

ISLAMIC LEGAL SYSTEM

SHA 1032

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The era of Khulafa al-Rashidin

- “establishment period”
- 632 CE to 661 CE
- Primary sources: Qur’an and Sunnah
- 4:59
- “ O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, **refer it to Allah and the Messenger**, if you should believe in Allah and the Last Day. That is the best [way] and best in result.”

Ijtihad of the companions:

- Examples:
 - Caliph Abu Bakar regarding those who refused to pay zakat
 - Caliph Umar on lifting the cutting of thief's hand at the time of famine
 - Caliph Umar considered multiple pronouncement of talaq as triple talaq ie irrevocable.
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- [Akram: 183-191]

The differences of opinions

- 1. inheritance. In the existence of grandfather, whether the siblings of the deceased be entitled?
- 2. marriage during iddah
- Agriculture land, as booty or as zakat?
- [akram; p. 186]

Reasons of such differences

- In understanding the text of the qur'an
- Eg. 2:228
- In accepting hadith (not yet codified) so Umar asked for another person who narrated the same hadith while Ali asked the narrator to take oath.
- Methodology of ijtiḥād as some preferred qiyās and others preferred maṣlaḥah (public interest) and some used ṣadd al-dharai (blocking the door of evil)
- [Akram; 189]

Development of *fiqh*

- Dealing with real issue/question
 - Not binding (umar as caliph did not use his status)
 - Ijtihad changed from time to time ie. from Umar to Ali.
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- [akram; p. 191]

Umayyad dynasty (7th century)

- Started from 41 H
- “Building Period”
- New ijtihad v old ijtihad
- [akram: pp.192-201]

Emergence of school of thought

- Indirectly because of prominent scholar
 - The differences due to sectarians eg. Syiah, khawarij.
 - Spreading false hadith
 - Based on locality eg. At Madinah, Kufah, Basrah, Egypt.
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- [akram; 194]

Examples of prominent jurists:

- At Madinah: Aishah binti Abu Bakr, Abdullah ibn Umar
- At Mecca: Abdullah ibn Abas
- At Basrah: Anas ibn Malik
- Egypt: Abdullah ibn Amar al-'As
- Kufah: Ibrahim ibn Nakaie
- Yaman: Tawus al-Jandi

Madrasah of ahl- Hadith & Madrasah of ahl-Ra'i

- Preferred to use weak hadith rather than personal opinion
- to solve real issue not hypothetical one
- Traditional vs progressive
- [akram; p.195-200]

Abbasid Dynasty (8th – 10th CE)

- 2nd century of Hijrah
- Starting with flowering era
- Lasting with declining era
- Emergence of great imam (jurists)
- The recognition of schools of thought (mazahib)
- [Akram; pp.202-211]

Compilation of Sunnah

- At this period ie after 140 H: development of science of hadith/traditions in more systematically
- Muwatta Imam Malik
- Musnad Imam Ahmad

- [akram: 207]

Great collectors of hadith:

- Imam Bukhari (d.256H)
- Imam Muslim (d.261H)
- Imam Abu Daud (d. 275H)
- Imam Tarmizi (d. 279H)
- Imam Ibn Majah (d.273H)
- Imam Nasai'I (d.303H)

- [Akram; 208]

Development of Fiqh and Usul Fiqh

- Systematically:
- Imam Abu Hanifah (d.150H/767CE)
- Iman Shaibani (d.189H)
- Imam Malik in his Muwatta' (d.179H/795CE)
- Imam Shafie in his Risalah (d.204H/820CE)

- Later developed as School of Thought (*Mazhab*)
- Imam Hambali (d.241H/ 855CE)

Imam Abu Hanifah

- AL-NU' MAN IBN THABIT al-Taymi,
- Was born in yr 80 H at Kufa. (d. 150 AH)
- His teachers Anas b. Malik , Imam Jaafar and Hammad.
- He was a merchant.
- Then opened the school at Kufa.
- In 763 al-Mansur , the Abbasid ruler of Baghdad , offered Abu Hanifa the post of Chief Judge of the State, but the Imam declined.

His legal method:

- Regarded as *ahli ra'y* (people of opinion)
- Propound the doctrine of *qiyas* (analogical deduction)
- Advocate the principle of *Istihsan* (juristic preference)
- as it is closer to equity.
- He was regarded as the first person who formulated the principle of jurisprudence systematically.

His disciples:

- Imam Abu Yusuf
 - Imam Muhammad Hassan al-Syaibani
 - Imam Zufar
 - Imam Hassan Ibn Ziyad
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- Famous books of Hanafi school:
 - Al-Mabsut (Imam al-Sarakhi)
 - Al-Hidayah (al-Marghinani)
 - Ahkam al-Qur'an (Imam al-Jasas)
 - Al-Majallah Ahkam (the Mejelle)

Sources of law:

- Qur'an
- Hadith/Sunnah
- Ijma' (consensus)
- **Qiyas (analogical reasoning)**
- Istihsan
- Al-Masalih al-Mursalah
- al-istishab
- Sadd al-Dhara'I
- Uruf
- [Akram: 211]