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The Role of The Holy Qur'an in Islamic Law

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Abstract

The Holy Qur'an contains a complete code of justice and moral values as well as the laws based thereupon. The Holy Qur'an, a divine Book, is the direct articulation from Allah, revealed on the Prophet SAW. through the angel Hazrat Jibrail AM. during the particular moments. This divine book tells us how to lead our life as good Muslims, i.e., pray five times in a day, refraining from drinking alcohol, use of scientific information contained therein, and also the abstract information on what will happen in the future after the world is ended. The best proof that it is the word of Allah is the verse of the Qur'an itself. Since the Holy Qur'an contains the commands of the Almighty, it is an Ordinance, law and legislature for us. It is also an exhaustive code of divine orders to guide those who believe in the supreme unseen the creator.

Keywords: Qur'an, Jurisprudence, Islamic Law, Justice, Code of Divine Orders, Scientific Information.

1. Introduction

The Holy Qur'an, the 'Mother of Books' (أُمُّ الْكِتَابِ); the collection of messages that revealed and miraculous speech of Allah. This Holy Book is the main and principle source of Islamic law, because this source contains law for many cases and also serve as the basis for the extension of the law. In fact, This (The Holy Qur'an) is the only source and that all other sources are explanatory to the Holy Qur'an (i.e. Sunnah, Ijma, Qiyas, Istihsan, Istislah etc). The role of the Holy Qur'an accordingly to law undoubtedly unique, authentic and absolutely different from other laws in the world. It does not content information, ideas and arguments about specific themes as arranged in literary order like other laws.

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2. Compilation of the Holy Qur'an

Based on earlier transmitted reports, in the year 632 CE, after prophet Muhammad passed away, a number of his companions knew the Qur'an¹ by heart but were killed in a battle by Musaylimah, thus, provoking the first Caliph Hazrat Abu Bakr who decided to collect the book into one volume so that it could be preserved.

The eminent Sahabah Zayed Ibn Thabit (d. 655CE) was the person to collect the bits and pieces of the Qur'anic texts since "he used to write the Divine Inspiration for Allah's Apostle."² Thus, a group of scribes, most importantly Zayed, collected the verses and produced a hand-written manuscript of the complete book. The manuscript, according to Zayed, remained with Abu Bakr until he died. Being of divine origin, the legal principles laid down in the Qur'an cannot be altered by any Muslim or any man for that matter.

According to Alimuzzan Cowdhury, the texts were preserved either in the memories of the Sahabas of the Prophet (SAW) or inscribed on bones, date-leaves and tablets of stone and other inscribable materials of the period. The collection and consolidation of the texts were undertaken by the third caliph Othman (RA) who appointed Zayed for the purpose and the result from this is the pure Qur'anic texts which exist to this day.³

All sources of Islamic law must be in essential agreement with the Qur'an, the most fundamental source of Islamic knowledge. When the Qur'an itself does not give solution directly or in detail about a particular subject, Muslims only then turn to alternative sources (i.e., Sunnah,

¹ The word "Qur'an", a verbal noun, is equivalent to "qira'ah" (قِرَاءَة) as both come from the verb "qiro'" (قَرَأَ) which means "to read, to recite or reciting". However, the term "Qur'an" has been historically used specially to refer to the book which was revealed by Allah to the last prophet, Muhammad (SAW).

However, some significant textual variation and deficiencies in the Arabic script mean the relationship between the texts of today's Qur'an and an original text is unclear. ¹ The Qur'anic chapters are called 'Surahs' and verses are called 'Ayat' (آيَات).

² Hurgonie, C. S. (2010). *Mohamedanism*. (New York: General Books, LLC.) p.39

³ Fyzee, A. A. A. *Outlines of Mohamedan Law* (Oxford: Oxford University Press, 1949) p.37

Ijma, Qiyas, etc.).⁴ The Qur'an mentions on an intellectual basis for those who might have been blessed with the knowledge of astronomy and sciences to ponder and think of what Allah has said:

إِنَّ فِي خَلْقِ السَّمَاوَاتِ وَالْأَرْضِ وَاخْتِلَافِ اللَّيْلِ وَالنَّهَارِ لَآيَاتٍ لِأُولِي الْأَلْبَابِ.

"Behold! In the creation of the heavens and the earth, and the alternation of Night and Day, there are signs for men of understanding."⁵

Some say, after Abu Bakr, Hafsa bint 'Umar (RA), the prophet's widow, was entrusted with the custody of the manuscript. In about 650 CE, the third Caliph Hazrat Othman (RA) began noticing the slight differences in pronunciation (by those new readers of different countries) of the Qur'anic texts as Islam had by then expanded beyond the Arabian Peninsula into Persia, and North Africa. In order to preserve the sanctity of the text in terms of pronunciation and authenticity, he ordered a committee headed by Zayed to use Abu Bakr's copy and prepare a standard copy of the Qur'an.⁶

Thus, within 20 years after Prophet Muhammad's demise, the Holy Qur'an was committed to written form. That text became the model from which copies were made and promulgated throughout the urban centers of the Muslim world, and other versions of doubtful origins were believed to have been destroyed.⁷

The present form of the Qur'anic text is accepted by Muslim scholars to be the original version compiled by Abu Bakr.⁸

According to the school of Shia and some Sunni scholars, the fourth Caliph Hazrat Ali (RA) compiled a complete version of the Qur'an shortly after Muhammad's demise. The order of this text differed from

⁴ Coulson, N. J. (1964), *A history of Islamic law* (Edinburgh: Edinburgh University Press, 9th ed. 1st in 1956) p.65

⁵ Al-Qur'an, 3:190

⁶ Nelson, K. (1985) *The Art of Reciting the Qur'an*, (Austin: University of Texas Press, 1997 p. 43-44

⁷ Navid Kermani (d.1997 CE), *Sharia: The Islamic law*. (London: Taha Publishers, 1994) p.107-120.

⁸ Mohamad K. Yusuff, *Zayd ibn Thabit and the Glorious Qur'an* (Beirut: 1946. This book was translated into Urdu, Lahore, 1955 and into Farsi, Tehran, 1968) p.129

that gathered later during the Uthman's (RA) era in that this version had been collected in chronological order. Despite this, he made no objection against the standardized Qur'an and accepted the Qur'an in circulation. Other personal copies of the Qur'an might have existed including Abdullah Ibn Mas'ud's (RA) and Ubai Ibn Ka'ab's (RA) codex, none of which exists today.⁹

The Qur'an most likely existed in scattered written forms during Prophet Muhammad's lifetime from several sources which indicate that a large number of his companions had memorized the revelations. Early commentaries and Islamic historical sources support the above-mentioned understanding of the Qur'an's early development.¹⁰

The Qur'an in its present form is generally considered by academic scholars to record the words spoken by Prophet Muhammad, through divine transcendental inspiration, because the search for variants has not yielded any differences of great significance. Although most variant readings of the text of the Qur'an have ceased to be transmitted, some still are on research ground. There has been no critical text produced on which a scholarly reconstruction of the Qur'anic text could be based.¹¹ Historically, a controversy over the Qur'an's content has rarely become an issue, although debates continue on the deep scientific knowledge on the subject matter.¹²

In 1972, in a mosque in the city of Sana'a, Yemen, manuscripts were discovered that were later proved to be the most ancient Qur'anic text known to exist. The Sana'a manuscripts contain palimpsests on a manuscript page from which the text has been washed off to make the parchment readable again, a practice which was common in ancient times due to scarcity of writing material. However, the faint washed-off underlying text is still barely visible and believed to be "pre-Uthmanic" Qur'anic content, while the text written on top (superior) is believed to

⁹ Nasr, Seyyed Hossein (2007). "Qur'an". *Encyclopædia of Britannica Online*. Retrieved 2007-11-04.

¹⁰ Campo, Juan E. (2009). *Encyclopedia of Islam*. , p. 570–74.

¹¹ Abbas Jaffer, Masuma Jaffer (2009). *Qur'anic Sciences*. (Oxford: ICAS press.) p. 11–15.

¹² Haleem, Muhammad Abdel (2005). *Understanding the Qura'n: themes and style*. I.B.Tauris. p.82

belong to Uthmanic time.¹³ Studies using radiocarbon dating indicate that the parchments are dated to the period before 671 AD with a 99 percents probability.¹⁴

3. Legal topics of the Holy Qur'an

This divine book is the most authentic and the first source of Muslim law. Out of 6000 verses, about 200 verses deal with the legal principles and about 80 verses outline the personal laws relating to inheritance, marriage, dower, divorce, maintenance, gift, protection of minors, prohibition of gambling, adultery and intoxicating drinks, usury, homicide and polygamy, etc.¹⁵ They also prescribe punishment for commission different types of crimes according to the gravity of the offences. Moreover, the emphasis in the Holy Qur'an upon the final Judgement by Allah for actions of men on earth has a tremendous impact on the personal conduct of human beings in refraining them from doing wrong - even alone and unseen by others all of which other procedural laws coined by men have failed to achieve their purposes. The Qur'an, apart from its substantive provisions, also indicates the means by which these are to be interpreted and supplemented.¹⁶

It is important to note, while interpreting the Qur'anic verses, that some later verses abolished by some earlier verses. The abrogating (repealing) verses are called 'Nasikh' (ناسخ) and the abrogated ones are called "Mansukh (منسوخ)".¹⁷ The Holy Qur'an is undoubtedly the basic and primary source of law. Most of the Qur'anic injunctions and admonitions can be correctly understood only when they are viewed in the light of what the prophet said or what he did in the situation to which the injunction or admonition referred. The Holy Qur'an is a source of the following Laws:

¹³Jenssen, H., *Encyclopedia of Islam*, vol- 1 (London: Oxford University Press, 1949) p. 127-135.

¹⁴ "Qur'an: Text, Interpretation and Translation" Third Biannual SOAS Conference, October 16-17, 2003". *Journal of Qur'anic Studies* 6 (1): 143-145. April 2004

¹⁵ Duncan B. MacDonald, *Development of Muslim Theology, Jurisprudence and Constitutional Theory* (London: Gorgias Press, 1903) p.87

¹⁶Coulson, N. J. (1964), *A history of Islamic law*, p.55

¹⁷Fayzee, A.A.A. *Outlines of Mohamedan Law*, p.19

3.1. Criminal Law

The main theory of criminality in Islam is that a man himself is responsible for his actions. It is due to his heinous and evil deeds that he is criminally prosecuted. According to Islamic view, no one is born criminal. There are his own acts which him good or bad. He is free to act. Injunctions regarding punishment have been laid down in the Holy Qur'an:

3.1.1. Fornication (الزنا): It has been said in the Holy Qur'an:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِنْهُمَا مِائَةَ جَلْدَةٍ.

"The women and the men guilty of adultery or fornication, flog each of them with a hundred strokes."¹⁸

3.1.2. Theft (السرقه): Allah says regarding the punishment of 'theft':

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جِزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ.

"The male thief and the female thief, you shall "cut off" their hands as a punishment for their deeds, and to serve as a deterrent from Allah. Allah is Almighty, Wise"¹⁹

3.1.3. Apostasy (ارتداد): Allah says regarding the punishment for apostasy-

وَقَالَتْ طَائِفَةٌ مِنْ أَهْلِ الْكِتَابِ آمَنُوا بِالَّذِي أُنْزِلَ عَلَى الَّذِينَ آمَنُوا وَجَهَ النَّهَارِ وَكَفَرُوا آخِرَهُ لَعَلَّهُمْ يَرْجِعُونَ.

"A group from the People of the Scripture said: 'Believe in what is revealed to those who believe at the beginning of the day, then disbelieve at the end of the day, so perhaps they might return to faith.'"²⁰

3.1.4. Wine drinking (شرب الخمر): The Holy Qur'an Says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوا لَعَلَّكُمْ تَفْلِحُونَ.

¹⁸ Al-Qur'an:24:2

¹⁹ Al-Qur'an, 5:38

²⁰ Al-Qur'an, 3:72

“O, you who believe! Intoxicants and gambling, sacrificing to stones, and (divination by) arrows, are an abomination of satan’s handiwork: Eschew such (abomination), That ye may prosper.”²¹

3.1.5. Rebellion (التمرد) : Allah tells us about the rebellion of the disbelievers in ancient times and in more recent times, such as:

فَأَسْقِطْ عَلَيْنَا كِسْفًا مِّنَ السَّمَاءِ إِن كُنتَ مِنَ الصَّادِقِينَ.

“Let a fragment fall out of the sky on if you are telling the Truth”²²

3.2. Civil Law

Civil law systems that contain elements of Islamic law²³ which attempt to integrate principles and features of Shari’ah in deference to the unique circumstances of Muslim society. The following topic under civil law according to the Holy Qur’an:

3.2.1. Justice (عدالة): The concept of justice extends justice to being a personal virtue, and one of the standards of moral excellence that a believer is encouraged to attain as part of his Allah-consciousness. Further Allah Says,

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ.

“O, you who believe! be upright for Allah, bearers of witness with justice; and not let hatred of a people incite you not to act equitably. Be just that is nearer to observance of duty. And keep your duty to Allah. Surely Allah is aware of what you do.”²⁴ The Qur’an states again,

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ وَأَنزَلْنَا الْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَافِعُ لِلنَّاسِ.

²¹ Al-Qur’an, 5:90

²² Al- Al-Qur’an, 26: 187

²³ “Civil Law”. *Microsoft Encarta Online Encyclopedia 2009*. Archived 2009-10-31

²⁴ Al- Al-Qur’an, 5: 8

“We have sent our Messengers with clear signs and have sent down with them the book and the criterion so that man can establish justice. And we sent down iron of great strength and many benefits for man...”²⁵

3.2.2. Law of Evidence: Law of evidence has also been crystallized in the Holy Qur'an. Adducing evidence has been made obligatory by the holy Qur'an. Evidence of women is also admissible. The Qur'an says:

وَأَسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ تَضِلَّ إِحْدَاهُمَا فَتُذَكِّرَ إِحْدَاهُمَا الْأُخْرَى .

“And call in two male witnesses from among your men [over the document of loan]. And if two men cannot be found then one man and two women from among those whom you deem appropriate as witnesses so that if either of them gets confused the other reminds her.”²⁶

3.2.3. Law of contract: The Qur'an is the main source of the Islamic law of contract. Detailed rules concerning buying and selling, Riba, Amanah, Wadiah, Shirkah and Madarabah, Qard-e-hasna, etc., have been given in the Holy Qur'an.

إِنَّ الَّذِينَ يُبَايِعُونَكَ إِنَّمَا يُبَايِعُونَ اللَّهَ يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ فَمَنْ نَكَثَ فَإِنَّمَا يَنْكُثُ عَلَى نَفْسِهِ وَمَنْ أَوْفَى بِمَا عَاهَدَ عَلَيْهِ اللَّهُ فَمَ يُؤْتِيهِ أَجْرًا عَظِيمًا .

“Those who swore fealty to you, (O, Prophet), in fact swore fealty to Allah. The Hand of Allah is above their hands. So whoever breaks his covenant breaks it to his own hurt; and whoever fulfils the covenant that he made with Allah, He will bestow on him a great reward.”²⁷

3.2.4. Law of Torts: The Qur'an contains detailed laws concerning torts against a property, e.g., ghasb (غصب), privacy, nuisance, homicide, Qysas, equality, injuries to human bodies, negligence, defamation, fraud, torts against women, racial discrimination, liability of head of state, self-

²⁵ Al- Al-Qur'an, 57:25

²⁶ Al-Qur'an, 2:282

²⁷ Al-Qur'an, 48:10

defense, etc. The Law of Privacy has also been discussed in the Holy Qur'an :

إِلَّا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَذَكَرُوا اللَّهَ كَثِيرًا وَانْتَصَرُوا مِنْ بَعْدِ مَا ظَلَمُوا
وَسَيَعْلَمُ الَّذِينَ ظَلَمُوا أَيَّ مُنْقَلَبٍ يَنْقَلِبُونَ .

“Except those who believe (in the Oneness of Allah, Islamic Monotheism), and do righteous deeds, and remember Allah much, and reply back (in poetry) to the unjust poetry (which the pagan poets utter against the Muslims). And those who do wrong will come to know by what overturning they will be overturned.”²⁸

3.3. Administrative Law: Law concerning judiciary, executive and legislature, head of an Islamic state, rule of law, natural justice, freedom of persons, fundamental human rights, bureaucracy, armed forces, media, central religious institutions like the mosques and places of worship as well as places of learning ,tabling (preaching), e.t.c., are prescribed in the Qur'an.

3.3.1. Fiscal Law: Law regarding sources of revenue, spoils of War, Zakah, Jiziyah, Al-khiraj, Al-Fie, the khums, Al-'ushr interlayer have been laid down in the Holy Qur'an. Thus, the institution of Waqf has also been established because of the Qura'nic teachings.

3.3.2. Law of Blasphemy: Penalty for blasphemy is death. Blasphemy is Kalma-tul-Kufr. The Holy Qur'an says :

يَحْلِفُونَ بِاللَّهِ مَا قَالُوا وَلَقَدْ قَالُوا كَلْبَةَ الْكُفْرِ وَكَفَرُوا بَعْدَ إِسْلَامِهِمْ وَهُمْ بِمَا لَمْ يَنَالُوا
وَمَا نَقَمُوا إِلَّا أَنْ أَغْنَاهُمُ اللَّهُ وَرَسُولُهُ مِنْ فَضْلِهِ فَإِنْ يَتُوبُوا يَكُ خَيْرًا لَهُمْ وَإِنْ يَتَوَلَّوْا
يُعَذِّبُهُمُ اللَّهُ عَذَابًا أَلِيمًا فِي الدُّنْيَا وَالْآخِرَةِ وَمَا لَهُمْ فِي الْأَرْضِ مِنْ وَلِيٍّ وَلَا نَصِيرٍ .

“They swear by Allah that they did not say [anything against the Prophet] while they had said the word of disbelief and disbelieved after their [pretense of] Islam and planned that which they were not to attain. And they were not resentful except [for the fact] that Allah and His

²⁸ Al-Qur'an, 26:227

Messenger had enriched them of His bounty. So if they repent, it is better for them; but if they turn away, Allah will punish them with a painful punishment in this world and the Hereafter. And there will not be for them on earth any protector or helper.”²⁹

3.3.3. Commercial Law³⁰:

The Holy Qur'an contains detailed commercial Laws. The holy Prophet had the firsthand knowledge of commercial laws. The Makkans were traders in the pre-Islamic Arabia. The Holy Qur'an thus provided a complete guidance to the Arabs after the advent of Islamic commercial transactions. It is a source of guidance for the mankind. The Qur'an had a deeper significance as the primary source of law.

4. Conclusions

In time, it can be said that the Holy Qur'an is the legislative and principal source of Islamic Jurisprudence. All other sources derive their validity from the Holy Qur'an which is in the direct words of Allah Who is a complete sovereign over the entire universe. It is to be noted that it is not only a book of law, but also it is a book of guidance for the mankind. So it does not contain a detailed corpus of legislation.

²⁹Al-Qur'an, 9: 74

³⁰ Legal rules that :

- (a) Determine the rights and duties of parties engaged in trade and commerce. (b) Govern disputes arising out of ordinary transactions of buyers and sellers, and (c) Settle issues concerned with affrightment, banking, insurance etc.