

Another the ultimate
basis of, and
justification for,



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Another fundamental tenet of Islam is the principle of tawhid, or the belief in the unity of God—that God is one. Yet, another fundamental tenet of Islam is the acceptance of Prophet Mahommed as a rasul, or messenger of God. The dogma of tawhid is absolute, immutable and inviolable. It is the principle of permanence in the world of Islam. The Koran holds that Islam as the true religion has existed the beginning of the world, and will continue to exist till the day of resurrection.

But the day of resurrection is far away, and in between, the people forget their religion or corrupt it. God, therefore, in his bountiful mercy, sends to them, from time to time, a rasul (messenger), so that he may point out the true faith, and lead the people towards it. Such a rasul was Mahommed.

Muslim Law is a Revealed Law:

From these tenets of Islam, flow the concepts of Muslim law.

Like the Hindus, the Muslims hold the view that law is of divine origin; it is a revealed law.[83] But, then, in addition to the divine character of law, in Muslim jurisprudence, the ultimate basis of, and justification for, law must be sought in human reason. Islam propounds the doctrine of *ilmul-yaqin* (certitude), the ability to distinguish between good and evil, and it is, therefore, the Prophet who helps man to distinguish between the two. The Prophet received direct revelation from God, which is contained in the holy book, the Koran.

The Koran is supplemented by *ahadis* (traditions), which are looked upon as indirect revelation. The Koran and the *ahadis* are further supplemented by the *ijma* (consensus of the learned). If a point is not covered by anyone of

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these, then the kiyas (analogy) is utilized to get the answer. On these principles, is based the shariat.

The term shariat literally means a road to the watering place; figuratively, it means the path to be followed. The shariat, within its fold, embraces the totality of Allah's commandments. The basic notion of the shariat is that all actions are to be judged according to ethical principles.

Muslim jurisprudence, like Hindu jurisprudence, lays emphasis on the duties of man in all walks of life. The rights of man occupy a secondary place.

Five Religious Commandments:

The shariat lays down that the religious commandments are of five types : (i) fard, which one must do, such as five daily prayers, (ii) haram, which one must not do, such as drinking of wine, (iii) mandub, which one may do, such as additional prayers on Id, (iv) markrum, which one may not do, such as certain types of fishes may not be eaten, and (v) faiz, acts towards which the Shariat is indifferent, such as travel by air. Thus, a distinction is made between mandatory rules and recommendatory rules, between what is legally enforceable and what is only morally enjoined. Schacht rightly remarks that the law proper has been thoroughly incorporated in the system of religious duties; those fundamental concepts permeate the juridical subject-matter as well. Just as in the field of worship, the obligatory and indispensable acts are accompanied by others which are only recommended, the heirs are recommended but not obliged to pay the debts of the deceased, and even the next of kin who has right to demand retaliation for intentional homicide is recommended to waive it against payment of blood

money. He further adds, "... Islamic law is part of a system of religious duties, blended with non-legal elements.

But though it was incorporated into the system of religious duties, the legal subject-matter was not completely assimilated, legal relationships were not completely reduced to an expressed in terms or religious and ethical duties, the sphere of law retained a technical character of its own, and juridical reasoning could develop along its lines. That the concepts allowed/forbidden and valid/invalid were to a great extent co-extensive, made it possible for this last pair, together with the kindred concept of legal effect, to be fitted into the system. There exists, thus, a clear distinction between purely religious sphere and the sphere of law proper..... "

Concept of Fiqh or Law:

Islam uses the term fiqh for law.

Fiqh literally means intelligence. In Islam, it means the science of jurisprudence. The term, Usulu. 1 Fiqh, is the " knowledge or science, of those rules which directly or proximately lead to the science of fiqh: and hence it discusses the nature of the sources or authorities (i.

e., of law) and what appertains thereto, and of the nature of what is established by those sources or authorities, namely, law and what appertains thereto". As included in the last part of the definition, the discussion relates to the law-giver, the law, the objective of law, Le. Acts, rights, and obligations, and the subjects of law, that is, those to whom the law applies, i. e., persons. Fiqh implies the exercise of judgment in determining a rule of

law in the absence of a binding command from the Koran or the sunna. A jurist is called faqidh.

The word faqidh must be distinguished from the word alim. The latter term means a learned person, while the former refers to a person who is not merely learned, but can, also, exercise independent judgment. According to Fyzee, “ Fiqh or the science of Islamic law is the knowledge of one’s rights and obligations derived from the Koran, or the Sunna of the Prophet, or the consensus of opinion among the learned (the ijma) or analogical deductions (the Kiyas).” Abu Hanifa interprets Fiqh as the soul’s cognizance of its rights and obligations. Fiqh stresses the power of reasoning, and holds that the rules of law can be deduced from one’s ilm (knowledge). The shariat is divine revelation.

Fiqh is human endeavour, and by it, an edifice of law be erected. The Muslim law-givers divide fiqh into two: the usul and furu. Literally meaning root, usul deals with the first principle of interpretation, i. e., it deals with the Muslim jurisprudence. The furu deals with substantive law, with ahkam (the various injunctions), i.

e., the law as it is actually applicable in daily life.

Law as Developed by Jurists:

It is in this context that the role of the jurists, in the formulation of rules and principles of law, has to be understood.

As Schacht puts it, “ Islamic law provides the unique phenomenon of legal science and not the State playing the part of a legislator, of scholarly hand

books having the force of law (to the extent to which Islamic law was applied in practice). This depended on two conditions: that legal science guaranteed its own stability and continuity, and that the place of the State was taken by another authority, high enough to impose itself on both the government and the governed. The first condition was met by the doctrine of consensus which led to the cumulative elimination of differences of opinion: what differences could not be eliminated were made innocuous by the mutual recognition of the several schools of law as equally orthodox. The second condition was met by the fact that Islamic law claimed to be based on divine authority.

This claim was reinforced by the progressive reduction of the human element of personal opinion, until only the mechanical method of reasoning by analogy remained and even the use of this method was put out of reach of the latter generation by the doctrine of the closing of the gate of independent reasoning (ijihad). The traditionalism of Islamic law, which is perhaps its most essential feature, is typical of sacred law.