

A by ayesha begum,
the youngest wife of



**ASSIGN
BUSTER**

A great majority of Muslims suggested that there should be an election for the successor of the Prophet. This view was advocated by Ayesha Begum, the youngest wife of the Prophet. It was argued by this group that since Prophet exercised absolute command over the Islamic community, his successor too should be a person who could control the Muslims. This required the confidence of the people and therefore election was the only method to choose the successor.

This section of the Muslim-society pleaded for election as a method of finding out the successor of the Prophet also because the Prophet himself had suggested election. The Prophet's suggestions or sayings are called his traditions (Sunnat). They relied on this tradition of the Prophet.

Accordingly, an election was held in which Abu Bakr, who was father of Ayesha Begum, was elected and became the first Caliph. This group of Muslims, with its leader Abu Bakr, formed the Sunni sect of Islam. They assumed the name Ahle-Sunnat-wal-Jamat which means people of the 'tradition and assembly'.

They are popularly known as Sunnis. But there were Muslims (although in minority) who did not agree to the principle of election. That group emphasised upon the spiritual headship of the Prophet rather than his administrative control. This minority group was represented by Fatima, daughter of the Prophet. Their contention was that the Prophet's successor should be a spiritual leader of the community as Prophet himself was. They argued that this quality comes through the nobility of blood. Therefore, a person who is related to Prophet Mohammad through blood or belongs to his

family should be regarded as the most competent person to succeed him. Thus, the group of Fatima rejected the election and relied upon the principle of succession.

Consequently Ali, who was son-in-law of the Prophet (Fatima's husband) and was also his cousin, was nominated as the first Imam by this group of Muslims. They dissociated themselves from the majority and constituted a separate sect called Shia (literal meaning 'faction'). Thus we see that the split which divides the Muslims into two sects Shia and Sunni was due to the difference of opinions among the Muslims as to how to find out the successor of the Prophet. Therefore, division of Islam originated with political questions only but subsequently it resulted in the separation on legal principles as well. These two sects formed two major schools of the Muslim law. Later on, the Sunnis further splitted into several sub-sects in themselves, each sect representing a distinct school of Sunni Law. There was a similar split also among the Shias. The chart below gives a clear picture of the different schools of Muslim law.

Ali was acknowledged to be the first Imam by the Shia community. He was accepted as the temporal as well as the spiritual head of the community. After the death of Ali, his two sons Hasan and Hussain became the second and the third Imam respectively. After Hussain's death, his son Zain-ul Abdeen succeeded as the fourth Imam. Upto this stage the Shia community remained united but afterwards there had been divisions and sub-divisions of this sect.

Zain-ul Abdeen had two sons, Zyad and Muhammad Baqir. First split took place after the death of Zain-ul-Abdeen when some of the Shias acknowledged Zyad as their Imam but the majority followed Muhammad Baqir. The followers of Zyad formed a separate sect called Zaydis whereas Muhammad Baqir was accepted as the fifth Imam by the majority. This was the first division of the Shia sect.

After Mohammad Baqir's death his son Jafar Sadiq became the sixth Imam of this majority group. Upon the death of Jafar Sadiq there took place the second split in the Shia community. He had two sons Ismail and Musa Kazim. Here again, one group recognised Ismail (the elder son) as the seventh Imam but to the majority of them the younger son Musa Kazim was the seventh Imam. Followers of Ismail were called Ismailis and constituted the second school of Shia sect. In the other section of Shia community headed by Musa Kazim, there had been other Imams through succession. The twelfth Imam in this line of succession was Askari's son who is said to have disappeared from the world and is awaited in the near future. The twelfth Imam called Muhammad-al-Muntazar is the last Imam.

The followers of Musa Kazim and others in that line upto Mohammad-al-Mantazar constitute the third and the last school of Shias and are called Ithna Asharia or the Twelvers. In this manner we see that mainly it was the dispute over leadership of the Shia community in various stages of its development which caused the formation of the three schools. There is no appreciable difference between these schools in so far as the law is concerned. Qadri observes that, " The main reason of the differences among

the Shia sect and sub-sects lies not so much on the interpretation of the law as upon the doctrinal points.

A brief account of these schools and sub-schools follows:

The Ithna Asharia School:

This school is also called as Imamia School Majority of Shias are Ithna Asharia. The followers of this school believe that starting from Ali there had been twelve Imams who possessed spiritual powers. Everything that comes from the Imam is taken to be a law.

It is believed that the twelfth Imam, who disappeared when he was still a child, would reappear in future. A characteristic feature of Ithna Asharia School is that this is the only school in the Muslim world which recognises “Muta” or a temporary marriage. This school is further divided into two sub-sects, (1) Akhbari and the (2) Usuli. Akhbaris are very orthodox because they follow rigidly the traditions of Imams. Usulis, on the other hand, interpret the texts of Quran with reference to the practical problems of day to day life. The Ithna Asharias are found in Iran, Iraq, Lebanon, Pakistan and India. Shari-ul-Islam is an authoritative book of this school.

The Ismailia School:

For some reasons Jafar Sadiq disinherited, his eldest son Ismail.

The majority of Shias therefore did not accept him as their Imam. But there were some Shias, although in minority, who acknowledge Ismail as the seventh Imam. The followers of Ismail are called Ismailias or the Seveners because according to them there had been only seven Imams the Seventh

being Ismail. They believe that from him (Ismail) descended a series of concealed imams whose secret emissaries were constantly on the watch for a chance of striking at some weak point in the large ill-cemented empire of orthodox Islam. The Ismailias therefore, hold that Imams subsequent to Ismail are still alive but they have concealed their existence. In India, they consist of two main groups (i) Khojas and Bohras. Khojas were originally Hindus. Bohras are also Ismailias and they separated from the other groups during the Fatimid regime.

Both of them are commercial communities from the very beginning. Ismailias are found in the Central Asia, Syria, India and Pakistan etc. Ismailias of Bombay are either Khojas or Bohras. Daimul-Islam is an authoritative work on Ismailias doctrines.

The Zyadis School:

As pointed out earlier, the founder of this school was Zyad, one of the sons of the fourth Imam. The Zyadis were the first to defect from the general body of Shia Muslims. One of the peculiar features of this school is that its doctrines incorporate some of the Sunni principles as well. The followers of this school are not found in India; they are mostly in Yemen.

The Motazila Sect:

The Motazila emerged as a separate sect of Islam around 9th Century A. D. This school was established by Ata-al-Ghazzal during the reign of Mamun. Although they do not associate themselves from any of the two existing sects yet, it is said that they were defectors from the Shia community. Ameer Ali observes that, “ a careful comparison of the Motazilite doctrines

will show that they were either word for word the same as taught by the early Fatimides (Ismailia-Shias) or were modifications of those doctrines induced by the requirements of a progressive society and partly perhaps, by the study of Greek and Alexandrian philosophy'. The followers of this school believe that Quran is the only basis for their doctrines. Most of the traditions have been rejected by the Motazilas.

One of the characteristic features of the Motazilas is that this is the only school in Islam which practices strict monogamy. Marriage with more than one wife at a time is unlawful under the Motazila principles. Another peculiarity is that there cannot be any divorce without interference of a Judge. Divorce by Talaq is not recognised under this School. At present the followers of Motazila sect are comparatively very less in number. During the third stage of the development of Muslim law (661-900 AD.

), the rulers contributed nothing to the development of law. Those ambitious kings were interested in the expansion of their empire rather than the development of Muslim law. But the individual jurists did not sit idle. On their personal level they concentrated themselves to the further expansion of Muslim law by giving juridical interpretations to Quran and the traditions. This personal study by the jurists gave rise to different opinions about any given rule of law because of the differences in their approach as to the source of that law. Each jurist having his own interpretation, had followers and they constituted a distinct or separate school.

In this manner, the Sunni sect was divided further into four important schools. But, the principles of these four schools are substantially the same

and they differ from each other merely in matters of detail. Besides these four schools, there had been certain other ‘ personal schools’ of the Sunni Muslims. But, by 1300 A. D, only four schools, discussed below, were given recognition.

The Hanifi School:

This school of the Sunni Muslims is named after its founder Abu Hanifa and is the most popular school of Muslim law.

Abu Hanifa was an eminent scholar of his time and was widely known for his outstanding logical reasoning and technical legal thought. He was appointed as Qazi but he refused to accept the post in the fear that he would be required to give judgments against his conscience. As a punishment for his refusal to accept the post, he was imprisoned.

During his life Kufa, the city where he was born and lived, had become an important centre of distinct thinking in Muslim law. This school is therefore, also called as the “ Kufa School”. Abu Hanifa’s main contribution was that instead of accepting each and every tradition as law, he tried to find out the law in the texts of Quran itself through analogical deductions. In this manner he preferred scientifically concluded private judgments based on Quran over a blind reliance on the traditions. According to him the law must be formulated in accordance with the changing needs of the society. In the absence of a law in Quran it may also be obtained by the unanimous decisions of the jurists. He further suggested that if justice could not be done under the law then the principle of juristic equity (Istihsan) may be applied in interpreting that law.

He is therefore, rightly called the ' upholder of private judgments and the founder of Muslim jurisprudence. With certain modifications, his doctrines were further developed by his two disciples Abu Yusuf and Imam Mohammad. Characteristics of this school may now be summarised in the following lines. Out of a large number of traditions, the Hanafi School recognises only those traditions which have passed through the severe test regarding their originality. Those traditions which are not authentic are not to be accepted as law. Abu Hanifa is said to have relied upon eighteen traditions only. On the other hand Qiyas and Ijma as sources of law have been given prominence under this school. Several important principles of Hanafi law were obtained through Qiyas.

As regards Ijma, this school does not confine to the Ijma of the Companions. According to Hanafi School Ijma may be formed by the jurists of any age and may be used as a source of a law. It was for the first time under this school that the doctrine of Istihsan (juristic equity) was used in interpreting the texts of Quran and traditions. Similarly, customs and usages, provided they were not against the texts of Quran, were recognised as proof of the practices of society. The doctrines of this school being practical and most suitable to the changing conditions of the society have always been favoured by Caliphs and the emperors. Some of the important books on Hanafi law are Radd-Al-Makhtar, Durr-ul-Mukhtar, al-Hidyaya and Fatwai Alamgiri.

This school has been popular since its very beginning and a large number of Muslims are its followers. From Iraq, the home of this school, it spread over to other countries inhabited by Muslims such as, Egypt, Israel, Jordan,

Turkey, Afganistan, China and India etc. Majority of the Muslims in India and Pakistan belong to this school.

The Maliki School:

This School was established by Malik-ibn-Anas of Medina. He was a great scholar and is regarded to be an authority on traditions.

Imam Mohammad, who was the Hanafi jurists, was Malik's favourite student. Unlike Hanafis this school emphasises the importance of traditions as a 'source of law'. It recognises the traditions of the Companions, and of successors of the Companions. According to Maliki School, as far as possible, the new rules should be obtained exclusively from the traditions. If it is not possible then only Qiyas and Ijma may be taken into consideration. But this school recognises Ijma of only such jurists who lived in Medina. The scope of Ijma as a source of law is therefore limited under this school.

Malik and the subsequent jurists of this school had the privilege of being judges and as such they had to solve day-to-day problems of the public. This made their approach to law more practical than that of the Hanafis. Because of this fact, in interpreting a rule of law, a new element called Istidlal (inferring a thing from another thing for public welfare), was introduced by the Maliki jurists. Another point which is peculiar to the Maliki doctrine is that it recognises the importance of customs (of Medina) more than any other school. In addition to Quran, Traditions, Ijma and Qiyas. The Maliki School accepts also the customs and Istidlal as additional sources of law. A noticeable feature of this school is that it is the only school in which a married woman and her properties are always supposed to be under the

control of her husband. A Maliki woman cannot deal with her own properties without the consent of her husband.

Malik has written an exhaustive book namely, Kitab-al-Muwatta which is an authority on the Maliki doctrines. His compilation of the traditions, ' Muwatta' is available even to-day. Khalil-ibn-Ishaq's ' al-Mukhtasar' is another important work containing Maliki principles. The principles of this school spread over to the Central and West Africa, Spain, Kuwait, and Bahrain. There are no Malikis in India.

The Shafei School:

Founder of this School, Ash Shafei was an eminent scholar of Islamic jurisprudence. He was a pupil of Malik-ibn-Anas and was related to the Prophet. He developed his doctrines at Baghdad and Cairo.

Ash Shafei also relied upon the traditions of the Prophet. But his reliance on the traditions was more critical than that of Malik. He examined the traditions in the light of legal reasoning and logic in order to get a very balanced and systematic rule of law. Throughout his life he endeavoured to systematise the traditions. Joseph Schacht rightly observes that his legal theory is the achievement of a powerful individual mind, and at the same time a logical outcome of a process which started when traditions from the Prophet were first adduced as arguments in law. According to Ash Shafei, there was not a single problem of human life which could not be solved by Quran or the traditions of the Prophet. Such solutions may be obtained either directly in these texts or from analogical deductions. He made the greatest use of ' Qiyas' and had fully established it as a source of law.

But according to him Qiyas is to be considered only after considering Quran, Traditions and Ijtna. He not only approved Ijma as a source of new law but also enlarged its scope. Besides these four sources, the Shafei jurists recognise also the custom and the Malik's principle of Istadlal (public welfare). But Abu Hanifa's principle of juristic equity (Istihsan) is not acceptable to this school. One of the important characteristics of the Shafei School is that a woman is never regarded to be a free agent in her marriage. Even if she is adult, the consent of her guardian is necessary to validate the marriage.

It was Ash Shafei who for the first time incorporated usul or principles of law in his book Kitab-ul-umm. His 'Risala' too contains the principles and method of jurisprudence. Other important works on Shafei doctrines are Tuhfat-al-Muhtaj by Hajar, Nihojat-al-Muhtaj by Ramli and Al-Wajiz by Ghazzali. From Cairo the Shafei principles spread in the lower parts of Egypt, Hejaz, Indonesia, Malaysia and South-East Asia. Some of the Muslims in the Western Coast of India are followers of this school.

The Hanbali School:

The fourth and the latest school of the Sunni sect was established by Ibn Hanbal.

He studied under several scholars of eminence, including Ash Shafei. His peculiar feature was that he rigidly adhered to the traditions of the Prophet. It is therefore said that Hanbal was traditionist rather than a jurist. He relied so much upon the traditions that other sources of law namely Ijma and Qiyas were neglected by him. He recognised Ijma only of the Companions of the

Prophet. Under this school therefore, there is no scope for private judgments and human reasoning.

The result is that the doctrines of this school are rigid and uncompromising.

Because of this, Ibn Hanbal and his followers were always regarded as reactionaries and were harassed by the authorities from time to time.

Musnad-ul-bnam Hanbal, is an important book on Hanbali law. It is a collection of about fifty thousand traditions by Ibn Hanbal. Other books by him are Kitab-ul-Mashaekh and Kitab-ul-Alal. At present very few Muslims are the followers of this school. Generally the Hanbalis are in Saudi Arabia and Qatar.