GENERAL INTRODUCTION TO ISLAMIC LAW
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The compatibility of Sharia and modern jurisdictions has been a long-standing debate. Muslim jurists have been criticized for having lost contact with the changing conditions of contemporary life, in the sense that they have been unable to relate the sources of Sharia to modern government processes in the fields of legislation and judicial practice. Similar criticism has also been forwarded to the government in Islamic countries with formal Sharia for their failure in internalizing its ultimate goal, *maqashid al-shariah,* namely the public benefit. The alleged closure of the door of *ijtihad* is one of the factors held accountable for the gap between Islamic law and its sources on the one hand and the changing society on the other. The hegemony of *Ahlul Hadith* (People of the Text) over *Ahlur Ra'yi* (People of the Ratio) following the alleged closure of the door of *ijtihad* has curtailed Islam into a religion of rigid and stagnant nature and often with an exclusionary stance of its followers. The quest for better solutions and more refined alternatives lies at the very heart of *ijtihad,* which must, according to the formulation of classical *Ushul Fiqh* (Roots of Islamic Law), never be allowed to discontinue. *Ijtihad,* in classical *Ushul Fiqh,* is a collective obligation of the Muslim community and its scholars to exert themselves in order to find solutions to new problems and to provide new guidance in matters of law and religion (Kamali 1991, xvii). Islam's encouragement on the use of ratio in religious and legal matters is explicit in its precept that making an error in *ijtihad* is not only tolerated but is worthy of reward given the sincerity and earnestness of the *mujtahid* (one who performs *ijtihad)* who attempts it. It is often through such errors that the best solution can ultimately be reached.

This paper discusses points of relevance in gaining basic understanding of Islamic Law, from its philosophical perspective to its technicalities. It is also aimed at unveiling the humanity dimension of the religion which has been insufficiently exposed both as a discourse and in reality. This brief paper is meant mainly as a basic introduction and, hence, further readings of more comprehensive resources are encouraged.

1. The Trilogy of Islam, the Beauty of Sharia

Since we are going to talk about Islamic Law, it is crucial that we have a comprehensive understanding of Islam, especially as a religion of humanity. The gap between Islam's teachings on ethical and moral values and their realities amongst Muslim societies, I submit, is caused by the lack of appreciation to this dimension of humanity of Islam. It is, therefore, important to distinguish between the generic Islamic teachings and the attitudes and behavior of Muslims, which may not always reflect their religious moral precepts.

A comprehensive understanding of Sharia is also of paramount importance. The notion of Sharia may be understood in its broader or narrower meanings. Sharia is often and widely meant to refer to Islamic jurisprudence. While this meaning is not completely

untrue, Sharia also refers, in its wider sense, to other elements or dimensions of the religion. In this context, Sharia means **the** religion, Islam, itself. The comprehensive meaning of the religion encompasses three dimensions called *al-shari'a al-tsalatsah* or the three sharia (Noeh, in Munir 1999, 147), consisting of submission *(islam),* faith *(iman),* and doing what is beautiful *(ihsan).* The trilogy of *islam, iman,* and *ihsan,* while each operating with own goals and approaches, complement each other to form **the** religion of Islam. Sharia, in its narrow meaning of Islamic jurisprudence, by nature, is to reflect these elements including the element of beauty of its ethics and morality.

In their book, *The Vision of Islam,* Murata and Chittick (1994) elaborate in great details these three dimensions of Islam, which will be briefly cited to help us understand this trilogy. The first element of the trilogy is submission *(islam),* comprising a series of activities, such as bearing witness *(shahadah)*, praying, and fasting. The word for submission, *islam,* is the same word that is used, with capital "I", to refer to the religion as a whole. The discipline that regulates these activities of islam (submission) is called *Fiqh* (or Shariah in its narrow meaning) which deals with the legal system. It is concerned with differentiating right activity from wrong activity and explaining how to do things correctly.

The second element is faith *(iman),* which adds a dimension of understanding. As Murata and Chittick put it (p.288), it makes people see that the meaning of activity transcends the domain of everyday life and reaches back into the divine reality. *Iman* will make people understand that everything in the universe is governed by *tawhid,* that human activity has everlasting repercussion after death. The Prophet Muhammad teaches his Companions that faith means that they have faith in God, His angels, His books, His messengers, and the Last Day, and that they have faith in the measuring out, both its good and its evil. This faith dimension is elaborated and discussed in the discipline of Theology or *Ilm Tawhid* (i.e. science of the Oneness of God).

The third element, doing what is beautiful *(ihsan),* is the deepest dimension of Sharia, which focuses on human intentionality. It directs human being to reorient their desiring and their choosing on the basis of an awareness of God's presence in all things. God is the criterion for the beautiful, the good, and the right. In a hadith retold by Bukhari and Muslim, when asked by Angel Gabriel about the meaning of *ihsan,* the Prophet replied that, *"Doing what is beautiful means that you should worship God as if you see Him, for even if you do not see Him, He sees you."* The Qur'an connects *ihsan* to everything good and praiseworthy and makes its possessors the inhabitants of paradise. In various verses, *ihsan* is connected to human capacity of seeing God, sincerity *(ikhlas),* God wariness *(taqwa),* God's love, and wholesomeness *(shalih).* The Qur'an's message is not limited to commands, prohibitions, and theological pronouncements. On the contrary, its primary message is that people should recognize the beautiful and do what is beautiful. This is not simply a moral beauty, but a visual and auditory beauty as well. Conduct should be beautiful, writing should be beautiful, speaking should be beautiful. For many Muslims, especially the theoreticians of the third dimension—the Sufi authorities— beauty is divine, wherever it is found. It can only serve to remind people of God. This

dimension of beauty of Sharia is further elaborated in the discipline of *Tasawwuf* (Sufism) which is concerned with ethical and mystical system.

2. *Maqashid Sharia:* **Islam as a Source of Social Well-Being**

Islam, literally, implies the meaning of peace, submission, justice, and well-being (*maslahah).* Linguistically it is metamorphose of root words *salima-yaslamu-salaaman* meaning safe and peace and *aslama-yuslimu-islaaman* referring to the verb which means to save or to bring peace. Generically, it is a religion that brings the mission of liberation and salvation through a set of new moral values for social transformation. Islam is a source of morality because of its metaphysical and humanistic character.

The presence of Islam as a source of norms and morality can be observed in the socio-historical context of the Arab in the 7th century. The Arabs then lived as nomads in open deserts and were susceptible to inter-tribal conflicts and wars. Islam presented itself amongst these nomads, built their sensitivities and internalization for ethical values and moralities. The language of the Qur'an, laden with aesthetics and messages on humanity and the one-ness of God, had influenced these nomads, moving their hearts and emotions and inspiring them to lead a new life in societies fabricated with social norms and order.

Islam guides its followers to keep balanced and not transgress in all aspects of life. The all-purpose prayer of Muslims which is always recited in all occasions is the prayer for goodness in the world and in the hereafter, *"Rabbana aatina fi al-dunya hasanah wa fi al-akhiratina hasanah (*Our Lord, grant us goodness in the world and goodness in the hereafter)."* Along with this line, the Prophet Muhammad asked Muslims to work for their worldly life as if they would live forever and work for their life in the hereafter as if they would die tomorrow. These religious injunctions reflect the importance of keeping the same weight between vertical relation *(hablul min Allah),* which is the relation between human and God, and horizontal relation *(hablul min al-naas)* or the relation amongst human beings and between human and the environment.

The feeling of tranquility a Muslim gains after performing ritual activities such as prayer or fasting, which is vertically oriented, should become a basic capital to radiate peace, goodness, and wholesomeness to others. This balance between personal and social piety is important. Normatively, Muslims are encouraged to spread *salam* (peace) by saying *assalamu alaikum* which means 'may peace be blessed upon you.' This phrase is not just an expression for greeting, it is meant as a prayer for the safety of others. Hence, every Muslim should nurture the feelings of peace, secure, safe, and well-being as a basis for her/his religiosity. And God as portrayed in one of His ninety nine Beautiful Names *(asmaul husna)* is attributed as *al-salam,* the Lover of peace. Similarly, teachings on justice, equality, mutual love, help to the needy, etc. should have effects on increasing social piety. It is at this social level that Islam is currently faced with serious challenges among others the emerging phenomena of violence, conflicts and wars which can threaten the peaceful co-existence in the society.

Imam Shatiby, a Maliki jurist, in his *magnum opus, al-Muwaffaqat fi Ushul al-Shariah,* elaborates about the general framework of Sharia. He contends that within Sharia there are variants that should be understood comprehensively among others: law, ultimate goal of Sharia, textual justification (*dalil)*, and ijtihad. It means that sharia should not be understood just as a law. There are other important elements such as the main purpose of why Sharia was revealed (*maqashid 'ammah).* Not only that, Imam Shatiby expounded that law cannot be presented in a rigid way as it needs *dalil* and careful process of *ijtihad*.

Such an opinion reflects an openness in viewing religious doctrines. Imam Shatiby has brought new lights to Sharia, making it an open corpus which is open to reinterpretation. He views that religion should not emphasize the ritual worships aspect *(al-ta'abbud)* only but should bring the mission of well-being for the entire human being (*al maslahat al-'ammah).*

Imam Shatiby divided *maslahah* into three levels: primary *(al-dharuriyah)* i.e. *maslahat* which becomes the main reference in the implementation of Sharia. Otherwise, there will be imbalance and injustices which may crumble the social system. This primary level Sharia covers the need to protect one's religion/faith, life, intellect, descendants, and property. Every human being is to respect other's religion, respect life, freedom of thinking and expression, respect human descendants, and their property. Imam Shatiby explains that this primary level Sharia is the essence of other religions, especially revealed religions.

The second level of *maslahah* is called *al-hajiyyat,* which does not cause the crumbling of social and legal system whenever not exercised. This level of *maslahah* deals more with the principle of ease and how the exercise of Islamic law can be made less burdensome or severe *(al-rukhshah al-mukhaffafah)* for those who find difficulties. For example, travelers, sick or old people are given the facility or ease in practicing their ritual worships that can be regulated in *Fiqh*. This secondary *maslahah* implies the message that even in the implementation of ritual worships there is this spirit of ease, enjoyment, and less burdening to Muslims; and, hence, there is no feeling of being forced or burdened.

The third level of *maslahah* is supplementary in nature, in the sense that it adds up to the beauty of Sharia *(al-tahsinat)*, giving attention to the dimension of ethics and aesthetics. For example Islamic teachings on cleanliness, grooming, *shadaqah* or giving charity, and other humanitarian aids. This tertiary *maslahah* becomes important because it adds up to perfecting the primary and secondary *maslahah.*

The three model of *maslahah* is basically the essence of Islamic teachings which show that Islam is concerned with humanity problems. Islam is not only concerned with 'heavenly' issues but deals with everyday mundane life with all its humanity problems and seeks to give moral spirits.

Therefore, understanding Islam is not enough by understanding it at the normative level which deals with particulars (*al-ahkam al-furu'iyah),* but one needs to explore deeper into

the essence of the religion which teaches justice, equality, peace, and *maslahah.* Whatever law and religious institutions are established amongst the public, they should be able to internalize these religious substances and make Islam motivator rather than obstacle in providing solutions to existing human problems. Islam should be able to give spirit in materializing views, sensitivity and motivation to act for humanity in totality, regardless of class, status, race, ethnicity, and religion or faith.

3. The *Shariah*

The term *shariah* derives from root word *shar',* which originally means 'way to the water,' i.e. way to the source of life. The verb *syar'* in Arabic literally means 'to give signs to the clear way to the water.' Used in religious context, the word means 'way to a better life,' i.e. religious values to guide human life. *Shariah* can be correlated to the term *al-dien* (religion)*,* which, literally, means submission. If *shariah* is the way and the subject to be reached is God, *dien* is the submission to follow the path and the subject or the actor is human being (Rahman 1979, 100-101).

Shariah and *dien* are basically similar because both refer to 'the way.' Their contents are also similar, namely teachings on good lives in line with God's injunctions. According to Fazlur Rahman (1979), a modern Islamic thinker, both terms can be used interchangeably because they have similar contents, namely religious teachings. But because the basic contents of the Qur'an deal with moral teachings for human beings to submit to God and find the way, the term *dien* and its equivalent Islam is more often used than the term sharia. For Muslims, who have committed themselves to submit to God in their religiosity, the task to be performed is to practice sharia—'the way' or "God's injunction.'

So, Islamic *shariah* is the way towards Islam or, more precisely, the way towards Allah, because the ultimate goal of a Muslim life is Allah. To achieve this goal, there are many ways to take up, which can be different from each other. What is important is that no human being will go astray and end up elsewhere other than arriving at God. The many ways to arrive at God is the Divine will of Allah as expressed in the following verses of the Qur'an:

"To each among you have We prescribed a law and an open way. If Allah had so willed, He would have made you a single people, but (His plan is) to test you in what He has given you; so strive as in a race in all virtues. The goal of you all is to Allah; it is He that will show you the truth of the matters in which you dispute." (QS al-Maidah/5:48)

"To each is a goal to which Allah turns him; then strive together (as in a race) towards all that is good. Wheresoever you are, Allah will bring you together ..." (QS al-Baqarah/2:148)

If God has explicitly mentioned about the different ways towards God, and ordered humans to strive in all virtues as in a race, there is no way to avoid encountering different

interpretations and implementations of *shariah*. A comprehensive and holistic guidance, the Way, ordained by God, *shariah* covers both faith and practice, which includes all behavior—spiritual, mental, and physical. Assent to or belief in God is part of *shariah,* and so are the religious duties of prayer, fasting, etc. Further, all legal and social transactions as well as all personal behaviour are subsumed under *shariah* as the *total way of life*. The question, then, is *'How is shariah to be known?"* The answer to this question will bring us to the discussion on the methodology of *shariah,* the *fiqh*.

4. The Roots of Islam, Textual and Rational Streams

The construction of Islamic thoughts is supported by pillars which play significant roles in the dynamics of Islamic intellectual tradition. These pillars are hierarchically related, with the Qur'an being the highest in position. As the main source of Islamic thoughts, the Qur'an is elaborated in the Hadith, tradition attributed to the Prophet Muhammad. These sources have given birth to *Tafsir* (Exegesis), most notably found in *Fiqh*.

Initially, these roots of Islam: the Qur'an, Hadith, *Tafsir* (Exegesis), and *Fiqh* have their own dynamics and processes. Over time, there has been a shift of paradigm among majority Muslims in viewing these pillars. They are now perceived more as ready for use products rather than on-going processes. Let us look at the inclination currently prevail in viewing these roots of Islam:

- The Qur'an is understood more as a kind of implementation guidance or instant direction without considering the context in which the verses were revealed.
- Hadith which is actually a factual report of the Prophet's tradition (Sunna) has in fact been equated to the Sunna itself. Modern Muslim communities are in general in full trust to the selection of Hadith made by classical ulama, and see there is no need to further examine the problems related to the Hadith.
- *Tafsir*, even if it is still understood as a 'process of understanding' (the Qur'an), has in fact been widely understood more as a product or the works of classical ulamas. High tribute paid to classical exegetes has often induced new awareness which puts no distinction between *Tafsir* and the Qur'an itself.
- *Fiqh* basically is the product of interaction of jurists with problems faced in a certain historical context. Different historical settings because of socio-cultural, political, economic and demographic factors have brought these jurists to different streams of thinking, which have given rise to the births of various schools of thought (*madhhab).* Similar to *Tafsir, Fiqh* is also inflicted with fanaticism to certain schools of thought. Many perceive it as an end, ready for use, product rather than a process of human intelligence.

The shifting paradigm may have been the impact of the hegemony of *Ahlul Hadith* (People of the Text) over *Ahlur Ra'yi* (People of the Ratio)*,* or that of the status quo group over the progressive one. Initially, only the Qur'an was recognized as the sole legal source as upheld by the Kharijites. Later, *Hadith* was viewed appropriate as another legal source as argued by the *Ahlul Hadith.* Finally, the Qur'an and *Hadith* were deemed

insufficient; all religious texts deriving from the Qur'an and *Hadith* including *Tafsir* and *Fiqh* are viewed as legal sources as well.

The hegemony of texts over ratio solidified after these Islamic pillars passed their phases of codification and fixation. Since then, textual paradigms have developed quickly and dominated Muslims' intellectual awareness. Commitments to Islamic teachings are oriented more to the 'sound' of the texts and not their spirit. In addition, Muslims began to grow suspicion to social changes that are not accommodated in religious texts. The limitation of texts and, moreover, the limitation of Muslims in accessing these texts, has trapped Muslims to be always at the crossroads: resisting themselves by remaining under this hegemony of texts or getting themselves out and actively involved in social transformation at the empirical level.

This dilemma will remain until each pillar and the texts of Islamic teachings are internalized as a dialectics with social reality in the context of their revelation. The Qur'an, *Hadith, Tafsir,* and *Fiqh*, each came into being in a society with social, cultural, political and technological setting, and even with different internalizations of the religion. These pillars of Islam came into being not in a vacuum. Awareness of this reality should always be in the minds of Muslims.

The Qur'an was revealed gradually; the *Hadith* never came out of the blue; the exegetes had their own personal and social backgrounds, and *Fiqh* is actually a response to problem(s) emerging amongst certain society. These four groups of texts obviously are responses to problematic situations of their periods. Likewise, modern Muslims are living under constantly changing situations. Modern Muslims' life and religious texts actually share a similar situation: they both come into existence and develop in the changing contexts.

Reference for a continually changing life should not be a source which relies on a changing life as well. In other words, human life which is continually changing should not be based on texts resulted from the change itself. On the contrary, it should be based on something more universal and everlasting.

1) *The Qur'an.* The Qur'an derives from the root word *qara'a* (to read); literally it means 'reading' or 'recitation.' It may be defined as 'the book containing the speech of God revealed to the Prophet Muhammad in Arabic and transmitted to us by continuous testimony.' It is a proof of the prophecy of Muhammad, the most authoritative guide for Muslims, and the first source of Sharia. The ulama are unanimous on this, and some even say that it is the only source and that all other sources are explanatory to the Qur'an.

There are 114 *suras* and 6235 *ayat* of unequal length in the Qur'an. The shortest of the *suras* consist of four and the longest of 286 *ayat*. Each chapter has a separate title. The longest *suras* appear first and the *suras* become shorter as the text proceeds. Both the order of the *ayat* within each *sura* and the sequence of the *suras* were re-arranged and finally determined by the Prophet in the year of his demise.

The contents of the Qur'an are not classified subject-wise. The *ayat* on various topics appear in unexpected places, and no particular order can be ascertained in the sequence of its text. For example, the command concerning prayer appears in the second *sura*, in the midst of other *ayat* which relate to the subject of divorce (al-Baqarah/2:228-248). In the same *sura* we find rules which relate to wine drinking, apostasy, war, followed by passages concerning the treatment of orphans and the marriage of unbelieving women. From this we may conclude that the Qur'an is an indivisible whole and a guide for belief and action which must be accepted in its entirety. Hence, following some parts of the Qur'an and abandoning others will be totally invalid.

The Prophet himself memorized the Qur'an, and so did his Companions. To a large extent, this was facilitated by the fact that the Qur'an was revealed piecemeal over a period of twenty three years in relation to particular events. The Qur'an itself explains the rationale of graduality in its revelation in several ayat (al-Furqan/23:32; al-A'la/87:6; Bani Israil/17:106). The Qur'anic legislation concerning matters which touched the lives of the people was therefore not imposed all at once. It was revealed piecemeal so as to avoid hardship to the believers.

The Qur'an was revealed in two distinct periods of the Prophet's mission in Mecca and Medina respectively. The larger part of the Qur'an, nineteen out of its total thirty parts *(juz),* was received in Mecca. The remainder was received after the Prophet migrated to Medina. The Mecca verses are mainly devoted to matters of belief, the Oneness of God (*Tawhid),* the necessity of the prophecy of Muhammad, the hereafter, disputation with unbelievers and their invitation to Islam. Since the Medina period signified the *ummah* and the nascent Islamic state, the Medina verses emphasize the principles regulating the political, legal, social and economic life of the new community. During this period Islam expanded to other parts of Arabia, and the Qur'anic response to the need for rules to regulate matters of war and peace, the status and rights of the conquered people as well as the organization of the family and principles of government feature prominently in the Madinese part of the Qur'an (Sabuni, and Khallaf, in Kamali 1991, 18).

The Qur'an calls itself *al-huda,* or guidance, not a code of law. Out of over 6200 ayat, less than one tenth relate to law and jurisprudence, while the remainder concerned with matters of belief and morality, the five pillars of the faith and a variety of other themes. Its ideas of economic and social justice, including its legal contents, are on the whole subsidiary to its religious call. There are close to 350 legal *ayat* in the Qur'an, most of which were revealed in response to problems that were actually encountered. Some were revealed with the aim of repealing objectionable customs such as infanticide, usury, gambling and unlimited polygamy. Others laid down penalties with which to enforce the reforms that the Qur'an had introduced. But on the whole, the Qur'an confirmed and upheld the existing customs and institutions of Arab society and only introduced changes that were deemed necessary (Abdurrahim, in Kamali, 19-20).

Since the Qur'an responded directly to the problems faced by the Prophet and the Arab communities at that time, it is understandable that it was taken as an inherent part of the dynamics of their lives. Qur'anic verses functioned as motivator for transformation in the

belief, social, cultural, and political system of the Arab societies. For example, the Qur'anic teaching on egalitarianism, which views that all human beings are equal regardless of their ethnic, status, and sexual differences, was deemed controversial at the beginning. But this injunction was gradually accepted and became a new norm amongst Muslim societies.

The dialectics of the Qur'an and human beings were reciprocal. The Qur'an responded to the changes in human life, and human beings were historical witnesses of various problems addressed in the Qur'an. This communication process hardly posed any significant problem. Each *ayat* of the Qur'an was internalized not from its beautiful language but more from its substantive message and the social consequences it incurred. The Qur'an was viewed as an independent and autonomous entity after the demise of the Prophet. It no longer responded to the problems faced by the Companions and the following generations. The Qur'an remained the same, but Muslims expanded and developed into many other parts of the world. The changing nature of the Qur'an, with the Prophet no longer present, and the Qur'an being codified as a *mushaf,* Muslims tended to see it as something outside themselves. They tended to see the Qur'an as an object of reading, memorizing, or studying, rather than as a subject bringing the spirit of transformation. The meaning of the Qur'an was highly determined by the subjectivity of the exegetes.

2) The Hadith. *Hadith* and *Sunna*, albeit their different meanings, are sometimes used interchangeably. Literally, *Sunna* means a clear path or a beaten track but it has also been used to imply normative practice or an established course of conduct. To the *ulama* of *Hadith, Sunna* refers to all that is narrated from the Prophet Muhammad, his acts, his sayings, and whatever he has tacitly approved, plus all the reports which describe his physical attributes and character (Kamali 1991, 44). In a *Hadith*, the Prophet is reported to have said, 'I left two things among you. You shall not go astray so long as you hold on to them: the Book of Allah and my *Sunna*'

As *Sunna* is the second source of the Sharia next to the Qur'an, the *mujtahid* (one who conducts *ijtihad)* is bound to observe an order of priority between the Qur'an and *Sunna*. Hence in searching for a solution to a particular problem, the jurist must resort to the *Sunna* only when he fails to find any guidance in the Qur'an. If there is a clear text in the Qur'an, it must be followed and be given priority over any ruling of the *Sunna* which may happen to be in conflict with the Qur'an.

Hadith is a narrative, purporting to give information of what the Prophet said, did, or approved, or disapproved or, of similar information about his Companions, especially the senior Companions and more especially the first four Caliphs (Rahman 1979, 53-4). The word occurs frequently in the Qur'an, and in all cases it carries the meaning of a narrative or communication. *Hadith* differs from *Sunna* in the sense that *Hadith* is a narration of the conduct of the Prophet while *Sunna* is the example or the law that is deduced from it. Hadith in this sense is the vehicle or the carrier of *Sunna*, although *Sunna* is a wider concept which includes also the established practice of the community.

Because *Sunna* is a fact while *Hadith* is a report of the fact, they are fundamentally different. First, *Sunna* is objective while *Hadith* is subjective. Second, classification and categorization applies only to *Hadith* and not to *Sunna*. What can be problematic, therefore, is the *Hadith* and not the *Sunna*. One of the problems is the use of the Prophet's authority as a source of information. Information on the Prophet's *Sunna* may be retold in a partial manner and not chronologically. Many *hadiths* inform only the content of the Prophet's saying, or what he did or approved, without explaining about the situation or context. This problem becomes more serious when *Hadith* is viewed as *Sunna* and, hence, equally objective. It becomes even more serious when the *Hadith* is understood as *wahy* (revelation) on the ground that the Prophet would not say or act with lust or vested interest. This may lead to a fallacy among majority Muslims in viewing *Hadith* as equally valid as the Qur'an (Qaradhawy, in Misrawi 2003, 89).

Secondary to the Qur'an, *Hadith* could not possibly contradict this primary source. Thus, *Hadith* is also a source of morality which is laden with the spirit of liberation. Its validity can be tested empirically, as to how far it contributes to providing solutions to the various problems humans are facing. However valid it is, if it cannot inspire positively to solve human problems, a question should be raised on the validity of its *sanad* (transmission) and *matn* (content or subject matter).

In sum, it is clear that the process of *Hadith* formation has involved interpretations of its re-tellers (*rawi)* from the time of the Companions to its codification in the mid of the third century of Islam. When the *Hadith* have been compiled and presented in various books like now, the meaning is also determined by the interpreters. And so is the meaning of the Qur'an. Therefore, even when *Tafsir* is not formally categorized as a source of Islam, it is one of the crucial roots of Islam.

3) Tafsir. *Tafsir* as a process of understanding texts applies not only in the interaction between Muslims and Qur'anic verses; it appears in all other religious texts as well. But because the Qur'an is the main source, while other texts function as its supporters, *Tafsir* is known more in its relation with the Qur'an. The need for *Tafsir* appears when the process of communication with texts is constrained.

Similar to the tradition in reporting the *Hadith*, there are two tendencies in Tafsir: *tafsir bil ma'tsur* and *tafsir bir ra'yi.* The first stream is based on reports deriving from the Qur'an itself, the Prophet, the Companions, and the *tabi'in* (generation after the Companions) who provide explanation on what may have been intended by God in a certain text. The second is based on *ijtihad* which has fulfilled certain criteria (Adz-Dzahabi, in Misrawi 2003, 91).

The influence of hermeneutics discourse can be observed among contemporary Muslim thinkers. In general, they view that the Qur'an should not be treated as a 'dead' text but as a living text filled with the spirit for transformation. This spirit for transformation, as opposed to the spirit for texts, is being used as a parameter to view the current realities.

Fazlur Rahman (1970) through his Thematic Contextual *Tafsir* proposed that verses on the same theme or issue be grouped first so as to enable a comprehensive understanding of the meanings given by the Qur'an on it. Then the socio-historical context of each verse should be studied so that its spirit for transformation can be explicated and more easily applied in the current context.

Engineer (1994, 16) contends that there are two categories of verses: normative verses, which discuss about what should be; and contextual ones, which describe about realities. The Qur'an implies what should be done by incorporating empirical realities. When reading the Qur'an, normative verses should be used as a reference, while contextual verses should be understood within the socio-historical frame of the revelation. Qur'anic texts are to be restored to carry out their initial function, i.e. as motivator for change and not as an implementation guideline.

In the modern discourse, *Tafsir* is no longer viewed as sacred and that it can be conducted only by elite *ulamas*. It should be brought into Muslim awareness that this process of understanding Qur'anic texts from its simplest form of quoting certain verse(s) to more complicated tasks like translating and interpreting is never free from the exegete's subjectivity. *Tafsir* should be seen as a process of dialectics between the exegete, the Qur'an, and the continually changing reality faced by the exegete. Therefore, Tafsir should be continuously renewed so that the guidance (*huda)* of the Qur'an can precisely reach the objectives.

4) Fiqh. Fiqh is almost similar to Islamic law itself. Literally, meaning "understanding," it is a discipline which seeks to understand detailed and general rules of Islamic teachings. Later, *fiqh* is understood as a discipline on practical sharia. *Fiqh* deals with more practical aspects of sharia regulating human activities in their life cycle from the time they get up in the morning till the time they go to bed at night.

It is not surprising that *fiqh* is often viewed as representation of the religion itself. The role of *fiqh*, therefore, changes up and down in line with the inclining and declining role of the religion in the state. In countries imposing formal sharia, *fiqh* has a big authority in regulating human life as individuals, as part of the society, and in their relation with God. On the contrary, in a secular country *fiqh* is internalized more as regulating human relation with God.

Fiqh is often mixed up and confused with sharia. The latter is comprehensive, the Way ordained by God, embracing all from moral and ethical values, theology, spiritual aspiration, to formal ritual worships. Sharia is also known as *al-sharia al-tsalatsah* (the three sharia), reflecting the trilogy of *Islam-Iman-Ihsan. Sharia* consists of: 1) *fiqh* which represents *Islam* and can be viewed as the legal system, 2) *ilm-tawheed/ushuluddin* representing *Iman* which constitutes the theological system, and 3) *tasawuf* as representation of *Ihsan* which deals with ethical and mystical system (ZA Noeh, in Munir 1999, pp. 147-156). Thus, it is clear that *fiqh* is actually a part of *sharia*.

The comprehensive sharia is often narrowly understood, just as *fiqh*. Demands for formal sharia in several regions in Indonesia, for example, in reality is no more than the application of *fiqh*. When formal sharia has been agreed upon, the first action taken is to impose the obligation to wear head scarf *(jilbab)* for women, flogging, or hand chopping, and other rules that can be explicitly found in the texts. More significant problems detrimental to the lives of the majority like corruption, women trafficking, or business monopolies are not viewed as part of sharia just because these issues are not found in the texts.

This misconception has a significant effect to the way Muslims internalize the religion. When Islam is represented as sharia and sharia is understood just as formal rules, consequently, Islam is internalized just as a formal dogma. Physical dimension of the religion is prioritized over its spirituality. Pillars of Islam like prayer *(shalat),* fasting *(shaum),* alms *(zakat),* or *haj* are also reduced to mean just as ritual worships. During the Prophet's life these teachings had the power as a social movement with effect for social transformation. The dominant textual approach to Islam has restricted the religion's power and scope, because texts cannot respond directly to the prevalent problems faced by Muslims such as modern sophisticated crimes and corruption.

Fiqh or *shariah* understood just as *fiqh* is not the whole of Islam itself. It is the interpretation of texts which carries certain historical contexts. Therefore, differences of opinions of *fiqh* scholars *(fuqaha)* are inevitable, as illustrated in the later section. Even, the same scholar may express different opinions in different contexts.

5. Historical Development of Shari'a

The history of Islamic law as an embryo of *Fiqh* has been debated among Islamic scholars. Joseph Schacht, who built his thesis on the arguments of his predecessors, Snouck Hurgronje and Ignaz Goldziher (Arfa 1995, 52), contends that Islamic law was established only in the second century of Islam. He argues that Islamic law was not founded by the Prophet Muhammad, but by *qadhi* (judges) appointed by the governors of the Umayyad dynasty. It was these judges who transformed legal administration practices into a discipline of *Fiqh*. This thesis was refuted by Muslim as well as Western scholars, among others Al-Azami (Hasyim 2001, 88) who criticizes it for its flawed methodology, which disregarded the role of the Qur'an as the primary source of Islamic law.

An-Na'im (1996, 14)[1] affirms that the first three centuries of Islam (seventh to ninth centuries A.D.) were the formative period of Sharia. The formation of Sharia was significantly influenced by the territorial and demographic nature of the Muslim communities and their political and sociological contexts. The Muslim expansion and the conversion of various ethnic and cultural groups are also important. These territorial and

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[1] For survey on related factors and processes of sharia formation see among others Marshall G. Hodgson, *The Venture of Islam,* Chicago: University of Chicago Press, 1974; Ira M. Lapidus, *A History of Islamic Societies,* Cambridge: Cambridge University Press, 1988; and Holt, Lambton, and Lewis (eds.), *The Cambridge History of Islam,* pp. 58-63.

demographic factors determined the political and sociological nature of the Muslim state and provided inputs from which its institutions and policies developed during the crucial first three centuries of Islam. The combination of these factors had considerable impact on the formulation of sharia.

In more details, an Indonesian *fiqh* scholar, Alie Yafie,[2] divides the phase to five stages:

1) *Darut Tasyri'* or the period of laying the foundation of *fiqh,* when this discipline was in its formation process during the Prophet Muhammad's life. The Qur'an and the Hadith, which later become foundations of Islamic law, were in their revelation and formation process. The Prophet Muhammad was the sole authority of law through his *ijtihad.*

From the beginning, both the Qur'an and *Hadith* take serious consideration on social changes and adjust the law accordingly. For example, the prohibition of *khamar* (alcoholic drink) was revealed in stages, and so was the obligation for prayer. The principle of ease in ritual worships such as one for traveler to combine and shorten the prayers and not to fast was given considering Muslims' condition as individuals and collectively. This shows the dynamic nature of Islamic law. Most, if not all, legal formulations in the Qur'an and *Hadith* were based on the socio-cultural conditions of the revelation.

2) *Darut Tadwin* or the codification and registration period, when *fiqh* laws were codified and registered by the *sahabah* (companions) and *tabiin* (generation after *sahabah).* In this period the Qur'an and *Hadith* were being collected and codified. Legal authorities were in the hands of political authorities or *khalifah* through *qadhi* (judges) dispatched into regions. *Ijtihad* played a great role at this stage because there were no standard laws developed yet. The Prophet allowed the use of logical reasoning *(ijtihad)* when there was no fixed regulation in the Qur'an or *hadith*. Since its formation, sharia has been influenced largely by geographical characteristics and political context of Muslim societies.

The sharia of this phase is characterized by its strict adherence to the Qur'an and *Sunna* as understood and practiced by the first generation Muslims. The issue at this stage of *fiqh* formation is controversies whether or not laws claimed to originate from the Prophet and his companions are genuine or fabricated.

3) The second century of Islam was a period when schools of *fiqh* were formed. Sharia was constructed based on the works of earlier *fiqh* scholars who lived in Muslim centers stretching from Medina, Mecca, Basra, Kuffah, Damascus, and Egypt. This period produced masterpieces in *fiqh* such as Imam Syafi'i's *ar-Risalah* and *al-Umm,* Imam Maliki's *al-Muwaththa'*. A large number of *fiqh* schools developed at this period, four of them survive up to the present time.

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[2] As cited by Misrawi (ed.), *Dari Syariat Menuju Maqashid Syariat* (From Sharia to Maqashid Sharia), Jakarta: KIKJ and Ford Foundation, 2003.

Because of their independence and individuality, the works of the jurists in this stage were inevitably influenced by local contents. This reality was viewed as natural and legitimate. Founding jurists with their schools of thoughts *(mazhab)* of *fiqh* that have sustained until now worked in their own territories.

Differences of opinions amongst jurists were caused not only by their geographical differences and their mastery of texts from which laws were deduced, but also by their political inclination which gave birth to racial and ethnical fanaticism. Nasr Hamid (Misrawi 2003, 107) identifies that differences of opinions between Imam Syafi'i and Imam Hanafi, on whether or not it is allowed to recite the *surah al-Fatihah* in a language other than Arabic, are in fact due to political factors and fanaticism.

4) *Darut Taqlid* or period of adhering (to certain schools of thought). The biggest challenge of the period was how to sustain and take care of the previously produced works and, therefore, the spirit was to save the existing works. Textual approach to religious teachings began to inflict Muslims' intellectual tradition. *Ijtihad* was strongly discouraged and Muslims' intellectual horizon was preoccupied by explaining, repeating, and summarizing from existing works. Fanaticism to certain schools began to develop.

This period at the early Abbasid dynasty was characterized by the standardization of sharia sources the development of various techniques to break down the general principles and specific rules from the sources. This period, second and third centuries of Islam, presented monumental activities in the interpretation of the Qur'an and the sifting of authentic Sunna to distinguish them from other traditions. This period marks the beginning of *taqlid* or fully adhering to the school of thought one had chosen.

5) *Darut Taqnin* is the period of processing raw materials of *fiqh* into legal system in the modern time. *Fiqh* is the basis of law formation in Muslim countries or as a reference in countries with Muslim population which do not formally adopt Sharia like Indonesia.

The role of the early Abbasid period in the formation of *fiqh* as it is widely applied today is of paramount importance. The vast majority of Muslims today are followers of the four surviving Sunni schools of Islamic jurisprudence, *madhahib* (singular *madhhab),* which were established during the early Abbasid period (An-Na'im 1996, 16). The previously ruling Umayyads were said not to put high priorities on genuine and thorough Islamization of the government and administration of justice because of their preoccupation with the external expansion and internal cohesion of their domain (Goldziher 1981; Schacht 1964; Coulson 1964; in An-Na'im 1996, 15-16).

Recognizing the important role of the early Abbasids in the formation of Islamic law does not mean to underestimate the significance of the earlier periods. After all, sharia is fundamentally based on the Qur'an and *Sunna* as understood through the practice of the first few generations of Muslims. The clear and definite verses of the Qur'an and texts of Sunna must have been applied by the Prophet himself and his immediate Companions (*shahaba).* As An-Na'im (1996, 16) puts it, it would be better to see the early Abbasid

period as the culmination of a long process and fusion of the various elements of factors contributing to the formulation of Shari'a.

5. Ijma, Qiyas, and Ijtihad

Qiyas. The term *qiyas*, according to the Muslim jurists, means analogical reasoning, i.e. concluding from a given principle embodied in a precedent that a new case falls under this principle or is similar to this precedent on the strength of a common essential feature called the 'reason' or *'illa* (Rahman 1979, 71). The common element in this usage is the movement of thought from the explicitly known to the explicitly unknown. When a new or refined and complicated issue emerged, and the Qur'an and *Sunna* gave no clear and unequivocal decision, then a verse of the Qur'an or a general principle or a specific case in the *Sunna* was taken and a decision was made on its strength with regard to the present issue. It is by virtue of the commonality of the *'illa* between the original case and the new case that the application of *qiyas* is justified. The jurists who resort to *qiyas* take it for granted that the rules of Sharia follow certain objectives *(maqashid)* which are in harmony with reason.

The four elements of *qiyas* are contained in its definition by the majority of ulama, i.e. 'the application to a new case *(far')*, on which the law is silent, of the ruling *(hukm)* of an original case *(asl)* because of the effective cause *('illa)* which is in common to both' (Kamali 2000, 199). Kamali (200) provides an illustration on the inter-relatedness of these elements: *far', hukm, asl,* and *'illa* in an example adduced from the Qur'an (Al-Maidah/5:90) on the prohibition of wine drinking. If the prohibition is to be extended by analogy to narcotic drugs, the four pillars of *qiyas* would be:

asl	*far'*	*'illa*	*hukm*
wine drinking	taking drugs	the intoxicating effect	prohibition

From its beginning in as *ra'y* which encouraged the use of ratio, *qiyas* seems to have been established in the second half of the 2nd century of Islam. Shafi'i is generally credited with having established *qiyas* as a principle. The development of personal opinion into *qiyas* was a link in the process of securing uniformity and solidifation of Islamic law which logically ended in *ijma'*.

Ijma'. After the first four Caliphs, differences in legal and dogmatic opinion on details began to appear. The secular Umayyad administration left the task for legislation to recognized religious leaders and jurists from different regions. The jurists, in turn, exercised their minds mainly employing the method of personal opinion on the materials of the Qur'an and *Sunna* (both living and verbal traditions). But alongside this free, individual legislative activity, which produced an uncoordinated body of opinions, went another balancing and complementary movement of coordination and unification. The development of individual opinion into systematic analogical reasoning was a step toward *ijma'* (Rahman 1979, 72).

Ijma' is defined as the unanimous agreement of the jurists of the Muslim community of any period following the demise of the Prophet Muhammad on any matter (Kamali 2000, 169). Unlike the Qur'an and *Sunna*, *ijma'* does not directly partake in divine revelation. As a doctrine and proof of Sharia, *ijma'* is basically a rational and yet binding proof. *Ijma'* plays a crucial role in the development of Sharia. The existing body of Fiqh is the product of a long process of *ijtihad* and *ijma'*. Since *ijma'* reflects the natural evolution and acceptance of ideas in the life of the community, *ijma'* can never be expected to discontinue. When the door for *ijtihad* was allegedly closed in the third century of Islam, *ijma'* , in all probability continued to play a role in consolidating and unifying the law after the supposed termination of *ijtihad* (Hasan 1970, 160).

Ijtihad. Ijtihad literally means exerting efforts or strenuousness, but technically it means exercising independent juristic reasoning to provide answers when the Qur'an and *Sunna* are silent (An-Na'im 1996, 27). The exercise of *ijtihad*, in a broader sense, is relevant to the interpretation of the *Qur'an* and *Sunna*. Whenever a principle or rule of Sharia is based on the general meaning or broad implications of a text of the Qur'an and *Sunna*, instead of a direct ruling of a clear and definite text, the link between the text and the principle or rule of *Sharia* is established through juristic reasoning. Differences in the *ijtihad* of jurists in the interpretation of the Qur'an and *Sunna* since the earliest times account for the differences in their conclusions on whether a given text is relevant and what it means in relation to the facts (Shafi'i, *al-Umm,* in An-Na'im 1996, 198).

It is difficult to imagine any text in the Qur'an and *Sunna* which does not need *ijtihad* for its interpretation and application in concrete situation. *Ijtihad*, therefore, was a basic and very active concept in the formulation of Sharia during the eighth and ninth centuries. When Sharia had taken its definite shape and the need for developing fresh principles and rules was perceived to be diminishing, room for *ijtihad* was narrowing and the *Ijma'* arrived at by that time was declared final. This phenomenon is known in the history of Islamic law as the closing of the gates of *ijtihad*. The gates are believed by majority Muslims to have remained closed since the tenth century up to now. Contemporary Muslim scholars like Muhammad Abduh have been demanding for the reopening of the gates of *ijtihad*.

6. Schools of Thought in *Fiqh*

The dynamic intellectual activities at the late Umayyad and early Abbasid dynasties were of significant importance in shaping the development of *Fiqh*. At this period, most intellectual activities were centered in Kuffah and Medina and, hence, these cities were viewed as the places of origin of *Fiqh*. Reflecting different approaches in interpreting the Qur'an or in retelling the *Hadith*, *the rational and the textual,* the deduction of *Fiqh* laws also followed this pattern. The Medina stream, because of their closeness to the source of *hadith* texts, they developed into *Ahlul Hadith* (People of *Hadith*), which put high priorities on texts. The Kuffah stream in Iraq, being far from textual source of *hadith*,

places great importance on the role of ratio and, therefore, is known as *Ahlur Ra'yi* (People of Ratio). From these centers a significant number of *Fiqh* schools *(madhhab)* developed, four of them have survived up to now: Hanafi, Maliki, Shafi'i, and Hanbali.

a) *Hanafi.* Abu Hanifah (died in 150 H.), founder of the Hanafi school, lived during the two dynasties, late Umayyad and early Abbasid. Genealogically, his intellectual construction was built in a region with high inclination for rationalism, i.e. Kufah (Iraq), also known as a fertile ground for the growth of theology and philosophy. Kufah was also a place for the study of *Fiqh* like Medina. Located far from the center of Qur'anic and *Hadith* texts, Kufah developed the tradition of resorting to ratio in deducing laws. This region was known as the locus where analogy and syllogism developed. Abu Hanifah was fortunate to have elements conducive to his learning: an environment with rational intellectual tradition, a significant number of *ulama* who could inspire him, and teachers from whom he could explore knowledge. He learned from *Fiqh* scholars with different backgrounds including the rationalist and those who adhere to *Hadith*, the Mu'tazilite and the Shi'ite. Ideologically, he had a strong inclination toward four streams of *Fiqh*, i.e. that developed by Umar (based on the principle of *maslahah* or public and personal goodness), by Ali (based on the pursuit of the essence of Sharia), by Abdullah ibn Mas'ud who pioneered the principle of rationality in *Fiqh*, and by Ibn 'Abbas who taught him the Qur'an (Hasyim 2001, 93).

Abu Hanifah was a *Fiqh* scholar with an undisputed reputation. His method of *istinbat* (deducing law) adopts the following order of priorities: 1). the Qur'an, 2) the *Sunna*, 3) words of Companions, 4) *Qiyas* (analogy), 5) *Istihsan* (deem something as good), 6) *Ijma'* (consensus), and 7) *Urf* (tradition)

Abu Hanifah is widely known for the breadth and depth of his knowledge, far breaking through the limitation of his time. He was not content with the superficial meaning of the text; instead, he would pursue to disclose its deeper meanings and intents. From a human rights' perspective, the *Fiqh* of Abu Hanifah (the Hanafi school) is characterized by its high respect to humanity as depicted in the following principles: a) ease to mitigate Muslims in their ritual worships and social relations, b) securing the rights of the poor and the weak, c) freedom for human beings to act within their capacity, and d) ensuring human freedom and dignity. In addition to his shrewd intellectual, Abu Hanifah is also known for his independence from authorities' intervention. He was not willing to legitimize the will of the power holder unless it is in line with the Qur'an and *Sunna*.

Prioritizing ratio over texts, the Hanafi school may be viewed as liberal *(al-fiqh al-hurriyyah).* It is more flexible in facing the dynamic and challenging human life. In the case of marriage, for example, the Hanafi differs from other schools in assuring that a mature woman could not be forced into marriage by anybody. This view is different from that of the Shafi'i which allows a girl forced into marriage by her father or grandfather. On many other issues, the Hanafi is relatively more flexible than the other schools. Abu Hanifah died in the prison in Baghdad.

b) *Maliki.* Imam Malik ibn Anas lived in 93-179 H. and hardly ever left his place of birth, Medina. He is well known as an authority of *Hadith* and *Fiqh*. He witnessed the late period of the Umayyad and the early Abbasid when Islam expanded to China and Europe especially Spanish. His students spread his teachings in various regions among others Africa, Hijaz, Iraq and Andalusia. Imam Shafi'i, founder of the Shafi'i school, was one of his students. Shafi'i paid very high respect to him and said that Malik was a shining star compared to other scholars.

Scholars often name Malik as proponent of traditional *Fiqh*. Medina, where Malik spent most of his time, was the locus of traditional stream of *Fiqh*. This city is of special value because of its political history. Most Sharia laws were made during the Prophet's life in Media; the four rightly-guided caliphs *(khulafaur- rasyidun)* were also there. It is not surprising that traditional *Fiqh* developed there. The association of Medina with traditional *Fiqh* and Iraq with rational *Fiqh* is not fully true. Not all Iraq *Fiqh* are rational, neither are Medina *Fiqh* traditional. *Hadith* are used in Iraq, so much as ration used in Medina. Despite being a traditionalist, who strongly adhered to the *Hadith*, Malik was a rational in a way that he adjusted texts with different demands for *maslahah* (benefit).

In deducing laws, Malik adopted the following order of priorities: 1) the Qur'an, 2) the *Sunna*, 3) *Qiyas* (analogy), 4) *Mashalih Mursalah* (public benefit), 5) *Ihtisan* (deem something as good), and 6) *Dzara'i,* which means that things leading to *haram* (prohibition) is *haram;* likewise, things leading to *halal* (allowable), is halal. Two important works of Imam Malik are *al-Muwaththa'* and *al-Mudawwanah.*

c) *Shafi'i.* Muhammad Idris al-Shafi'i was born in 150 H., the year Abu Hanifah passed away. Several accounts, among of them by Al-Khayyal (Hasyim 2001, 16) assume that this coincidence was meant by God to have a replacement for Abu Hanifah, so that the world is never left behind by *Fiqh* scholars.

Shafi'i's intellectual activities began at very early age by memorizing the Qur'an. Then he learned the *Hadith* from resourceful teachers in Mecca. He was interested in Imam Malik's thought and later became his student. He had an extraordinary capacity in absorbing, retaining, and memorizing knowledge. He was also an eloquent speaker who could articulate ideas clearly.

The methodology Shafi'i developed in deducing laws is different from his predecessors, Hanafi and Maliki. He presented five levels of knowledge[3]: 1) the Qur'an and *Sunna*, 2) *ijma'* (consensus) if the knowledge is not found in the Qur'an and *Sunna*, 3) Unanimous opinions of the Prophet's companions, 4) Divided opinions of the Prophet's companions, and 5) *Qiyas* (analogy) to something existing in the Qur'an or *Sunna.*

Shafi'i emphasizes the importance of *qiyas* as a method in *istinbath* (deducing law) for two reasons. *First,* Sharia law is inseparable from the issue and its context and therefore we must provide an explanation in what context the law is produced. There is no problem

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[3] Muhammad ibn Idris al-Shafi'i, *Al-Umm,* Vol. VII, p. 246.

if the texts of the Qur'an or *Hadith* provide such contextual explanation. If not, we have to resort to *qiyas* in order to draw an analogy with what is contained in the texts. Another reason is because Shafi'i divided the legal aspect of sharia into two levels: *qath'i* (definitive, decisive, and free from speculation) and *zhanni* (speculative, doubtful). The *qath'i* teachings are expressed in texts with definitive meanings. There is no need to do an *ijtihad* for definitive or decisive knowledge because it is explicit in the texts. For example, the obligation to pay alms is *qath'i,* reflecting the principle of justice, and needs no more explanation. But how this obligation is materialized in terms of what goods are sanctioned, how much, for whom, and when, is the issue of the *zhanni* level, which needs *qiyas.* This process of arriving into rules and laws is the domain of *fiqh,* which is also known as *sharia* in its narrow meaning.

As a whole, Shafi'i's process of *ijtihad* could be divided into two phases. First is the Baghdad period, when he wrote masterpieces *Risalah Ushuliyyah, Al-Umm,* and *Al-Mabsuth.* Then he moved to Egypt (199 H.) where he revised his earlier books. Followers of Shafi'i are spread among others in Iraq, Egypt, Yemen, Khurasan, and in Southeast Asia like Indonesia and Malaysia. His monumental contribution to the Islamic intellectual tradition is his success in developing a new discipline, i.e. *Ushul Fiqh* or the Roots of *Fiqh* which elaborates the principles of Islamic jurisprudence. Shafi'i succeeded in positioning himself as a synthesis of his predecessors, Abu Hanifah (the Rationalist), and Imam Malik (the Traditionalist).

d) *Hanbali.* Imam ibn Hanbal (164 – 241 H.) was born, raised, and died in Baghdad. Hanbal is the name of his grandfather, who was a follower of the Umayyad but left and joined the Abbasid. Similar to his predecessors, Imam Ahmad began his intellectual journey by memorizing the Qur'an; then he learned the Hadith, the Companions' *akhbar,* and the *tabi'ins' atsar.* Imam Hanbal's early interest was Hadith, then *Fiqh*, particularly after he met Imam Shafi'i. His *Fiqh* developed from textual (*dirayah)* and historical *(riwayah)* perspective.

In general, his methodology of deducing laws is based on: 1) Texts (the Qur'an and Sunna), 2) Undisputed *fatwa* of the Prophet's companions, 3) In the case of different opinions exist among the companions, he would take one which is not contradictory to the texts. If none is in line with the texts, he would not make any choice. Unlike Shafi'i, he would not exercise the process of selection or *qiyas;* 4) Hadith *mursal* (disconnected) or *dha'if* (weak), and 5) *Qiyas,* only as a final resort (Ibn Qayyim, in Hasyim 2001, 126).

It is noteworthy to explore Imam Ahmad's progressive opinion on *ijtihad.* He never declared that the door for *ijtihad* was closed. The Hanbali school is of the opinion that *ijtihad* remains open to those who have the capacity and credibility. They believe that each decade will produce an independent *mujtahid* (person who does *ijtihad).* .

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