

Sources

① Shariyah - 'Quran' - best source.

The word Quran comes from 'qaraa' which means to read. It is the most sacred word. It is of divine origin. It is believed to be words of Allah. Ayat (verses) → 666 (only 100 verses deals with law. It talks about different aspect of life be it morally, social or economic aspect.

② Hadith / Sunnah

It means tradition.

→ Hadith Mutawatir (most famous, continues)

→ Hadith Mashhur

→ Hadith Ahad (isolated)

Mutawatir → It is the most famous or the universally accepted practise followed by prophets or companions among Muslims

Mashhur → At first the companion of Mohd followed the practise and later people started following it.

Ahad → Prophets or companions followed but it did not become famous neither people followed it.

Sunnah - Teaching of prophet
- Conduct of prophet Mohd.

③ Ijma → Consensus of opinion of Jurist
Agreement of the Muslim jurists in any particular age on a ^{judicial} rule.

Three types of Ijma

① Ijma - ul - Sahaba → Ijma of the ~~to~~ companion of prophet Mohd.

② Ijma - ul - Fuqaha → Ijma of the Islamic jurist who have good command over the Islamic law.

③ Ijma - ul - Ummah → Ijma of the people.

Ijma can be done by 2 methods

① Words

② Practice

④ Qiyas → Analogical Deduction (अनुमान लक्षण)

Ijtihad and Taqlid (imitating)
 ↓ without giving a literal meaning
 Interpretation
 (literal meaning)

It is not a source of law in sunni and it is said that the doors are close for the interpretation as no one is qualified to interpret the words of Allah as prophet is no more.

Also, there are 4 sub-schools of sunni and they are sufficient for the interpretation and do not require above source.

Extraneous Sources

Those sources which have not been mentioned by the classical jurists but which have an impact in the evolution of muslim law.

Legislation → It is the most important source in the present scenario. Mostly, muslim law is uncodified however it is in a developing stage. For example,
 Dissolution of Muslim Marriages Act, 1939
 Shariat Act, 1937
 Muslim Women Protection of Right on Divorced Act, 1986
 Triple Talaq Act

Custom should not be prohibiting the provision of any law, it should not be fraudulent, it should not cause injury, it must not be immoral and must not be against public interest.

Precedent

→ Shah Bano V/s Mohd Ahmad Khan
 → Maina Binti Mohd Ahmad → right to her exercise

After the death of Prophet Mohd, Muslims were divided into Sunni and Shia. After his death there was no leader and he also did not decide who will be its inheritance. So, some people said their should be elections (Sunni) for our next leader and some said his legal heir should be the leader (Shia).

So, after the death of Mohd. There were 4 Khalifa who tried unite the muslims

1) Abu Bakr → He was companion and father in law of Mohd. 632 - 634 AD. He was the first Khalifa.

2) Omar / Umar → 634 - 644. He was the most powerful Khalif and son of Al-Khattab. He was senior companion and had great command over Islam i.e. he was great jurist.

Here's Abu Hanifa principles can be seen in Hedaya. Hanifa school was formed at place Kufa which now a part of Modern Iraq. Hedaya which was translated in Persian and further in English during British Raj. Hedaya principles can be seen in fatwa-e-alamgiri during Aurangzeb.

2) Maliki → founder → Malik-ibn-Anas
* It had great emphasis on 'Ijma'
* It Maliki principles can be seen in Kitab-at-Muwatta

3) Shafei → founder → Mohd-ibn-Idrishash-Shafei
he was also the pupil of Malik-ibn-Anas who established Maliki School.
* He formed 'Qiyas' as a source of law.
* He emphasised more on 'Ijma' than Maliki.

4) Hanbali → founder → Ahmed-ibn-Hanbal he was the pupil of Shafei school.
Mostly people of Syria and Palestine follow the Hanbali School.

Shuk School

It is established by Imam Jafar who is the sixth Imam.

5) Ismailiyas → people who followed the elder most son of Jafar came to known as Ismailiyas. Mostly prevalent in Egypt

In India they are divided into 2 parts

↳ Khojia

↳ Bohra

(2) Athna Ashariya or Immania - The people who followed Musa Kazim are known as Immania. Mostly people followed this. 50% community in Iraq follows this.

(3) Zaidyas - Not much popular. → After the death of 4th Imam i.e. Zaynul Abidin, the people who followed his son Zayd came to known as Zaidyas.

Who are Khalifa?

Khalifa are the 'successor', 'ruler' or 'leader'. Khalifa means the successor of prophet Mohd.

Who is a Imam?

Worship leader of a mosque

In Shia, Imam are considered next to god. They are very important people while in ~~Shia~~ ^{Sunni} there is not much emphasis given to Imam but rather Khalifa are considered to be of utmost importance in Sunni.

~~Shia~~

Muta - Marriage is a marriage for a limited time period between a muslim woman and a Shia muslim man.

Sunni

Shia

Khalifa / Caliph
Election

BASIC

Imam
Inheritance

Marriage (Nikah)

Muta - Marriage is not recognised.

Muta - Marriage is legal

Guardianship

A minor can marry
Father/grandfather/
brother can give consent
on behalf of minor girl

Only father and grand
-father can give consent
not brother

Witness for Marriage

There must be two
adult male muslim
who is of sound mind
OR

Not required in Shia

If there are not 2
male adult, then
1 male and 2 female
adult should be there.

Types (Nikah)

Valid / Void / Irregular

Valid / Void

Age of puberty is of imp.

Age of puberty not important

Talaaq

For Talaaq, witness are
not required can be
given orally or in written

Two witness are
required. But in Shias,
it is mostly given orally.

Maternity

If there is a illicit relationship, mother is known but father is unknown (fatherless).

If there is a illicit relationship; the child born out of this relationship is called motherless.

Maintenance

They have equal right.

If a person is suppose to maintain more than one person, then the maintenance shall be given on the basis of relationship & not divided equally.

Waqf

Declaration

Declaration + possession

Free - Emption

It can be claimed by all the co-parceners (members who have interest in the property)

Only two people can claim this right not more than that.

Wasiyat - will

Consent of successor is required.

Consent of successor is not required.

If a legatee dies before testator such a will is returned to testator

If a legatee dies before testator such property shall not be returned and

Ex: X a person wrote a will for A i.e. X → A
Now, A dies before the death of X, so the property will return back to X.

rather pass on to the legal heir or legal representative of legatee
X → A (dies)
↓
L.R. / legal heir

DT.

Inheritance

Residuary / distant kindered

Sharer / Residuary

* There are three classes of legal heir:

① Sharer
(शेअर legal heir)

② Residuary
(जो बच जाय)

③ Distant kindered
(दूर के Rihitedaar)

The elder most son / daughter entitle to inherit the whole property, etc.

The elder most son is entitle to inherit sword, quran, clothes

A muslim widow is entitle to be the owner of an immovable property if she does not have any kid

A muslim widow is not entitle to be the owner of an immovable property

Doctrine of Return

Both ~~and~~ husband and wife have right to return.

Only husband have right to return.