

LEGAL OPINION OF THE COMPANION (*QAWL AL-SAHABI*)

- Who is *Sahabi*?
- Position of legal opinion of *Sahabi*
as a source of law

Who is *Sahabi*?

- Sahabi is one who met the Messenger of Allah (peace be upon him) and kept close to him for some period sufficient to prove the quality of keeping company with him customarily.

What is meant by legal opinion of Companion?

- Many Companions attained the rank of mujtahid.
- After the death of Messenger of Allah (peace be upon him), these Companions who interpreted the law, undertook ijtiḥad, issued legal opinions (fatawa) and settled a dispute among parties.
- These numbers of legal rules, legal opinions and judgment based on ijtiḥad and personal opinions are called legal opinion of Sahabi or in other words, school of Sahabi on the issue.

Position of legal opinion of Sahabi as a source of Islamic law

The matters that are agreed and disagreed upon among legal theorists

- 1) The legal opinion of the Companions on questions about which the rules cannot be known by *ijtihad* and personal opinion. The Muslim legal theorists agreed that it is a proof of Shari'ah that must be followed. Because it is as good as a Sunnah from the Messenger of Allah.
- The Hanafi jurists illustrate it by the fatwa of Ibn Mas'ud that minimum period of menstruation is three days and by fatwa of 'A'isah that the maximum period of pregnancy is two years.
- There is no room for exercise of opinion and speculation in the rules of such matter.

Position continue...

2) The opinions that are expressly agreed upon by the Companions are considered as a proof of Shari'ah since it is an *ijma'*.

In addition, the opinions of the Companions that spread widely and were not opposed by other Companions are considered as a proof by those jurists who regarded silent *ijma'* as a proof.

Position continue...

- 3) The legal theorists agreed that the opinion or fatwa of a Companion is not a proof binding on other jurist-Companion. Since the Companion differed among themselves on many issues and no one of them impose his view on others.
- 4) The opinions of the Companions on which there is disagreement among them. Whether these opinions are considered as a proof binding on those who succeeded them.

Position continue...

There are two views of Muslim jurists on the matter.

- The first view holds that these opinions are not a proof of Shari'ah. This is the view of Imam Shafi'i (new school), and the late jurists of Hanafis and Malikis.
- Their argument is that the Companions were not infallible, for infallibility is not established for anyone other than the Messenger of Allah (peace be upon him).
- Thus their opinions have the possibility of right and wrong. The opinion of a person which opens to right and wrong cannot be a proof of Shari'ah.

Position continue...

- The second view is the view of prominent jurists of the Hanafis, Imam Shafi'i (old school), Imam Malik and one view of Imam Ahmad, assert that these opinions are a proof of Shari'ah.
- The argument of this view is that the opinions of the Companions although have possibility of wrong but were nearer to attain the truth on account of the association of the Companions with Messenger of Allah (peace be upon him) for a long time; acquaintance with subtleties of the language; their knowledge of the cause and occasions of the revelation of the Qur'an, their observation of the acts of Messenger and listen to what has been said by him and knowing its objective. All these matters are not experienced by other mujtahids who succeeded them. Thus their opinions are more preferable.