

AN ANALYSIS OF THE PRIMARY SOURCES OF SHARI'AH

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Abstract

Sources of Islamic Law are classified into primary and secondary sources. The primary sources as agreed by scholars includes: Quran, Hadith and Ijma'. Although there are divergent opinions by the scholars on the inclusion of Ijma' into the primary sources of Shariah as that was never part of the sources stated by the Prophet Muhammad (SAW). The purpose of this article is to discuss the important of this primary source of Islamic law in an attempt to solve any contemporary issue in our society. The article focuses on the detail analysis of Quran as sources of Shari'ah. The article reveals that Quran is a primary source of Sharia which all other sources are dependent upon. The article embarks on extensive examination of Hadith of Prophet Muhammad as another primary source of Sharia. Ijma' formed last discussion on the primary sources of Shari'ah with focus on its important and condition that must be satisfied before relying on it to formulate Islamic rule.

Keywords: Primary, Sources, Shari'ah, Quran, Hadith, Ijma'

Introduction

In Islamic Law, the term used for source is *dalil* which in plural form is *adillah*. The word *dalil* means guide or something that guides a person to a particular place or thing. The Qur'an in this sense is a *dalil* for the *ahkam* (legal rules) of Allah, because it leads us to the Book of Allah that contains rules (*ahkam*) related to the acts of the subjects. Therefore, examination of the contents of the *Qur'an* yields the information required about a *hukm*. The term *dalil* in this meaning is also considered equivalent to the term '*usulul-Ahkam*' (the roots of the rules) and *Masadir Al-Shariyyah-Alahkam* (legal sources of *Ahkam*).

The sources of *Shari'ah* could be divided into two major classes namely: the primary source and the secondary source. The primary sources, accepted universally by all Muslims, are the *Qur'an* and the *Sunnah*. The *Qur'an* and the *Sunnah*, referred to as *An-Nass*¹, constitute the two main sources of Islamic Law with *Qur'an* taking priority over the *Sunnah*. Majority of the scholars are of the opinion that *Ijmah* should also fall part of the primary sources of Islamic Law

¹ Command of the Allah has contained in the Holy Quran

so far the opinion is based on the provision of the *Qur'an* and *Sunnah*. This is in line with the provision of *Qur'an* chapter 4:59. "O you who believe obey Allah and obey the Messenger and those who are in authority among you". This article will discuss primary sources of Islamic law centred on *Al-Qur'an*, *Sunnah* and *Al-Ijmah*.

Qur'an is Allah's Word, being inimitable, revealed to His Messenger Muhammad (peace be upon him) in its Arabic word and meaning, recorded in the copies of the *Qur'an* and reported to human being through continuous transmission by a large number of people (*tawatur*)².

It is evident from the above definition that the Book is distinguished by the following characteristics.

Characteristics of *Al-Qur'an*

Firstly, the characteristics of the *Qur'an* could be found in its wording and mode of revelation. Both the wording and meaning of the *Qur'an* belong to Allah. Further explanation shows that the *Qur'an* was revealed from Allah to His Messenger in its word and meaning. The *Qur'an*, as the legal theorists say, is the words and meaning together. Accordingly, the *Sunnah* is excluded from the definition, because it (i.e. *Sunnah*) was revealed to the messenger in its meaning and not in its words. The revelation of the *Sunnah* came down to Allah's Messenger (peace be upon him) on its meaning, and the messenger conveyed this meaning to the people in his own words.³ This is in line with the word of Allah in the *Qur'an* when He says:

'The revelation of this Book is from Allah, the Exalted in Power, full of Wisdom. Verily it is we who have revealed the Book to thee in Truth; so serve Allah. Offering Him sincere devotion.'⁴

Secondly, the *Qur'an* is in the Arabic language. Allah, the excelled said 'surely we have revealed the *Qur'an* in an Arabic that you may understand'. (Q 12:2) Allah further said 'A Book the verses of which have been expounded in detail, an Arabic *Qur'an* for a people who have knowledge.' (Q 41:3). The jurists unanimously agreed that if the meaning of the *Qur'an* are conveyed in a language other than Arabic on which it was revealed, it will not be called the *Qur'an* and its recitation will not be considered a proof in law.⁵

Although, there are claims by some writers that the translation of the meanings of the *Qur'an* must be called the *Qur'an* and it must have its effect. They supported their claims with authority that Abu Hanifa

² H. H. Hassan, *An Introduction to the Study of Islamic Law*, Adam Publishers & Distributors; New Delhi-110001, p 139.

³ Ibid

⁴ *Qur'an* Chapter 39 verse 1-2

⁵ H. H. Hassan, *An Introduction to the Study of Islamic Law*, p. 139

⁶ Ibid

allowed the person who did not know Arabic to recite the *Qur'an* during the prayer on person, but this is not the correct position as the reliable authorities of the Hanafī's school have reported that Abu Hanifah withdrew this *ijtihad*.⁶ Although it was reported that Abu Hanifah restricts this concession to the occasion of needs because necessity is estimated. Therefore, it should not be maintained absolutely that the translation of the meanings of the *Qur'an* is considered to be the *Qur'an*.

It must be further noted that the prayer will not be valid by reciting the translation of the meanings of the *Qur'an* during it without need, nor will there be a devotion to its recitation nor will it be considered a source of law in deduction of rules. But the source of law is the Arabic words of the *Qur'an* alone. And as a result of this *al-Shafi* lays down in his book titled *Kitab al-Umm* that the learning of Arabic is an obligation on everyone who enters the fold of Islam so that he is able to understand the *Qur'an*, and to devote himself to its recitation, and to recite it during the prayer.⁷

Thirdly, the *Qur'an* has been transmitted to us through *tawatur* (continuous transmission by a large number of people) by recording it in the copies and preserving it in the copies and breasts. *Tawatur* means that a large number of people transmitted it from a large number of people whose secret agreement on lie, delusive imagination or error is not rationally possible. The *Qur'an* stands on the highest degree of *tawatur* because the *Ummah* has passed it from generation to generation without adding or removing anything from it. *Tawatur* in this sense conveys sure knowledge and definiteness about the soundness of transmission and report. Therefore, the legal theorists state that the *Qur'an* is totally definite in respect of its establishment, though the meanings of some of its words are presumptive.⁸

Fourthly and finally, the *Qur'an* is inimitable for man. Inimitability of the *Qur'an* is the belief that no human speech can match the Quran in its content and form. The Quran is considered an inimitable miracle by Muslims, effective until the Day of Resurrection and, thereby, the central proof granted to Prophet Muhammed in authentication of his prophetic status. The concept of inimitability originates in the Quran where in five different verses opponents are challenged to produce something like the Quran: "If men and jinn banded together to produce the like of this Quran they would never produce its like not though they backed one another."⁹ Its inimitability is obvious from its challenge to the Arabs who were masters of eloquence of the

⁶ Ibid p.140

⁷ Ibid

⁸ Ibid

⁹ Chapter 17 v.88

language. The inability to bring a shortest chapter (surah) like it also shows its inimitability. The Arab wanted to prove the Prophet a liar in his Message, as the *Qur'an* was the proof of its truthfulness and a sign of his Prophethood. Their inability to produce a few verses like it and its challenges to them are a positive proof that the *Qur'an* is the Word of Allah, and not of Muhammad (peace be upon him)¹⁰

Qur'an as Source of Shari'ah

The *Ummah* is unanimously agreed that the *Qur'an* is the first source among the sources of legislation and that it is incumbent on the jurist to consult it and rely on it in deduction of a rules about the problem that confront him. He will find in the *Qur'an* a rule for every incident provided in the text or by inference.

The *Qur'an* is primary source from which the rules are derived and other sources are considered as subordinate to it. Its authority and position in reasoning is derived from it. The proof of the *Sunnah* is even derived from the text of the *Qur'an* as obedience to Allah's messenger has been declared obligatory on the Muslims. When Mujahidin make a rule according to *Qur'an* and the *Sunnah*, their agreement on a rule is also a source of law. Analogy is not an independent source, because it is reasoning by the reason of the text and consensus.

Indication of 'Ahkam (Rulings) In the Quran

The *Qur'an* was transmitted by way of *Tawatun* (recurrence). Its authenticity as far as transmission is concerned is definite (*qat'iyun*). However, wordings (*Alfadah*) of the Quran are not all definitive (*qa'iyun*). Some words convey a definite meaning, which is not subject to interpretation while others convey probable meanings which are subject to interpretation while others convey probable meanings which are subject to interpretation.¹¹ A probable word can give two or more meaning. Taking these two aspects into consideration, it could be said that the *Qur'an* indicates *'Ahkam* (rulings) in two grades of strength which are the Definitive and Speculative.

The definitive text is one which is clear and specific, it has only one meaning and admits of no other interpretations. Examples of these definitive texts can be seen in the following verses of the holy *Qur'an*:

(a) "In what your wives leave, your share is a half if they leave no child."¹²

¹⁰ Abu Zahra, Muhammad, *Usul al-Fiqh. Dar al-fikr al-Arabi*, Cairo, 1958, p.76

¹¹ L.S. Hassan & E.A. Muhammad-Jami'u, *Introduction to Basic Principles of Shariah (Islamic Law)* Ahmadu Bello University Press Limited, Zaria, Kaduna State, Nigeria, 2019, p.41

¹² Chapter 4 v. 12

(b) "The adulterers, male or female, flog each with a hundred stripes."¹³

(c) "Those who accuse chaste women and produce not four witnesses (to prove it), flog them eighty stripes"¹⁴

The quantitative aspects of the rulings in the above verses, namely, one half, one hundred, and eighty are self-evident explanatory enough and therefore, not open to interpretation or *Ijtihad*.

A speculative text is one which is open to interpretation and *Ijtihad*. These include the text of *Qur'an* that conveys more than one meaning. In other words they are subject to interpretation. The best interpretation is that which can be obtained from the *Qur'an* itself, then *Sunnah*, and then *Ijma*. Examples include when Allah says: 'Divorced women shall wait concerning themselves for three *Quru*' (Q.2:228). The word *Quru* is probable to mean three periods of purification or period of menstruation. Therefore, jurists are divided into two camps accordingly as regards 'iddatu't-Talaq (waiting period after divorce).

The revelations in the larger part of the *Qur'an* consist of an enunciation of general principles, and in some part it provides specific details. Broadly speaking the Holy *Qur'an* is specific on matters which are deemed to be unchangeable, but in matters which are liable to change, it merely lays down the general principles.¹⁵ For example, in the sphere of crimes, the *Qur'anic* legislation specific with regard to the Hudud¹⁶ offences. As for the rest, the *Qur'an* authorizes the community and those who are in charge of their affairs to determine them in the light of the general principles of the *Shari'ah* and the prevailing the conditions of the society.¹⁷

Injunctions in The Holy *Qur'an*

The scholars of *Qur'an* have enumerated varying number of verses of legal injunctions, but the number is approximately considered to be 500¹⁸ however, these legal verses can principally be divided into three major divisions and these are as follows:

- a. Injunctions dealing with matters of faith and dogmas which are related to Allah, His angels, books, apostles, the Last Day and the resurrection.¹⁹

¹³ Chapter 2 v. 196

¹⁴ Chapter 24 v. 4

¹⁵ Al-Shatibi, Abu Ishaq Ibrahim, *al-Muwafaqat fi Usul al-Ahkam*, (ed.) Muhammad Hasanayn Makhluf, al-Matba'ah al-salafiyah, Cairo, vol. III, 1341 A.H, p.219

¹⁶ Plural form of Hadd punishment and it simply means the prescribed punishment in the Book of Allah

¹⁷ Al-Shatibi, Abu Ishaq Ibrahim, *al-Muwafaqat fi Usul al-Ahkam*, p.219

¹⁸ L.S. Hassan & E.A. Muhammad-Jami'u, *Introduction to Basic Principles of Shari'ah*, p.41

¹⁹ A. Zubair, *The Major Sources of Islamic Law*, Al-Madinah Heritage Publications Lagos Nigeria, 2005, p.54

- b. Injunction dealing with matters of morals. They teach the *Mukallaf* (a person under legal obligation) the high moral standards with which he is to be adorned and refrain him of vices and vile practices.²⁰
- c. Injunctions dealing with acts which come from the *Mukallaf* such as his statements, stipulations, actions, contracts, transactions etc. This third division is the *fiqh* of the *Qur'an* and it is the cogent object of science of *Usul al-fiqh*. It is called practical injunctions.

These practical injunctions have been split into two branches. The first branch consists of rituals such as prayer, fasting, zakat, hajj, vows, oaths etc., which are mainly to regulate the relationship of man to his Creator, Allah.²¹ The second branch deals with social intercourse which consist contracts, transactions, penalties etc. This branch aims at laying down regulations which are to guide the mutual relations among the *Mukallafin* individual dealings, or group, or among the nations. Any injunction which does not deal with rituals among practical injunctions is known in the circle of the venerable earlier Muslim jurists as *ahkam al-mu amalat* generally.²² But later Muslim jurists divided these *ahkam al-mu amalat* into various segments according to their peculiar subject matters as follows:

1. *Ahkam al-ahwal al-Shakhsiyyah*, i.e. injunctions relating to personal status, and it contains family law, such as marriage, polygamy, dower, maintenance, right and obligation of the spouse, divorce and various mode of dissolution of marriage, the period of retreat after divorce or death (*iddatu 't-Talaqorwafat*²³) law of succession, *al-waqf* i.e. endowment, and *al-wasiyyah*, i.e. legacies. There are about seventy verses of the *Qur'an* dealing with this segment.
2. *Al-Ahkam al-madaniyyah*, i.e. injunctions relating to civil law, and this relates to law of contract, the law of tort, the law of trust, the law of property, company law, the law of partnership and commercial law, loans, deposits, weight and measures.²⁴ The purpose of this law is primarily to deal with the relationship between individuals or groups in property matters and to enable them enforce their rights. About seventy verses of the *Qur'an* concentrate on this subject, also.²⁵

²⁰Ibid p.54

²¹Ibid p.55

²² Injunction as it relate contractual relationship

²³L.S. Hassan & E.A. Muhammad-Jami'u, *Introduction to Basic Principles of Shariah*, p.42

²⁴ Ibid p. 42

²⁵A. Zubair, *The Major Sources of Islamic Law*, p.55

3. *Al-Ahkam al-Jina'iyah*, i.e. injunctions relating to criminal law, it deals with acts or omissions punishable under the *Shari'ah*. The criminal law is instituted principally not to punish but to deter crimes, and to safeguard life, property, human dignity, individual and group rights. Nonetheless, it regulates the relationship between the aggrieved party and the accused, and of course the state is to control the proceedings and execute the ordained penalty accordingly. And this has about thirty verses of the *Qur'an*.²⁶
4. *Ahkam al-murafa'at*, i.e. injunctions relating to code of procedure, which deals with civil or criminal proceedings and law of evidence. It relates to taking of oaths and vows and judicial administration in general.²⁷ It has about thirteen verse of the *Qur'an*.²⁸
5. *Al-Ahkam al-dusturiyya*, i.e. injunction relating to constitutional and administrative law, it deals with structure of the principal organs of government and the relationship between them and the subjects. It also regulates the functions of government and its agencies. There are about ten verses of the *Qur'an* dealing with this segment.²⁹
6. *Al-Ahkam al-dawliyyah*, i.e. injunctions relating to international law, it regulates the relationship between Islamic State and other nations in time of peace or war. It also regulates the dealing of Muslims with non-Muslims in Islamic State. About twenty-five verses of the *Qur'an* deal with this subject.³⁰
7. *Al-Ahkam al-iqtisadiyyahwa al-maliyyah*, i.e. injunctions relating to the principle of economics and finance, it deals with rights of needies and poors in the wealth of rich people, as well as governmental revenues and factors of production. In short, it regulates monetary relationship between the haves and the have-nots, as also between the state and individuals. About ten verses of the *Qur'an* deal with this subject.³¹

These numerous Qur'anic legal injunctions has explained and sub divided as explained above are designed to promote man's welfare in this world and improve his prospects in the Hereafter. From this, it follows that there are two sides to every human act, one that involves this worldly life and the other one that involves the life after-death.

²⁶ Ibid

²⁷ L.S. Hassan & E.A. Muhammad-Jami'u, *Introduction to Basic Principles of Shariah*, p.42

²⁸ A. Zubair, *The Major Sources of Islamic Law*, p.55

²⁹ Ibid

³⁰ Ibid p.56

³¹ As-Sayuti. Jalalud-Din 'Abdu 'r Raham (nd): *Al-itqanfi'ulumi 'l Qur'an*, 1/20

Every act, whether it pertains to worship or the conduct of civilized life, produces two effects. On the one hand, this effect is manifest in the worldly affairs; for instance, it may result in the fulfilment of a responsibility, appropriation of something or justification of what is lawful, acquisition or loss of a right, incurrance of a punishment, shouldering of some responsibilities etc. On the other hand, the same act has bearing on the Hereafter as well, whether the person concerned deserves either punishment or reward. Since the Shari'ah aims at fostering the well-being of man, both in this life and in the Hereafter, it must be treated as one indivisible unit, which will not serve its purpose if some components of it are accepted and others rejected.³²

The disparity between the two branches of practical injunctions in the *Qur'an* is of some interest. Under the search-light of *Ulama* (Scholars) find that injunctions dealing with rituals and personal status are to some extents, detailed. The reason for this detail is found in the nature of these injunctions, which seems to be ritualistic and hardly gives room to human innovations. Consequently, it is apathetic to circumstantial and environmental changes. The remaining segments are principally put into a nut-shell and no full details of them are given except in some situations. This is, perhaps, because these laws are subject to circumstantial and environmental changes in accordance to the kaleidoscopic nature of human interests. Hence, the general principles and provisos are given to guide the authorities, i.e. the *Ulama* and the political leaders, in their dispensations among their subjects. This allowance is given to enable the *Qur'anic* injunctions match the various stages of developments in the life of human beings without prejudice to the existing divine fundamentals. There is no doubt that the *Qur'an* makes a complete coverage of all fields of the *Shari'ah* but does so in a general sense rather than going into details. A lot of expositions of these principles has been left to the *Sunnah* and more so to *Ijtihad*.³³

The exercise of *Ijtihad* necessitates the interpretation of the Holy *Qur'an* and this, in turn, requires from any jurist, the knowledge of certain sciences which will, among other factors which are deemed relevant in the circumstance at hand, provide him the art of the interpretation and deduction of rules from the *Qur'an*. The sciences are: Arabic language; a general knowledge of the contents of the *Qur'an*; the *Sunnah*; *Ashab al-Nuzul*, i.e. reason for a revelation; general objectives of the *Shari'ah*; and piety. The more knowledgeable the person the more chances has he to discover treasures in the *Qur'an*. Furthermore, no verse or a group of verses

³²L.S. Hassan & E.A. Muhammad-Jami'u, *Introduction to Basic Principles of Shari'ah*, p.42

³³A. Zubair, *The Major Sources of Islamic Law*, p.57

should be interpreted in isolation. Rather, the verses of the *Qur'an* should always be seen, read and understood in their right perspective as inseparable part of a coherent integral message of Islam especially when deducing relevant legal ruling from them.³⁴

Sunnah of the Prophet

The *Sunnah* literally means habitual or customary practice whether this practice is good or bad. A tradition from the Prophet (Peace be on him) says: "If anyone introduces a good practice (*Sunnah*) the person will get its reward and the reward of him who will act upon it till the Day of Resurrection; and if anyone introduces an evil practice, he will bear its burden and the burden of him who will act upon it till the day of resurrection."³⁵ *Sunnah* literally also means a clear path, way, practice or manner.³⁶ It has been used to imply normative practice or an established course of conduct. *Sunnah*, in an absolute sense implies the exemplary conduct. The term is also said to indicate the usual way, whether good or bad.³⁷

Technically, *Sunnah* according to the jurists means "the saying (*qawl*), practice (*fil*) and approval (*taqrir*)" of the Messenger of Allah (SAW).³⁸ However, according to the scholars of 'aqidah, the opposite of *Sunnah* is *Bid'ah*, which means innovation

The *Sunnah* also applies to the practice of the Companion regardless whether it is supported by any text of the *Qur'an* or the *Sunnah*, or it is based on *ijtihad* independent judgment or discretion) on which they agreed. The Companion collected the *Qur'an* in public interest, for no text in the *Qur'an* or the *Sunnah* existed about it. They did it to protect religion and its primary source, namely the *Qur'an*. The Prophet is reported to have said about the *Sunnah* of the Companions. Hold fast to my *Sunnah* and the *Sunnah* of the rightly-guided Caliphs after me; hold on to it firmly.³⁹

Finally, the *Sunnah* also means the word, deed, or tacit approval or disapproval of Allah's Messenger (peace be on him) which relate to juristic and jurisprudential provision of the *Shari'ah*.⁴⁰ Thus, it becomes a very important source of the *Shari'ah* and it comes only second in authority after the Book of Allah (Quran).

Types of the Sunnah

The *Sunnah* has three types: the verbal *Sunnah* or the *Sunnah* by word (Qawliyyah), the practical *Sunnah*, or the *Sunnah* by deed (fi'liyyah).

³⁴ Ibid

³⁵ M. F. 'Abdul-Baqi, (ed) *Sahih al-Muslim*, Beirut, Darulhaya'i t-Turathi 'l-Arabi, vol. 2, p. 704, no. 1017

³⁶ L.S. Hassan & E.A. Muhammad-Jami'u, *Introduction to Basic Principles of Shariah*, p. 55

³⁷ Ibid p.55

³⁸ Ibid p.55

³⁹ H.H. Hassan, *An introduction to the Study of Islamic law*, p 141

⁴⁰ M. A. Al-Khatib, *Al-Sunnah Qabla al-Tadwin*, Dar-al Fikr, Beirut, 1980, p. 16

and the tacit *Sunnah* or the *Sunnah* by tacit approval or disapproval (taqririyyah).

The verbal *Sunnah* or the *Sunnah* by word (*Al-Sunnah al-Qawliyyah*): It means the sayings of Allah's Messenger (peace be on him) meant for legislation and explanation of rules. The *Sunnah* in this sense is synonym of Hadith (tradition), such as the saying of Allah's Messenger (peace be on him): "The search for knowledge is an obligation on every Muslim man and woman,"⁴¹ and his saying: "Deeds are to be judged by intentions and a man will have only what he intended".

The practical or actual *Sunnah* (*Al-Sunnah al-Fi'liyyah*): It means the actions of the Prophet (peace be on him) such as his prayer, fasting, and pilgrimage to Makkah. His deeds are also to be followed like his words, as he is reported to have said: "Pray as you see me pray," and he Says: "Learn from me the rites of your pilgrimage to Makkah".⁴²

The tacit *Sunnah* or the *Sunnah* (*Al-Sunnah Al-Taqririyah*) by the tacit approval or disapproval of the Prophet (peace be on him): It means the word or deed of a Companion which issues from before the Prophet and he keeps silent. His silence and not objecting to a word or deed of a Companion is called the tacit *Sunnah* or *Sunnah taqririyyah*, meaning that the Prophet (peace be on him) allowed him to continue to do the act and confirmed the validity of his word or deed. The examples of the tacit *Sunnah* are as follows:

It is reported that the Prophet (peace be on him) confirmed the action of a man who performed *tayammum* (sand ablution) as he missed water, but found it after saying prayer.⁴³

Another example is his confirmation of the action of *Mu'adh* when he sent him to Yemen and said to him: By "what will you judge"? He said: "By Allah's Book". He said: "What will you do if you do not find a rule in Allah's Book"? He said: "By the *Sunnah* of Allah's Messenger." He said: "If you do not find a rule even in the *Sunnah*, what will you do"? He replied: "I shall exercise my opinion, I shall spare no effort". So the Prophet (peace be on him) allowed him to do as he replied and confirmed his reply saying: "Praise be to Allah who granted success to the messenger of Allah's Messenger in achieving what pleases Allah". This confirmation is more certain than mere silence and not objecting to his action by him, for it has silence as well as cheerfulness that appeared on his face or that can be interpreted by his speech.⁴⁴

Sunnah as Source of Shari'ah

⁴¹ A.M.Shakir(etal) *Sunanul 'l-Tirmidhi*, Mustapha al-BabiLibrary. Egypt, 2nd edition vol. 4, 158, n 1610, 1395 AH/1975

⁴² H.H. Hassan, *An introduction to the Study of Islamic law*, p 141

⁴³ Ibid p. 151

⁴⁴ Ibid p. 152

The *Sunnah* is unanimously accepted as second primary source of Islamic law. It is a rule of life and refers to the exemplary conduct or the model behaviours of the Messenger (SAW) comprising what he said, did or approved.

A number of verses from the Holy *Qur'an* indicate definitely that *Sunnah* is to be followed as a source of law, as evidenced as follows:

1. 'O ye who believe! Obey Allah and Obey the Apostle and those Charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Apostle, if ye believe in Allah and the last day.⁴⁵
2. 'He who obeys the Apostle, obey Allah.⁴⁶
3. 'So take what the Apostle assigns to you, and deny yourselves that which he withholds from you.⁴⁷

Therefore, based on the above authorities from the *Qur'an*, jurists maintain that the *Sunnah* is the second source of Islamic law after *Qur'an*. If a jurist does not find a text in the *Qur'an* for a case he wants to settle, he has to recourse to the *Sunnah* for the derivation of the rule.

There are two types of the *Sunnah* in respect of transmission: A *Sunnah* whose chain of transmitters is continuous and not broken. It is one in which the names of the narrators have been mentioned from the beginning of the chain to Allah's messenger (peace be on him). None of its narrators is missing. The other kind is a *Sunnah* whose chain of narrators is not continuous but broken. Where one narrator is missing in the chain and sometimes more. Some scholars of Hadith name the *Sunnah* from whose chain one narrator is missing Hadith *mash'hur*, but other scholars apply the term *mash'hur* to a chain from which only the name of the Companion is missing. If the name of a narrator other than the Companion is missing it is called *munqati*(broken). The first term is used by the Hanafi jurists and the second by the doctors of Hadith (*muhaddithun*).⁴⁸

Muttasil (Hadith with Continuous Chain)

The legal theorists in general have divided the Hadith with continuous chain into two kinds: *mutawatir* (a tradition continuously transmitted by a group number of people) and *ahad* (solitary traditions) and the Hanafi Jurist have added a third kind to it. It is *mashhur* (a well known tradition).⁴⁹

- a. **Hadith Mutawatir** (a tradition continuously transmitted by a large number of people. The Hadith *mutawatir* is one narrated by group from a group of people whose agreement upon falsification

⁴⁵ Chapter 4 v.59

⁴⁶ Chapter 4 v.80

⁴⁷ Chapter 59 v. 7

⁴⁸ H.H. Hassan, *An introduction to the Study of Islamic law*, p152

⁴⁹ Ibid p.152

is inconceivable considering their large number integrity, diversity of residence and absence of evil purpose. These were transmitted to us through *tawatur*.

Tawatur (continuous transmission) is sometimes verbal (*lafzi*) when all the narrators of Hadith agreed on its words and meaning such as the tradition from the Prophet (peace be on him): 'He who lies against me intentionally should make his abode in hell'.⁵⁰ A multitude of the Companions whose agreement on lie was impossible reported this tradition verbatim, then the Successors like them transmitted it, and again the Followers of the Successors reported it. It was the period of recording the *Sunnah*. Sometimes *Tawatur* relates to the idea and not to the words (*ma 'nawi*). It is when the narrators agreed on the idea of the Hadith but their words varied in its narration. This is in most cases is Hadith *mutawatir*.⁵¹

The Hadith *mutawatir* conveys sure knowledge and certainty in respect of its establishment in the sense that we are sure about its attribution to Allah's Messenger (peace be on him). It is similar to the *Qur'an* in respect of its establishment. It may be definite or presumptive in respect of conveying its meaning. Being a proof or source of law it is like the *Qur'an*.⁵²

b. Hadith Mustahar (A well-known tradition)

The well-known tradition (Hadith *mustahar*) is one whose number of narrators from the Prophet does not reach the extent of *tawatur* but reaches this extent after that. If a person from among the Companions relates a tradition from the Prophet or two persons do so, then a multitude of the Successors whose agreement upon falsification is inconceivable relate it from them and so on till the end of the chain during the period of recording the *Sunnah*, this sort of Hadith will be considered to be a well-known (*mash'hur*) tradition. It became well-known during the second or the third generation of the narrators, that is, the Successors or their Followers. But if one person from the Companions, then from the generation of the Successors, then from the generation of their Followers narrate a tradition, or two persons do so, this sort of tradition will be considered a solitary tradition (*akhbar al-ahad*) though it become well-known after that, because every *Sunnah* became well-known in the fourth generation on account of compilation of Hadith.⁵³

c. A Solitary Tradition (*Hadiith Al-Ahad or Khabar Al-Wahid*)

This is one narrated by one narrator or two from the beginning of the chain to its end. The number of its narrators does not reach the extent

⁵⁰ A.M.Shakir (et al) *Sunanul 'i-Trimidhi*, Mustapha al-BabiLibrary, Egypt, 2nd edition vol. 4, 158, n 1610, 1395 AH/1975

⁵¹ Ibid

⁵² Ibid

⁵³ H.H. Hassan, *An introduction to the Study of Islamic law*, p153

of *tawatir* in the third generation; the generation of the Companions, the generation of the Successors, and the generation of their Followers, even though it reaches the extent of *tawatir* later on.⁵⁴ The reason is that the *Sunnah* was compiled after the period of the Followers of the Successors, and all traditions became well-known by this compilation. So by that solitary tradition fulfils neither the conditions of a *mutawatir* nor those of a well-known (*mashhur*) tradition.

A solitary tradition does not convey sure knowledge.⁵⁵ It conveys only presumptive or probable knowledge which is considered to be a proof in practical rules and not in dogma, but a proof in practical matters and legal injunctions.⁵⁶

Ghayr Al-Mutasil (Hadith with Broken Chain)

Hadith with a broken chain is one from whose chain the names of one or more narrators are missing. It is called *mursal* according to the terminology of the legal theorists (*Usuliyyun*), because they define *mursal* tradition as the statement of a righteous and reliable person, who is not a Companion, saying; 'Allah's Messenger said'. As for the scholars of Hadith (*muhaddithun*), they apply the term *mursal* only to a tradition from whose chain the link of one narrator or more other than the Companion is missing, as for example, a Successor (*tabi'i*) says; 'Allah's Messenger said'. As for the tradition from whose chain the link of one narrator or more other than the Companion is missing, they call it *munqati'* (a tradition with a broken chain).⁵⁷

The *mujtahidun* have differed on arguing by a tradition with broken chain (*mursal*). Al-Shafi'i does not argue by it unless the probity of its narrator is ascertained as explained below:

1. that it should pertain to the *marasil* of the Companion (i.e. the link of the Companion who directly heard from the Prophet is missing);
2. that it should be supported by one Other than the narrator whose name is missing;
3. or another narrator relates it from the narrators other than those from whom the first narrator has related it;
4. or it is supported by the View held by the maturity of the Muslim *Ummah*;
5. or it is corroborated by the opinion of a companion of the Prophet;
6. or the tradition with a broken chain should be narrated by one of whom it is known that he drops the link of a narrator whose report is accepted, such as *Sa'id ibn al-Musayyab*.⁵⁸

⁵⁴Y. Y. Bambale, *An Outline of Islamic Jurisprudence*, (Malthouse Press Limited Zaria Nigeria), p. 63

⁵⁵ Ibid p. 63

⁵⁶H.H. Hassan, *An introduction to the Study of Islamic law*, p152

⁵⁷ Ibid

⁵⁸ Ibid

The jurists in general contend that when a righteous and reliable person says, "Allah's Messenger said," he is sure about the attribution to Allah's Messenger (peace be on him) of what he is relating on the basis of an evidence of the probity of a person from whom he has narrated the tradition by dropping his name. The reason is that his own probity prevents him from attributing a report to Allah's Messenger without knowing it or considering his report probable from him.⁵⁹

Legal Weight Attached to Sunnah Sahih

The legal weight usually attached to Sunnah depends on its nature be it *sahih* (authentic), *hasan* (good) and *da'if* (weak) Hadith. *Sahih Hadith* is one with a continuous chain of narrators which trace back to the Holy Prophet Muhammed (Peace be on him). This type of Hadith satisfies the condition of uprightness and retentive memories of the narrators and whose narrations are free from defects.⁶⁰

Hasan Hadith is one that falls between *sahih* and *da'if*. Its narrator is known for truthfulness, but not attained the highest degree of reliability and prominence like that of *sahih*.⁶¹

While *Daif Hadith* is one in whose narrators do not possess the qualification required in *Sahih* or *Hasan*. It is called weak because of the weakness that exists in the chain of narrators, bad memory, and doubtedness in their integrity and piety.⁶² In terms of legal weight, only *sahih* and *hasan Hadith* are given consideration in deriving legal injunctions.

Al-Ijma' (Consensus of Opinions)

Ijma' literally means to resolve, to do something and to agree upon something. According to the terminology of the legal theorists *ijma* (consensus) has been defined as "the agreement of the *mujtahids* (independent legal thinkers) from among the Ummah of Muhammad (peace be on him) after his death in a certain period of time on a rule of the *Shari'ah*. The term also used to mean *al-azm al-musamimi*, i.e. determination.⁶³

From the definition given above, *ijma* must meet the following conditions before it qualifies a source of law under *Shari'ah*, viz:

- a) The agreement or consensus must take place among the *Mujtahids*. This precludes the agreement of laymen from the purview of *ijma*.
- b) Secondly, the *Mujtahids* must belong to the Islamic community (Ummah Islammiyyah). Accordingly, the

⁵⁹ Ibid p159

⁶⁰ A.M.Husni, *al-Sunnah waMakanatuhafil-Tashir al-Islami*, 3rdedBeirut,(1982), p. 94

⁶¹ Ibid p. 96

⁶² Ibid

⁶³ A. Zubair, *The Major Sources of Islamic Law*, p.55

- agreement of the *mujtahids* of the past communities who doesn't belong to Islamic community doesn't constitute *ijma*.
- c) The agreement must be upon a rule of law. Thus, it must state that a certain thing is prohibited, permitted, valid or void, etc. therefore, all non-legal issues are excluded from the domain of *Ijma*.⁶⁴
 - d) The agreement of the *mujtahids* must be held after the death of Allah's Messenger (peace be on him). Thus, an agreement during his lifetime is not considered as *ijma*. If the Messenger (peace be on him) agreed with the companions on an issue, then he was the source of the ruling not *Ijma*. If he was against their agreement, such agreement was not considered nor would it become a rule of law.
 - e) The agreement of the *mujtahids* must be demonstrated by their expressed opinion on a particular issue. This may be verbal or in writing.
 - f) The *mujtahid* must rely upon *sanad* (legal basis) in one of the accepted source of law-i.e. *Qur'an* or *Sunnah* for deriving their opinion. This is to ensure that the *Mujtahids* had undertaken proper *ijtihad* to arrive at their opinion. Thus, this shows that *Ijma* is a proof of the *Shari'ah*.

⁶⁴ Al-Amidi, Sayf al-Din Ali b. Muhammad, *al-Ihkam fi Usul al-Ahkam*, (Ed.): Abd al-Razzaq Afifi, (al-Maktab al-Islami Beirut, 2nd ed., vol. 1, 1982) p.195

The Consensus is sometimes verbal (*qawli*) and sometimes silent (*sukuti*). The verbal or express consensus (*qawli*) is the agreement of all *mujtahidun*, verbally, meaning that they announce their agreement on a certain rule. This is realized sometimes by their meeting in a place and by examining the moot question, and finally expressing opinion by each *mujtahid*. But generally the incident occurs and every *mujtahid* gives the same legal opinion. So the agreement is established verbally.

The silent or tacit consensus (*sukuti*), means to express an opinion verbally by some *mujtahids* of a certain period and to keep silent by the rest of them after knowing this without denying or opposing it. That is realized when one of them or their group gives legal opinion (*fatwa*) with regard to a specific rule about a particular incident, then the rest of them are informed of this opinion and they keep silent and do not raise any objection to after examination, study and consideration.⁶⁵

The jurists in general hold that the verbal or express consensus (*ijmasarih*) is a proof that must be followed, and a source of law that must be relied upon in the establishment of the rules of the Shari 'ah, and that it is incumbent on the *mujtahid* to have recourse to consensus (*ijma*) in order to know rules about incidents that are not covered by a text of the *Qur'an* or the *Sunnah*, that he may not give legal opinion about them or make a decision against the agreement of the *mujtahidun*. Therefore, the legal theorists hold that one cannot be eligible for *ijtihad* unless he knows the agreement and disagreement on the rules.⁶⁶

The consensus (*ijma*) is a decisive proof against which no one can exercise *ijtihad* when he fulfils its conditions. A rule is presumptive before agreement and becomes definite after agreement. It is incumbent on the *mukallaf* (a person under legal obligation) to obey this rule as he obeys the rule established by the text of the *Qur'an* and the *Sunnah*.⁶⁷

The jurists in general have argued to justify the proof of consensus (*ijma*) by the *Qur'an* and the *Sunnah*.

A *Quranic* verse says:

'But who so opposes the Messenger after the guidance has become clear to him, and follows the way other than that of the believers, We shall turn him to that to which he (himself) has turned, and shall cast him into hell, and an evil destination it is.'⁶⁸

⁶⁵H.H. Hassan, *An introduction to the Study of Islamic law*, p153

⁶⁶ Ibid

⁶⁷H.H. Hassan, *An introduction to the Study of Islamic law*, p. 151

⁶⁸ Chapter 4:115

The argument is that if a person follows the way other than that of the believers he will be punished, and it is binding to follow only the believers' way. The reason is that the believers' way is based on the rules of the *Shari'ah*. The agreement on a rule indicates the believers' way, and therefore, it must be followed.

The following traditions from the *Sunnah* justify *ijma*:

- i. My community will not agree on a mistake (*khata*);⁶⁹
- ii. My people will not agree on an error (*dalal*);⁷⁰
- iii. I prayed to Allah, the Exalted, that my Community may not agree on an error, and He gave it to me;⁷¹
- iv. Allah's hand is over the Community;⁷²
- v. Whatever the Muslims consider good is good in Allah's sight.⁷³

Although all these traditions individually convey probability or presumption (*zann*), they collectively convey definiteness of the proof of *ijma*, for they agree on one and the same idea. The idea is that the Muslim *Ummah* is infallible in their agreement. This makes the adherence to *ijma* obligatory on the Muslims.⁷⁴

***Ijma Sukuti* (Tacit or Silenteconsensus)**

This is the *Ijma* in which some *mujtahids* of a particular age give an express opinion concerning an issue or incident, while rest remain silent; they neither acknowledge it nor refute it expressly.⁷⁵ For *Ijma sukuti* to be validly constituted the following conditions must be met;

- a) The silence of the *mujtahids* must be free of all external indications that point to agreement or disagreement. If an indication of some sort is found that conveys agreement, then the *Ijma* is not silence, rather it is explicit. If, however, an indication is found that points to disagreement, no *Ijma* can be said to have been validly constituted.⁷⁶
- b) The silence of the *mujtahid* should be maintained for a considerable period of time. The duration, however, cannot be fixed, because the issue subject to *ijtihad* and the formulation of an opinion requires time, which may vary for each *mujtahid*.⁷⁷

⁶⁹ A. an-Naisaburi, *al-Mustadrak 'ala 's-Sahihayn*, ed. Mustapha 'Abdul-Qadir, Beirut. Dar al-Kutubi al-'Ilmiyyah, 1st edition, vol 1, no. 398, p.202.

⁷⁰ *ibid*

⁷¹ Ibn Majah, Muhammad b. Yazid al-Qazwini, *Sunah ibn Majah*, cagri Yayinlari, Istanbul, vol. II, 1981, p. 1303

⁷² *ibid*

⁷³ *ibid*

⁷⁴ Hamid Hassan, *op cit*, p.169

⁷⁵ Y. Y. Bambale, *An outline of Islamic Jurisprudence*, p. 68

⁷⁶ *ibid*

⁷⁷ *ibid*

- c) The issue must be one in which *ijtihad* is permitted. If however, the issue is one in which *ijtihad* is not permitted, then the silence of some jurists cannot be considered tacit approval.⁷⁸

Ijma as A Source Shari'ah

There are many Quranic verses and traditions of the Holy Prophet Muhammed (p.b.u.h) that sanctioned the use of Ijma as a source of Islamic law. Few of those authorities from the Qura'an and Sunnah are as follow:

A *Qur'anic* verse says:

'But who so opposes the Messenger after the guidance has become clear to him, and follows the way other than that of the believers, We shall turn him to that to which he (himself) has turned, and shall cast him into hell, and an evil destination it is.'⁷⁹

'Remain firmly together to Allah's rope, and do not separate.'⁸⁰

And from the Sunnah of the Holy Prophet Muhammed (p.b.u.h), the following Hadith are considered to be authority for the use of iijma in resolving legal matter:

- i. My community will not agree on a mistake (*khata*);⁸¹
- ii. My people will not agree on an error (*datal*);⁸²
- iii. I prayed to Allah, the Exalted, that my Community may not agree on an error, and He gave it to me;⁸³
- iv. Allah's hand is over the Community;⁸⁴
- v. Whatever the Muslims consider good is good in Allah's sight.⁸⁵

Therefore, as much as Qur'an and Sunnah are considered sources of law under Shari'ah, Ijma also ranks as one of sources of Shariah after the Qur'an and Sunnah. To therefore derive legal ruling under Shari'ah, recourse to Ijma in appropriate is situation cannot be over-emphasized.

Conclusion

The *Qur'an* as the primary source means that all the other sources are secondary to it, because their legal validity and justification as sources are derived from the *Qur'an*. The entire Islamic community has agreed that the *Qur'an* is the primary source for the laws of Allah. Therefore, it is binding upon the jurists to have recourse to it and to rely upon it for the discovery of the laws in cases that they face. They

⁷⁸ ibid

⁷⁹ Chapter 4:115)

⁸⁰ Chapter 3 v.102

⁸¹ A. an-Naisaburi, *al-Mustadrak 'ala 's-Sahihayn*, p.202.

⁸² ibid

⁸³ IbnMajah, Muhammad b. Yazid al-Qazwini, *Sunahibn Majah*, cagriYayinlari, p. 1303

⁸⁴ ibid

⁸⁵ ibid

also agreed that the jurists will find to each case provided for it and to rely upon it for the discovery of the laws in cases that they face.

Sunnah is also recognised as second source of Islamic law and it is incumbent upon Muslim community to follow the tradition of the prophet. *Sunnah* includes the saying, deed or silent approval of the Holy Prophet Mohammed and must be followed in any issue in which there is no direct provision in the Holy *Qur'an*.

Ijma also formed part of the primary sources of Islamic law. *Ijma* is like a reflection of *Al-Qur'an* and hadith and can only be resorted to only when *An-Nas* (the *Qur'an* and the *Sunnah*) are silent on a particular issue.

Thus, formulation of legal rulings from these sources of law is not the duty of every Muslims. Scholars who are versed in Shariah reserves the right to explore them to come up with ruling to solve any encountered problem. It is therefore incumbent to everyone to verify the status of a scholar before relying on his ruling with respects to the contemporary scholars.