WHICH ISLAMIC LAW DEVELOPED

The legal wealth of which we are proud today was not amassed all at once. It was gathered during the period of fourteen centuries beginning from the time when the dawn of Islam broke and its sun began to shine on the globe. The writers used different methods in country these periods according to their methodology of research. These periods are determined as six. (Hallaq, 1997, pp. 27-29).

- i. Era of The Prophet Muhammad Peace and Blessings of Allah be Upon Him
- ii. Period of Khulafa-e-Rashedeen
- iii. After period of Khulafa-e-Rashedeen till beginning of second century (*Hijrah*)
- iv. From the beginning of second century (*Hijrah*) till mid of fourth century (*Hijrah*)
- v. From the mid of fourth century (*Hijrah*) till fall of Baghdad
- vi. From the fall of Baghdad till today

DEVELOPMENT OF ISLAMIC LAW THROUGH DIFFERENT PERIODS

Development of Islamic law has been accompanied by the turning of the wheel of time. Generally, in classical jurisprudence, Islamic jurists have mentioned six periods and have described the sources of Islamic law in these periods, which are described below (Zarqa, 1968, vol. 1, pp. 156-170).

FIRST PERIOD (PROPHETIC PERIOD)

The period of Prophethood is the one during which The Prophet Muhammad Peace and Blessings of Allah be Upon Him and His companions lived. It is the golden period in which Islamic Law formed in its true sense because law of *Shari'ah* (شريعة) was formed, perfected and completed in this period.

The Prophet Muhammad Peace and Blessings of Allah be Upon Him performed his function to convey the laws of *Shari'ah* (شريعة) by the command of Allah Almighty to judge among the people.

Allah Almighty says in the Holy Quran:

“وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ”

{So judge between them according to what Allah has sent down.} (Al-Qur'an. Al-Ma'idah 5:49)

He further said:

“إِنِ الْحُكْمُ إِلَّا لِلَّهِ”

{The judgment rests with none but Allah}. (Al-Qur'an. Yusuf 12:40)

THE SOURCES OF ISLAMIC LAW DURING THIS PERIOD

- i. The Quran
- ii. The *Sunnah*
- iii. *Ijtihad* (اجتهاد)

(Abu Zahrah, 1958, pp. 12-20)

SECOND PERIOD (RIGHTLY GUIDED CALIPHS)

Islamic Law during the period of the Rightly-Guided Caliphs. This period starts from the death of The Prophet Muhammad Peace and Blessings of Allah be Upon Him and ends in 41 A.H. In this period the senior companions of Holy Prophet were at the major posts of Islamic State.

Factors which are affected Islamic law during this period.

1. Expansion of the area of Islamic State
2. Mixing of the Arabs with others.

THE SOURCES OF ISLAMIC LAW DURING THIS PERIOD

- i. The Holy *Quran*
- ii. The *Sunnah*
- iii. *Ijtihad* (اجتهاد)
- iv. *Ijma* (اجماع)

(Abu Zahrah, 1958, pp. 21-35)

THIRD PERIOD (EARLY JURISTIC FORMATION PERIOD)

Islamic Law during the period of junior companions and successors. This period starts from 41 A.H. and continues till the starting of the Second Century of the *Hijrah*.

SOURCES OF ISLAMIC LAW DURING THIS PERIOD

- i. The Holy *Quran*
- ii. The *Sunnah*
- iii. *Ijtihad* (اجتهاد)
- iv. *Ijma* (اجماع)

This period has some special characteristics which influenced the formation of Islamic Law. Some of these are as follows:

- Difficulty of establishment of *Ijma*. (اجماع)
- Dispersion of the companions.
- The diffusion of transmission of Hadith.
- Appearance of lie in Hadith.
- Appearance of attitudes of tradition (Hadith) and opinion. (Khallaf, 1996, pp. 56-68)

FOURTH PERIOD (CLASSICAL PERIOD OF MADHAHIB CONSOLIDATION)

This period is also called flourishing period of the Islamic history as four schools of thought were established in this era. This period begins with the starting of the Second

century of the *Hijrah* and ends with the half of the fourth century of the *Hijrah*. This era is different from other periods for three characteristics:

- i. Firstly, Islamic Law nourished in it greatly.
- ii. Secondly, in this period Islamic sciences were recorded and compiled.
- iii. Thirdly, in this period many legal schools were established.

This flourishing period of Islamic Law is remarked with these some factors.

- Special interest of the Abbasid Caliphs in Islamic Law and the jurists.
- Freedom of opinion.
- Growth of the academic movement
- Giving the legal opinions frequently (Fatawa فتاوى)
- The compilation of sciences.

SOURCES OF ISLAMIC LAW DURING THIS PERIOD

- i. The Holy *Quran*
- ii. The *Sunnah*
- iii. *Ijtihad* (اجتهاد)
- iv. *Ijma* (اجماع)
- v. Analogy (*Qiyas* قياس)
- vi. *Istihsan* (استحسان)
- vii. Custom (*Urf* عرف)
- viii. *Maslahah* (مصلحه) (Abu Zahrah, 1958, pp. 90-110)

FIFTH PERIOD (POST-CLASSICAL PERIOD AND TAQLEED تقلید)

The fifth period is from the mid-fourth century until the fall of Baghdad, in which Islam continued to spread geographically and the need to establish an Islamic judicial system arose in these areas. During this period, large judicial systems were established in various cities, including Cairo, Damascus, and Baghdad. During this period, the schools of thought founded in the fourth era became stronger. This was the period in which imitation raised its head and these four schools of thought began to be practiced.

THE SOURCES OF ISLAMIC LAW DURING THIS PERIOD

- i. The Holy *Quran*
- ii. The *Sunnah*
- iii. *Ijma* (اجماع)
- iv. *Qiyas* (قياس)
- v. *Urf* (عرف)
- vi. *Istihsan* (استحسان)
- vii. *Maslahah* (مصلحه) (Hallaq, 1997, pp. 153-170)

SIXTH PERIOD (MODERN PERIOD AND REVIVAL OF IJTIHAD اجتهاد)

The sixth is from the fall of Baghdad to the present day. During this period, there was no significant development in jurisprudence, but Islamic jurisprudence remained somewhat active in terms of a few modern issues.

Most of the time, an application process was adopted, under which the judiciary continued to carry out its functions.

In this way, Islamic law provided solutions to problems. During this period, the need for *Ijtihad* began to be considered essential in order to find solutions to the cases that arose in that era.

THE SOURCES OF ISLAMIC LAW DURING THIS PERIOD

- i. The Holy *Quran*
- ii. The *Sunnah*
- iii. *Ijma* (اجماع)
- iv. *Qiyas* (قياس)
- v. *Ijtihad* (اجتهاد)
- vi. *Urf* (عرف)
- vii. *Istihsan* (استحسان)
- viii. *Maslahah* (مصلحه) (Kamali, 2008, pp. 75-95)

PARA LEGAL INSTITUTIONS

The Judges are not only a part of Judiciary for the decisions and a single judge cannot dispense the justice alone. In addition to Judges there are also many departments, sections and offices, which play the vital role to provide justice to the people, which are called Para Legal Institutions. These are the backbone of Judiciary.

Following are the Para Legal Institutions:

- i. Jails.
- ii. Judicial lockup.
- iii. Afta. (أفتاء)
- iv. Tehkeem. (تحكيم)
- v. Advocacy.

Para Legal Institutions had been established in the era of The Prophet Muhammad Peace and Blessings of Allah be Upon Him. The companion of last Prophet, Umer ibn al-Khattab, may Allah be pleased with him extended these instructions. (Ghazi, 2005, p. 189)

As Judges maintain justice, law and order for the peoples. But there is an obstacle in doing that so a Judge alone cannot provide justice. As well there are also other departments and offices which play the

vital role in providing justice. Para legal institutions are the backbone of judiciary. Para legal institutions may be a law office corporation as a governmental agency, while a person working in a Para legal institute is known as a paralegal.

Following are some Para legal institutions;

Jail: A prison or jail is a place where an accused or prisoner is kept by the government for the purpose of rehabilitation. Jail and prison system was established in the era of Umar ibn al-Khattab. (Razaq, 2020, pp. 1-15)

Judicial lock up: A judicial lock up is a place of lock up or detention used for persons awaiting trial. Judicial lock-up was also introduced by Umar ibn al-Khattab in the mid of second century of Hijrah.

(Al Dawoody, 2017, pp. 45-47)

Afta (أفتاء): If a person issues a ruling is called *fatwa* (فتوى) the process of issuance of *fatwa* (فتوى) is called *afta* (أفتاء). Afta Institutions were established in the regime of Umar ibn al-Khattab. (Hallaq, 2009, pp. 52-60)

Tahkeem (تحكيم): If a Judge offers a ruling and everyone has to accept this ruling then it is called *tahkeem* (تحكيم). *Tahkeem* (تحكيم) began in the first period and its formal institute was established in the second period. (Khallaf, 1996, pp. 26-32)

Advocacy: Advocacy is the art of conveying a litigant's case to the judge in a proper manner. In the first period, people were allowed to present their case to The Prophet Muhammad Peace and Blessings of Allah be Upon Him through someone, but in the second period, this department became more strengthened and organized. Coulson, 1964, pp. 120-125)

CONCLUSIONS

Islamic law did not come all at once. It gradually passed through the era of the Prophethood, the Rightly Guided Caliph, the era of Companions, the *Tabi'een* (تابعين), and the *Tabi'een* (تابعين) and it continued to be formed, and during this time there was no stagnation in it anywhere.

Islamic law has confronted the social, political, cultural, familial, social and economic challenges of every era and provided solutions to the problems, to the point that the judiciary sector has established an autonomous position in the Islamic justice system.

In this field, the judges, according to their academic and jurisprudential background, maintained and promoted the essence of Islamic law.

This clearly demonstrates the gradual evolution, flexibility and practicality of Islamic law, revealing to the world that Islamic systematic justice is not just a fair decision between the parties, but rather the Islamic system of justice opens the door to the improvement of human standards in every aspect of life and a heavenly society.

This research brings maturity to the practicality of Islamic law in its implementation.

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