



**INTRODUCTION TO  
ISLAMIC LAW**

AWEL SEID  
CONSULTANT AND ATTORNEY AT LAW

JANUARY 2006

***Intellectual Background:  
Islamic Sources of Information and their  
Development into Islamic Law***

**By- Awel Seid  
Lawyer**

**Diversity of thought**

Diversity of opinion and practice has existed since the beginning of time. Even prophet Muhammad was thought to have said "1 (Could not find firsthand reference!) The goal of this chapter is to introduce some of the prevailing concepts of Islamic thought and to try to survey the various opinions and disciplines that have shaped the practice of Islam today: traditionalists versus rationalists; scholars who chose only a handful of ahadith as religiously binding, versus those who considered nearly all ahadith as so; those who interpreted the Quran with literalism and those who saw its broad fundamentals as eternal; those who believed in imitating the practice of Islam during the prophet's lifetime versus those whose application of Islam took into consideration the different social and political climates; those who claimed the "doors" of ijtihad (independent judgment) were to be closed, and those who believed they should remain open to prevent stagnation of thought.

Although the above debates have existed for centuries, it is unfortunate that despite great achievements in human and technological advances, many progressive Muslim thinkers today are discounted, alienated and even threatened because they fail to subscribe to the traditional party line or the politics du jour. Today's stagnation in thought is happening despite Islam's rich past where we find differing, even polarized views, from jurists in high stature. It is known that the four well-known Muslim schools of thought differed to no small degree in their interpretations. Many schools grew out of one another because students differed from their teachers and eventually formed opposing schools of thought. (Shafi'i was a student of Malik's and Ibn Hanbal was thought to be a student of Shafi'i's.)

One can't wonder but ask, if Islam was explicit on many issues, then why hasn't conformity among Islamic jurists continued through the ages? It could be argued that it was the legitimate exercise of independent judgment, or *ijtihad*, when there was no explicit guidance from divine revelation, that resulted in differences between the schools of thought. A 16<sup>th</sup> century Muslim scholar echoes the sentiments of many jurists when he preferred to speak of differences in juristic opinions in terms of "latitude of interpretation" or *tawsiy*, as opposed to "divergence" or *ikhtilaf*. Four hundred years later, modern scholar N.J. Coulson explains it this way: "God permitted a wide scope in the elaboration and interpretation of his basic precepts, and variations in doctrine can all be explained in terms of one standard, that of the comparative severity or leniency of interpretation." <sup>2</sup> Walking on that fine tightrope of interpretation has and always will be a challenge to Muslims across the globe.

This chapter introduces some of the sources, debates and opinions that have affected our way of thinking and the "latitude of interpretation" as one scholar put it. The study of women's rights in Islam would be incomplete without looking into how Muslims of yesteryear interpreted Islam and how historical and political influences have affected the beliefs and practices of Muslims today. In no way does this chapter cover all issues in depth or become a substitute for a devoted study on comparative Islamic thought. We are merely offering some food for thought and suggesting that one does not take for granted that the most prevailing opinions are indeed the only Islamic and correct options.

### **Sources of Islamic Law**

In the eighth century, a difference in legal approach arose amongst Islamic thinkers in two prevailing schools of legal thought. The traditionalists (*ahl al-hadith*) relied solely on the Quran and the *sunna* (traditions) of the prophet as the only valid sources for jurisprudence, such as the prevailing thought emanating from Medina. The non-traditional approach (*ahl al-ra'y*) relied on the free use of reasoning and opinion in the absence of reliable *ahadith*, which was heralded in Iraq. The reason for the difference in technique is that in Medina, there was an abundance of reliable *ahadith* that scholars could depend on for forming legislation, since the prophet lived the last ten years of his

life during a period of legislation in the young Muslim community. In Iraq, the sources that were available were not as reliable as in Medina and so the jurists had to turn to analogy because of their circumstances. Therefore, a hadith may have been accepted by Malik (from Medina) and not by Abu Hanifa (from Iraq) who had to use analogy in the absence of reliable hadith. A challenge that jurists had to reconcile was which of the prophet's actions and decisions were religiously binding and which were merely a function of personal discretion of the prophet? In general, ahl al-hadith eventually lent legislative significance to much of the prophet's decisions, whereas other schools tended to distinguish between the various roles that the prophet played in his life.

Muhammad ibn Idris al-Shafi'i (d. 819) was concerned about the variety of doctrine and sought to limit the sources of law and establish a common methodology for all schools of Islamic law. His efforts resulted in the systemization of *usul al-fiqh*, the following four sources of Islamic law:

1. the Quran;
2. the sunna or tradition of the prophet;
3. ijma or unanimous agreement.

Throughout history Muslim jurists in determining the legality of an issue used these sources in descending order. If the legality was not based on an explicit command in the Quran, then the jurists turned to look for explicit commands in the methodology were unanimously agreed upon; the Quran could be interpreted differently, some traditions of the prophet were questioned for their authenticity greatly debated and there was little unanimous agreement among scholars in Islamic history about inexplicit issues.

### **The Qur'an**

Here is a plain statement to mankind, a guidance and instruction to those who fear God (3: 138) God revealed the Quran in Arabic through the Angel Gabriel to prophet Muhammad over a period of 23 years. For ten years in Mecca and 13 years in Medina the Quran taught the oneness of God and guide believers to the path of morality and justice. As the Muslim community grew and its needs became more complex, the Quran

addressed those issues and tried to replace old tribal customs with more just reforms. For example, the Quran outlawed prevalent customs such as idolatry, gambling, liquor, promiscuity, unbridled polygamy usury, etc. It also improved the status of women by proclaiming women's equality to men and providing women with decreed rights in the areas of marriage, divorce and inheritance.

The shari'a, foundations of Islamic law, are derived from verses from the Quran. "The bulk of Quranic matter consists mainly of broad, general moral directives as to what the aims and aspirations of Muslims should be, the 'ought' of the Islamic religious ethic. "4 Because many of the directives in the Quran are so broad, interpretation takes on such a significant role. There have been so many different interpretations of the Quran, claims widely read and revered Islamic thinker Abi A'ala Maududi, that "there is hardly to be found any command with an agreed interpretation." 5 And that doesn't just refer to modern scholars, but also includes the founding schools of thought and even the companions of the Prophet, who "did not all agree in every detail in regard to commands and Prohibitions." Any Muslim scholar or institution has never questioned 6 Nevertheless, the authenticity of the Quran.

### **Sunna of the Prophet**

You have indeed in the Apostle of God a beautiful pattern of conduct for anyone whose hope is in God and the final Day (33:21). As the last messenger of God, Muhammad (570-632) brought the Quranic teachings to life through his interpretation and implementation as leader of the Muslim community. The sunna of the prophet generally means "tradition" and includes the following three categories: sayings of the prophet; his deeds; and his silent or tacit approval of certain acts which he had knowledge of. The record of the prophet's words and deeds were recorded in narrative ahadith, reports that were transmitted before finally being compiled in authoritative collections decades after the death of the prophet. (For more discussion about hadith, see next section, "The Role of Hadth.") In the first centuries of Islam, "it should finally be stressed that there was no suggestion, at this stage, that the prophet was other than a human interpreter of the divine revelation; his authority lay in fact that he was the closest, in time and spirit, to the Quran and as such was the ultimate starting-point of the Islamic sunna." 7

## **Qiyas or analogy**

The third source of law, qiyas, is reasoning by analogy. In order to apply qiyas to similar cases, the reason or cause of the Islamic rule must be clear. For example, because the Quran clearly explains the reason that consumption of alcohol is prohibited (because it makes the user lose control of his actions), an analogy can be drawn to drugs which induce the same affect. But because the Quran does not specifically state the reason why pork is prohibited, Muslims cannot justify banning another meat product with a similar cholesterol level, etc. The use of analogies greatly varied among scholars; for example, Spain's Ibn Hazm (10<sup>th</sup> century) who was formidable proponent of the Zahiri school, rejected the use of quas, whereas Imam Abu Hanifa of the Hanafi school (8<sup>th</sup> century) applied them extensively.

## **Ijma or unanimous agreement**

Ijma constitution thee unanimous agreement of a group of jurists of a particular age on a specific issue and constitutes the fourth and final source of law in Shafi'i's methodology. If questions arose about a Quranic interpretation or an issue where no there no guidance from either the Quran or sunna, jurists applied their own reasoning (ijtihad) to come to an interpretation. Through time "One interpretation would be accepted by more and more doctors of law. Looking back in time at the evolved consensus of the scholars, it could be concluded that an ijma of scholars had been reached on this issue." 8 Unfortunately, unanimous agreement rarely happened among intellectual elite and since there were always diverse opinions, one could always find several scholars of the day who concurred on an issue. Also, the definition of ijma and which ijma would be considered valid was a point of contention, because ijma is not simply the consensus of all past jurists. Besides, using the concept of ijma poses the problem of having to look to the past to solve the problems of the future, and scholars of yesteryear didn't wrestle the same issues that ate challenging Muslims today.

## **What is halal and haram?**

The concepts of halal, permissible, and harm, prohibited, play a major role in deciding the legality of acts. Scholars have created classifications of acts that span the difference between halal and haram, such as makruh, which is an act that is not recommended, but clearly not prohibited. No matter the classification, scholars agreed that if a certain action was not categorically prohibited, then it was permissible.

### **Difference between sunna and hadith**

"The majority of the contents of the hadith corpus is, in fact, nothing but the Sunna-Ijtihad of the first generations of Muslims, and ijihad which had its source in individual opinion but which in course of time and after tremendous struggles and conflicts against heresies and extreme sectarian opinion received the sanction of Ijma, i.e the adherence of the majority of the community. In other words, the earlier living Sunnah was reflected in the mirror of the Hadith with the necessary addition of chains of narrators. There is , however, one major difference: whereas Sunnah was largely and primarily a practical phenomenon, geared as it was to religious beliefs and principles as well." (Rahma, p.45)

The hadith constitute the recording in writing everything that prophet Muhammad was to have said, such as his opinions or decisions on issues, his responses to Muslims, questions or requests, as well as his silent or tacit approval of acts he had knowledge of. "The hadith sayings are in fact a veritable panorama of daily life in the seventh century, a vivid panorama, extremely varied because there are various versions of the same event. Finally, one also finds side by side subjects as different as 'how to perform one's ablutions,' 'how to behave on one's wedding night; and 'what is to be done in case of civil war" (Merniss, 35)

Just as during his life, Muslims could go to the prophet for answers; after his death, they looked to the hadith for prophetic guidance, a means of searching out what was or not acceptable in areas where the Quran had not left specific rulings. However, many scholars believe that hadith were not compiled in authoritative collections until the middle of the ninth century, "by which time a great mass of diverse ahadith reflected the variety of legal opinion developed over the past two centuries of juristic reasoning in the legal

schools. Recognition that the hadith literature included many fabrications led to a concerted effort to distinguish more clearly authentic traditions."(Esposito,6)

### **The development of the science of hadith**

In order to verify the authenticity of hadith narrations, painstaking attempts were made by Muslim scholars to apply a science of hadith criticism. Judging the trustworthiness of the narrator was the first criteria; for example, his or her having a good memory and a sound reputation in the community, etc. Based on the chain of narrators (isnad) ahadith were classified by the following categories:

- Mutawatir- "continuous: chain consists of a large group of transmitters in each generation, sufficient in and of itself to dispel suspicion of fabrication.
- Mashhur- "well-known" constitutes a widely disseminated hadith, with individual narrators that could be traced back to the time of the Prophet.
- Ahad\_ "isolated" refers to ahadith where the last link (sanad) in the chain was only one authority.
- Morsil- "not connected" refers to ahadith where the last link in the chain is unnamed.

The second criteria was judging the hadith for its content or matn. Did the hadith contradict the Quran or another verified tradition or the consensus of the community? Did it have the "light" of the Prophet in them? Were they consistent with his style and speech? After the ahadith were judged for their chain and content, they were labeled to their degree of strength or authenticity: sahih (authentic), hasan (good), da-if (weak). Of the six major collections of the hadith, that of Bukhari (d. 870) and Muslim (d. 875) have enjoyed an especially high reputation among Muslim scholars. Despite this, questions regarding the authenticity of some ahadith still remain.


### **Collection by Bukhari**



So revered is Bukhari's work, it "is generally considered by a large number of the Muslims as an authority second only to the Qu'ran. "(Hadith li, p. 53) Bukhari stated that he collected 600,000 ahadith and confirmed around 7,000(including duplications) as authentic. Although later scholars agree that Bukhari had stringent requirements to verify the chain of narration, his concentration was to verify the chain itself, and not the subject matter, "Al-Bukhari confines his criticism to the narrators of traditions, and their reliability, and pays little attention to the probability, and pays little attention to the probability or possibility of the truth of the actual material reported by them. In estimating the reliability of the narrators, his judgment has in certain cases been erroneous, and the Muslim traditionists have not failed to point this out. "Quoted are scholars such as al-Daraqutni, Bu Masud of Damascus and Abu Ali al-Ghassani who have pointed out weak traditions or those that do not technically fulfill the requirements. "Despite this, all the Muslim traditionists, including those who have criticized the Sahih, have paid unanimous tribute to the general accuracy, scrupulous care, and exactitude of the book's author. "Hadith Literature, p. 58)

### **Human influences in hadith collection**

Scholars have unsatisfactorily answered the legitimate concerns everyday Muslims have about legitimate human factors in hadith collection. The possibility of error, bias or evil intent is often refuted by traditionalists who believe that the science of hadith had been perfected to reject the many fabrications and that the sincerity and piety of the early narrators and compilers outshine the "rubbish heap of false traditions." (Hadith Lit, p. 32) But one cannot help but ask how human vice, political agendas and simple imperfections could not have played some role in the collection of ahadith. Fazlur Rahman in Islamic Methodology in History sorts through and explains how political and social factors in early Islamic history could not be easily isolated from the out product, namely the hadith and ultimately legal decisions. "The majority of the contents of the Hadith corpus, is, in fact, nothing but the sunna-Ijihad of the first generations of Muslims. "(Rahman, p. 45)

 Many practical issues dealing with the collection and authenticity of hadith were formidable challenges affecting their integrity, For example, it was difficult to question a

reporter of hadith, as a legal witness could, on the ground that his evidence was biased (Coulson, 63) some ahadith (such as predictive ones about political troubles in Bukhar and Muslim) were labeled authentic because they had supporting the theory that verification of islands is not a foolproof guarantee of authenticity (Fazlur Rahman, Islamic Methodology in History, Karachi: Central Institute of Islamic research, 1965, p. 72) at one time there were hundreds of thousands of ahadith to sift through, and enormous amount against the human odds that could not have perfectly sifted though all the fabricated ones; "selective" memory, mishearing, , making bona fide mistakes in relaying a tradition or other human factors are also not often reconciled with the enormous weight given to ahadith.

A good example of how a modern writer explains how this human factor comes into play with ahadith on women is Moroccan feminist, Fatima Mernissi. In a section of the veil and the male elite, she delves into the biographical background dissenting biographies and refuting opinions on several ahadith and their narrators to prove that in many instances, sexist ahadth have been, deliberately or not, attributed to companions, narrations of the Prophet. Analyses of these ahadith show inconsistencies historical impossibilities and clear bias, leading her to believe that many may have in fact been fabricated, labeled as authentic and used to further certain political agendas. Here is a shortened exercise in questing a questionable hadith:

Those who entrust their affairs to woman will never know prosperity" is reported in Bukhari. The "authenticity" of this hadith is shaded by the following facts Mernissis research indicates:

- This hadith is narrated by a slave who converted to Islam, Abu Bakra, (not to confused with the caliph Abu Bakr) whose genealogy was difficult to trace, which is considered an important part of a hadith narrator's biography. More importantly, he recalled this hadith apparently decades after the death of the prophet, coincidentally at the time that Aisha's army was defeated by Ali's forces at the Battle of the Camel, the first civil war.

- In Bukhari's chapter about the first Muslim civil war, "al-Fitna" where all other ahadith on the same subject were assembled, Abu Bakra's narration is a solitary hadith justifying political neutrality by the gender of one of the leaders, Aisha.
- A biography of Abu Bakra claims that he was one of the four witnesses who was flogged for slander by Omar ibn-al-khattab. Abu Bakra falsely accused a well-known companion of adultery.
- "Abu Bakra remembered other hadith just as 'providential at critical moments.' For example, after the assassination of Ali, M'awoua thought he could have legitimate claim to the caliphate if only Hassan, Ali's son and muhammad's grandson, would renounce in writing his rights to that claim. At this historic moment, Abu Bakra recalled a haith that Hassan will be the man of reconciliation between the two divisions of the Muslim community, even though Hassan would have only been a baby when the prophet was supposed to have predicted that. (Mernissi, 49-61)

Many may wonder why Mernissi so zealously questions the general uses of this hadith when it can be easily be explained by its circumstance: The prophet responded to news of the death of a Persian king who was to be repalced by his daughter. Therefore, the Prophet's response was not meant as a general rule of an Islamic teaching revealed from God, but a personal response to a political incident. Islamic teaching revealed from God, but a personal response was not meant as a general rule-- as Abu Bakra may have intended it--wasn't it relayed sooner? And why did Abu Bakra wait decades later to suddenly introduce it? If it was the prophet's personal response to a specific incident, why was it relayed in the context of Aisha's leadership? Even though it was classified as a "sahih" hadith by Bukhari Mernissi says that it was still hotly debated by many scholars. "Al-Tabari was one of those religious authorities who took a position against it, not finding it a sufficient basis for depriving women of their power of decision making and for justifying their exclusion from politics." (Mernissi, p. 61)

Mernissi also looks at Abu Hurayrah, the most prolific narrator (over 5,300 ahadith) in the three years he knew the prophet. (Siddiqi, Hadith Literature, p. 18) Although Abu Hurayrah narrates twice as many ahadith as the next prolific narrator, rarely is his huge number of narrations questioned. One author simply states that "the fact that he narrated

a uniquely large number of traditions itself did make inventing ahadith in its name an attractive proposition." (Mernissi, p. 73) It appears that Mernissi's intent is to bring out all these incidents, inconsistencies and human agendas out from the woodwork and into our understanding of the anatomy of ahadith today.

Many scholars on hadith have told us how scrupulous narrators were in remembering hadith correctly, yet on the other hand, Aisha, for example was known to have refuted ahadith of some companions. How could she have been touted for her refutations if all the companions are touted for their scrupulous memory? She wouldn't have had anything to refute if no one's memory failed or there was no misunderstanding. For example, when Ibn Umar related that the prophet had said that the dead are punished in their graves on account of the wailings of their relatives, Aisha pointed out that the prophet had actually said that while the dead are punished in their graves for their sins, their relatives wept for them. (Siddiqi, p. 21)

There is no doubt that the companions of the prophet and hadith scholars such as Bukhari were highly scrupulous and righteous individuals, but to admit to their human imperfections is not by any means the same as to admit that they willingly and carelessly recorder traditions. In the minds of many Muslims, there is no middle ground. The gray area is the most difficult to deal with because we have to exert effort, investigate for ourselves, question and probe, as opposed to being given a handbook of exact definitions, beliefs and sources. Understanding the hadith is not as simple as opening up Sahih al-Bukhari and believing every word in it as if it were the Quran. Unfortunately, this is the understanding of many Muslims who fear that having a gray area dilutes the true message. What Mernissi tries to do is to boldly examine this gray area and ask questions few have delved before. In many cases, she brings together opinion up Sahih al-Bukhari and believing every word in it as if it were the Quran. Unfortunately, this is the understanding of many Muslims who fear that having a gray area dilutes the true message. What Mernissi tries to do is to boldly examine this gray area and ask questions few have delved before. In many cases, she brings together opinions from past scholars in hopes of shedding light on the taboo subject of questioning the origin and meaning of questionable ahadith.

## The role of Ahadith in first two centuries of Islam

Many scholars have agreed that the fabrication of hadith was a result of political and social tensions and dissensions erupting immediately after the death of the prophet and were carried into modern times. Here is how biographer Muhammad Haykal explains the phenomenon:

....after Muhammad's death the Muslims differed, and they fabricated thousands of ahadith and reports to support their various causes. From the day Abu Lu'lu'ah, the servant of al Mughirah killed Umar ibn al khattab and Uthman ibn Affan assumed the caliphate, the old pre-Islamic enmity of Banu Hashim and Banu Maysarah reappeared. When, upon the murder of Uthman, civil war broke out between the Muslims, Aisha fought against Ali and Ali's supporters consolidated themselves into a party, the fabrication of ahadith spread to the point where Ali ibn Abu Talib himself had to reject the practice and warn against it. He reportedly said: 'We have no book and no writing to read to you except the Quran and this sheet which I have received from the prophet of God in which he specified the duties prescribed by charity. 'Apparently, this exhortation did not stop the hadith narrators from fabricating their stories either in support of a cause they advocated, or of a virtue or practice to which they exhorted the Muslims and which they thought would have more appeal if vested with prophetic authority. (Haykal, Ixxxiii)

By the end of the second century of Islam, it was believed that "the fabricated ahadith numbered in the thousands and hundreds of thousands and contained an unimaginable amount of contradiction and variety." (Haykal, Ixxxiv) At the same time, Muslim scholars started forming coherent systems of thought and legal positions. The different schools of thought that transpired echoed various opinions and interpretations and many of their differences concentrated on the treatment of the ahadith: Abu Hanafi was well aware of the fabrication of ahadith, and had accepted a handful as being authentic and binding. The other extreme is Ibn Hanbal who in his Musnad work of ahadith, collected all traditions of the prophet "Which, by his criteria, were likely to prove genuine if put to the test, and could therefore serve as a provisional basis for argument....But he never claimed that all its contents were genuine or reliable." (Hadith Lit, p. 49) His school accepted nearly all ahadith as binding. Malik's school of thought was seen as the Medina

school of interpretation, and believed that the prophet had been the best person qualified to interpret the Quaran, yet Malik rejected some of the prophet's rulings on ground that they were outweighed by other juristic consideration. (coulson, 56)

### **How non-specialists can judge the authenticity of ahadith**

It is difficult to comprehend how human narrators and a man-made science of hadith compilation could have withstood any outside political or social biases. it is also difficult to explain how the most knowledgeable jurists in the different schools of thought disagreed on their approaches to hadith. And if indeed the hadith has found criticism in the most reliable of its authoritative compilations, where does this leave everyday Muslims with regard to the second most important source on Islam? How do we judge the reliability of ahadith for ourselves? Certainly there were great efforts put into the science of hadith by early scholars. Since then, however, recent scholars have let down the Muslim community by failing to continue to develop and re-examine the science.

The discrepancies ,inconsistencies and frustration without an updated science has left many Muslims community leaders at a loss. For example, Dr. Maher Hathout, spokesperson for the Islamic center of Southern California and an active Muslim leader in the United States, says he was compelled to put together " a suggested prescription to the non-specialist' Muslim reader particularly in America. "In order to evaluate problematic hadith references, Dr. Hathout recommends the following guidelines to students in his Islamic studies program?

1. First of all, he says ahadith must be distinguished from the Quran in the following ways: Ahadith cannot be recited in acts of worship. Secondly, they were not meant to be compiled like the Quran which was memorized and written down on various items, such as leather and bone and then finally compiled in one authoritative book during Othmnan's leadership (mid-seventh century). The prophet himself has been reported to discourage his companions from writing down his words, lest they be confused with the Quran. This report is in conflict with weaker ahadith that claim that the prophet granted

permission to write down his words, (Hadith Lit., p. 25) Lastly they were not divinely preserved, as opposed to the Quran in which it states that God will preserve the Quran; therefore, they can be tampered with, as we have seen in several examples of the hadith.

2. Ahadith should not contradict the Quran. Ahadith should be categorized as either those elaborating on revelations from God or those of personal opinions of the prophet. It is agreed upon by many scholars, including Muhammed al-Ghaazzali and Sheikh Mahmound Shaltoot of al-Azhar that anything the prophet said as a judge, ruler, medical person, his personal preferences and all other issues relating to natural human practices (Mu'amalte), are not binding orders. If authentic, however, they may be taken as recommendations. Binding are those authentic sayings of the prophet that refer to religious practice (ibadat), that elucidate the Quran, or the prophet specifically mentioned he received as orders from God.
3. Authentic ahadith should use specific wording such as "God prohibits" in order to qualify to be binding in making a prohibition. This is a well known teaching in usual-al-fiqh. (For more information readers are encouraged to read works by al-Shatib, Ibn Hazm or Khallaf) Saying that it just isn't nice to do something, or that it's not nice to recommended, is not enough on its own to make the act prohibitive.
4. ahadith should be taken in their historical context. For example, there are some ahadith where the prophet uses the medical knowledge known during the 7<sup>th</sup> century, such as curing a fever by allowing blood to let from the body. (Get hadith reference) This was the extent of his knowledge and the knowledge of medicine for the Arabs at that time; the hadith should be judged against the medical information we have available to us today. Again, such a hadith should be judged by the capacity of the prophet at the time--is it his personal knowledge or a revelation from God?
5. Ahadith that are mutawatir (relayed by a large group) are considered authentic, as opposed to ahadith that are based on individual chains of notation. Unfortunately, only literally a handful of mutawatir ahadith actually exist in the published hadith collections

6. Ahandith on the same subject should be consistent. It is unlikely that dissenting hadith is authentic if the majority of others on the same issue clamor-segmenting contradictory.

## **Ijtihad**

During the Prophet's life the Muslim community respected the prophet's authority as their spiritual guide, community leader as well as well as a trusted and respected individual. He intervened in cases of controversy and his counsel was very much solicited; therefore, many of the Muslims took it for granted that the prophet was always there in case an issue needing clarification. However, this did not negate the benefits of using ijtiḥad, or independent judgment, and we have examples of the prophet encouraging the believers to apply the principles of ijtiḥad to their everyday lives. For example, it is reported that when the prophet appointed Mo'adh ibn Jabal governor of Yemen, he asked him what he would do in case an issue arises to which he is uncertain. Mo'dh said he would do the best he could and use his judgment. (" Ijtiḥad of the prophet's Companions," Light, j, January-March 92, p. 4, Hasan ud-Din Hashmi) In another example to show that independent judgment was encouraged, the prophet had ordered Muslims in a mission to not pray Asr (midday prayer) except in Qurayza, their destination. When the sun was about to set, some said that the prophet meant for them to hurry up so they arrive in Kuryza before the sun set, but if they are running late, they should pray on the road. Others took the prophet's words literally and refused to pray until they reached Qurayza after the sun set. Later when they met with the prophet they asked him which interpretation was correct, and he agreed with both. (Need reference)

After the death of the prophet, it was seen that "from the readiness of the Caliphs Abu Bakr and Umar to take advice it is evident that the right of interpreting the Quranic regulations was not the privilege of any special official body but could be exercised by anyone whose piety or social conscience dictated such a course." exercised by anyone (Coulson, 25) To prevent individuals from practicing ijtiḥad haphazardly, al-Shari'i developed a methodology for using ijtiḥad in his book, Usul al-fqh. Since then, the role of ijtiḥad has not been in the hands of the laymen, but in a select few who occupy a special role in Islamic law. Today in many Muslim countries, Islamic decisions ranging from



personal to political are made in the form of fatwas, or religious decisions where Islamic scholars render a decision on the morality or legality of an issue brought to them.

### **Medieval law**

During the Mongol invasion, the Muslim world lost many of its cultural and intellectual centers, including libraries, mosques and universities, not to mention the lives of hundreds of thousands of Muslims. The response of the Muslim community amidst this collapse was a withdrawal into a conservatism that resisted further change

Sunnah, i.e, an on-going process and came to be regarded as the unique carnation of the will of god....(T)th genesis of some of the important political, theological and moral doctrines... which had originated in the 'living sunnah' as a product of Islamic history acting on the Quran and the Prophetic Sunnah, were transformed, through the medium of the Hadith, into immutable articles of Faith." (Rahman, P.87)

Rahman sorts through and explains how political and social factors in early Islamic history could not be easily isolated from the out product, namely the hadith and ultimately legal decisions and how hadith, sunna, ijtiḥad and Ijma are all intertwined:

"the majority of the contents of the Hadith corpus, is, in fact, nothing but the Sunna-Ijtiḥad of the first generations of Muslims, an ijtiḥad which had its source in individual opinion but which in course of time and after tremendous struggles and conflicts against heresies and extreme sectarian opinion received the sanction of Ijma, i.e., the adherence of the majority of the Community. In other words, the earlier living Sunnah was reflected in the mirror of the Hadith with the necessary addition of chains of narrators. There is, however, one major difference: whereas Sunnah was largely and primarily a practical phenomenon, geared as it was to behavior norms, Hadith became the vehicle not only of legal norms but of religious beliefs and principles as well." (Rahman, P.45)

### **cultural Dimensions in Islamic Practice**

although the message in the Quran is timeless in its eternal meaning for the betterment of humankind and one's devotion to God, one cannot put aside the fact that it was indeed

revealed to a specific culture and at a specific time in history. Abul A'ala Maududi addresses this point: "Though at times it [the Quran] addresses other people and mankind in general, it mainly discusses those things which appealed to the taste of the Arabs and were linked with their environment, history and customs. This naturally gives rise to the question: Why does the Quran contain so many local and national elements of the period in which it was revealed, when it was meant for the guidance of the whole of mankind?" (Yusuf Ali translation, P. xxxvii) He addresses this by stating that "there is no philosophy, no way of life and no religion in the world which expounds, from the beginning to the end, everything in the abstract without making any references to particular cases or concrete examples, for it is simply impossible to build a pattern of life merely in the abstract." (Ali, P. xxxvii-xxxviii)

it is clear that cultural practices run deep and mould individuals and societies. One cannot really understand the impact Islam had on the Arabs without first understanding their pre-Islamic customs. The Quran is in the language of those receiving the message, both literally in Arabic, and figuratively, in the cultural "language" that one behaves through. That may account for the reason why some may argue that certain sexist attitudes are encouraged in the Quran; yet in a deeper, more complete reading, one that considers and respects the historical context, it encourages a liberating equality of women. Couldn't it be that those so-called sexist attitudes in light of modern feminist teachings, are based on today's interpretation of the Quran and may not have been originally intended or taken as sexist 1400 year ago?

It is also important to understand how early Muslims' interpretations of Islam were affected by their culture and the social and political climates, even decades after the death of the prophet. For example, there were vast differences in the way the two early Islamic intellectual centers interpreted law. Medina was the site of the first Muslim community and had traditional roots to Islam and the prophet and as a result, had access to an abundance of hadith. Kufa (Iraq) also became a center of intellectual thought, but as distinguished from Medina, it was not as closely linked to Islamic traditions and jurists there had to use more analogy. The legal methods in Kufa and Medina were similar, but "differed to no small degree." (Coulson, 47) Kufa was a cosmopolitan center, where "women enjoyed a higher estimation", whereas Medina was more insular and closely

revealed to a specific culture and at a specific time in history. Abul A'ala Maududi addresses this point: "Though at times it [the Quran] addresses other people and mankind in general, it mainly discusses those things which appealed to the taste of the Arabs and were linked with their environment, history and customs. This naturally gives rise to the question: Why does the Quran contain so many local and national elements of the period in which it was revealed, when it was meant for the guidance of the whole of mankind?" (Yusuf Ali translation, P. xxxvii) He addresses this by stating that "there is no philosophy, no way of life and no religion in the world which expounds, from the beginning to the end, everything in the abstract without making any references to particular cases or concrete examples, for it is simply impossible to build a pattern of life merely in the abstract." (Ali, P. xxxvii-xxxviii)

it is clear that cultural practices run deep and mould individuals and societies. One cannot really understand the impact Islam had on the Arabs without first understanding their pre-Islamic customs. The Quran is in the language of those receiving the message, both literally in Arabic, and figuratively, in the cultural "language" that one behaves through. That may account for the reason why some may argue that certain sexist attitudes are encouraged in the Quran; yet in a deeper, more complete reading, one that considers and respects the historical context, it encourages a liberating equality of women. Couldn't it be that those so-called sexist attitudes in light of modern feminist teachings, are based on today's interpretation of the Quran and may not have been originally intended or taken as sexist 1400 year ago?

It is also important to understand how early Muslims' interpretations of Islam were affected by their culture and the social and political climates, even decades after the death of the prophet. For example, there were vast differences in the way the two early Islamic intellectual centers interpreted law. Medina was the site of the first Muslim community and had traditional roots to Islam and the prophet and as a result, had access to an abundance of hadith. Kufa (Iraq) also became a center of intellectual thought, but as distinguished from Medina, it was not as closely linked to Islamic traditions and jurists there had to use more analogy. The legal methods in Kufa and Medina were similar, but "differed to no small degree." (Coulson, 47) Kufa was a cosmopolitan center, where "women enjoyed a higher estimation", whereas Medina was more insular and closely

knit. In Iraq, women could contract their own marriages, whereas in Medina this was not so. "in short, the Quran was interpreted by both schools in the light of existing social circumstances...Apart from such differences in the details of the law the whole outlook and attitude of the scholars was conditioned by their respective environments. A conservative attachment to tradition is the hallmark of the early Medinian jurists, while their Kufan colleagues, living in a newly formed society which had no such roots in the past, were animated by a spirit of free enquiry and speculation." (Coulson, 49-50)

Even in traditionally inclined Medina, the first compendium of Islamic law ---Muwatta by scholar Malik ibn Anas (d. 796) --- documents legal precedents and interpretations of Islamic practice, some of which were counter to earlier practice during the time of the Prophet (Coulson, 46-47) Also, it is reported that when renowned scholar al-Shafi'i moved to Egypt after first practicing law in Kufa, he changed many of his legal opinions to reflect the social climate and needs of the Egyptian society. (Need reference and perhaps an example relevant to women)

### **Incorporating the Cultural Context**

Once we recognize that Islam had to be introduced to the world within a cultural context--that of the Arabs in Arabia---how do we then sort through what is strictly cultural and what is the essence of the religious teachings and how they take into account cultural context prevailed: the dissenting, non-traditional view is that Islam's teachings are broad fundamentals, and the specific practices and regulations Muhammad put into use was intend for their immediate social context, as not necessarily binding to Muslim societies at all times; the more traditional view of Islam's teachings emphasizes the practices and regulations and paid little attention on Islam's fundamental teachings of spiritual equality of men and women and the fair treatment of women. "Had the ethical voice of Islam been heard, I hear suggest, it would have significantly tempered the extreme androcentric bias of law, and we might today have a far more humane and egalitarian law regarding women," said Leila Ahmed. (Ahmed, P.88)

The ethical and moral qualities outlined in Islam may be universal, but the practice will be affected by time and space. Through time, it became clear that cultural, historical and political contexts directly affected the status of women, despite the Quran's clear guidelines, as explained by Noel]. Culson and Doreen Hinchcliffe.

The modicum of Quranic rulings were naturally observed, but outside this the tendency was to interpret the Quranic provisions in the light of the prevailing standards....In particular, the general ethical injunctions of the Qurān were rarely transformed into legally enforceable rules, but were recognized as binding on the individual conscience. Thus, for example, a husband was never required to show that he had any reasonable or proper motive before exercising his power to repudiate his wife. And while the Quran might insist upon impartial treatment of co-wives in polygamous unions, classical Islamic law did not elevate this requirement into any kind of legal restriction upon the husband's entrenched right to have four wives. The result was that the Quranic provisions concerning women's status and position in the family were dissipated and largely lost. (Coulson and Doreen Hinchcliffe, "Women and law reform in contemporary Islam," in *Women in the Muslim World*, ed. Lois Beck and Nikki Keddie (Cambridge: Harvard University press, 1978), P. 37-38, quoted in Ahmed, P.92)

The Quranic verses addressing women and unambiguously declaring their spiritual equality to men did not sink well in the religious community decades after the prophet's death. Abu Hamid al-Ghazali, an eminent 8<sup>th</sup> century theologian, shares sentiments similar to Aristotle's argument that women are innately inferior to men. Al-Ghazali gives this advice to his followers: "Consider the women who have struggled in the path of God and say, 'o my soul, be not content to be less than a woman, for it is despicable for a man to be less than a woman in matters of religion or of this world.'" (Ahmed, P.68) How was it that such a negative sentiment could be made, despite its clear contradiction to the Quran? (See the spiritual equality chapter). Leila Ahmed explains that it was the conquests that Islam made in other territories, such as the Iran-iraq region of al-Ghazali and also the Mediterranean Middle East, that kept their cultural attitudes to women, despite their acceptance of Islam. "[T]he pronouncements and broad recommendations of the Quran would be heard one way in Arabia [during the time of the prophet] and quite another way in the societies to which it was transposed. Arab mores themselves,

moreover, changed as the Arabs adopted the ways of the conquered peoples and were assimilated into their new environments.” (Ahmed, P.68)

Hopefully what this chapter has done, other than to perhaps confuse the reader, is to really introduce to you some of the challenges and politics behind understanding Islamic issues. We want readers to understand that the reason it may perhaps confuse you is because many issues in Islam are not as definitive as many of us were led to believe. When you read about a specific Islamic issue, you can now ask yourself the following: what is it based on in the Quran? What are the different interpretations of these verses? What sunna or ahadith supports this? How does this compare to the practice of the Arabs before Islam? Of the non-Muslim Arabs during Islam? How authentic or binding are they? What is the ijma of the scholars on this issue? Although much of Islamic issues are decided upon by those possessing the proper technical ilm (knowledge), this does not preclude laypersons from asking questions for ourselves. The Quran encourages all people to seek the truth and use the capabilities God has endowed on us. Once we give this up to an intellectual elite, we have forfeited our right to think.

### Foot Notes

1. Noel James Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), P.102.
2. *ibid*, P.61
3. John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982), P.3.
4. *the Holy Qur'an*, trans. A. Yusuf Ali (American Trust Publications), P.xxxix.
5. *ibid*.
6. *coulson*, P.43
7. *Esposito*, p.8