

## Chapter 2

# Islamic Jurisprudence: Sources and Traditions Creating Diversity in Human Relationships

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Islam, a holistic religion, stipulates regulatory frameworks encompassing all aspects of human life: spiritual, social, economic, and political. The Qur'an, among other things, provides guidance about social systems, economic ideologies and systems, governmental responsibility, law of inheritance, family law, equality of people, and social justice. Islam is thus said to be a combination of religion (*din*),<sup>1</sup> culture, tradition, and civilization (Sardar 1991).

Following the examples and codes of the Prophet Muhammad (PBUH<sup>2</sup>), in the Medina Charter,<sup>3</sup> for example, Muslim rulers in the new lands created conditions of harmonious and peaceful living for all residents. Islam, due to its flexibility, in the first 200 years reached France in the West and India in the East, being borne by informal missionaries, travelers, or traders; not by the elites or authorized preachers. During its first millennium, Islam became the world's "most powerful engine, agent, and vehicle of globalisation" (Simons 2003, p. 3). In most areas of Muslim

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<sup>1</sup> Arabic word for religion, *Din*, is very comprehensive and implies "the ideas of indebtedness, duty, obedience, judgment, justice, faith, religion, customary rites, etc." (Ali 1938, note 207).

<sup>2</sup> God's blessings and peace be upon him (PBUH). Muslim readers are supposed to (and reminded of the obligation to) utter the blessings to the Prophet every time they come across his name.

<sup>3</sup> Compiled in 622 CE by Prophet Muhammad (regarded by many as the first written constitution of the world), to deal with socio-economic and security issues of all residents of Yathrib (the city of his refuge; renamed Medinat al-Nabawi—the City of the Prophet) to create conditions for a harmonious and peaceful living for all people belonging to different tribes and adhering to different religions. See Arjomand (2009).

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rule, especially in the Mughal India (Eickelman 2002) and Ottoman empires (because of strategic reasons of being acceptable to a vast non-Muslim population), in the Kingdom of Aceh, and the Sultanates of Northern Borneo, Brunei, and Sulu (because of the conversion of the rulers to Islam), local customary laws (*adat*) were allowed to prevail, especially in the countryside. This experience facilitated inter-cultural blend and enriched Islamic values and norms, and allowed for philosophical as well as geographic expansion of Islam.

This chapter endeavors to encapsulate important issues related to the growth and formation of Islamic jurisprudence and related Muslim traditions, and the factors and question required for understanding and studying human relationships in the Muslim world highlighting its comprehensive and pluralist character. In order to discuss the above, the rest of the chapter is divided into three sections dealing with the sources of Islamic jurisprudence that promote flexibility, the traditions in Islamic jurisprudence that create diversity, and the *imams* and other people and their practices that are turning things around (re)defining the Muslims' relationships to God, the Nature, and fellow human beings. The chapter concludes that because of the ordained obligations to the community, and the emphasis on pluralism, there ought to be many authentic and acceptable *shari'a* 'schools' of human relationships for human development in Islam.

## 2.1 Islamic Jurisprudence: The Sources that Promote Flexibility

Islam, having *tawhid* or the Unity of God as its fundamental principle, literally means peace and 'submission' demonstrated in the spirit of worshipping God (completely submitting to His will). The two fundamental sources of Islamic principles and dicta are the Qur'an and the *Sunnah* (pl. *Sunan*)—'usual practice' of Prophet Muhammad. The verses in the Qur'an are divided into two groups: clear or decisive verses and allegorical verses (al-Qur'an 3:7<sup>4</sup>). The Qur'an—a "guidance for mankind"<sup>5</sup>—revealed to Prophet Muhammad between 610–632 CE cover three wide areas: the science of speculative theology (e.g., in comprehending, establishing, and maintaining human beings' relationships with the Creator), ethical principles (e.g., about economic relationships and systems; roles and qualities of the leaders), and rules of human conduct (e.g., law of inheritance, relationships within and across genders, and with the followers of other religions) (Nomani and Rahnema 1995). Thus Muhammad Abduh opined that the Qur'an urges people to search and think about the revelation, and is "a Book of freedom of thought", "respect of

<sup>4</sup> The first digit in this reference refers to Chapter number in the Qur'an; the next one to the verse number. In subsequent references in this chapter only the digits are mentioned. Please note all verses of the Qur'an in this Chapter are taken from the English version by Abdullah Yusuf Ali (1938).

<sup>5</sup> "This is the Book; in it is guidance sure, without doubt, to those who fear Allah" (al-Qur'an 2:2).

reason” and for shaping the individuals “through research, knowledge, and the use of reason and reflection”<sup>6</sup> (Haddad 2005, p. 47).

The second source of Islamic jurisprudence, *Sunnah* (in the form of the Prophet Muhammad’s words, acts, and consents), compiled as the *Hadith* (pl. *ahadith*) literature, offers (social, economic, and political) guidance defining the human beings’ purpose and objectives and their relationships to one another, to God and the Nature. The *Hadith* literature includes what the Prophet said (*Hadith Qawli* or sayings; includes *Hadith Qudsi*—those sayings where Prophet Muhammad referred to Allah), did (*Hadith Faili*; actions), and gave silent consents to (*Hadith Taqriri*; was said and/or performed in front of the Prophet without receiving his disapproval). These *ahadith* are the sources of the *Sunnah* (usual practice) and explain and complement the text of the Qur’an, and are classified as *Sunnah Tashri’ah* (rooted from the word ‘*shari’a*’; legal *Sunnah*) or the Prophet’s activities and instructions as the head of the state and as a judge, and *Sunnah Ghair Tashri’ah* (non-legal *Sunnah*) consisting of the daily activities of the Prophet (eating, sleeping, dressing) that do not form a part of the *Shari’a* (Hannan 2003).

Among all different *hadith* literatures, the Sunni Muslims widely draw on ‘the Authentic Six’ (*al-Sihah al-Sitta*).<sup>7</sup> These works were compiled about 200 years after the Prophet’s death through a chain of communication.<sup>8</sup> Further, any Muslim who met the Prophet once (*al-sahabiyy*—‘the Companion’; pl. *sahabah*; fem. *sahabiyah*) and (their) followers (*al-Tabi’un*; pl. *al-Tabi’in* or the Muslims who met a Companion but did not meet the Prophet) were accepted as an ‘authority’ to report or narrate what was heard and seen ‘during the visit’ to the Prophet or the ‘Companions’, respectively. A *sanad* or *isnad* (a chain of narrators of a particular *hadith*), as a part of the *Hadith* literature, helps one understand the authenticity of these *ahadith*.<sup>9</sup>

<sup>6</sup> Haddad (2005) argues that Muhammad Abduh in his book *Tafsir al-Fatiha* (edited by Rashid Rida, al-Manar Press, Cairo) refers to verses like the following as the Qur’an’s insistence on rationality “Have they not travelled in the land, and have they hearts wherewith to feel and ears wherewith to hear? For indeed it is not the eyes that grow blind, but it is the hearts, which are within the bosoms, that grow blind” (22:46); “See they not how Allah produceth creation, then reproduceth it? Lo! for Allah that is easy” (29:19).

<sup>7</sup> These are *Sahih Bukhari* (by Imam Muhammad ibn Ismail al-Bukhari, d. 870 CE or 256 AH), *Sahih Muslim* (by Imam Muslim ibn al-Hajjaj, d. 875 CE), *Sunan al-Nasai* (by Imam Abu ‘Abd al-Rahman al-Nasa’i d. 915 CE), *Sunan Abu Dawood* (by Imam Abu Dawood Sulaiman ibn Ash’ath al-Sijistani, d. 888 CE), *Jami al-Tirmidhi* (by Imam Muhammad bin Isa al-Tirmidhi, d. 892 CE), *Sunan ibn Majah* (by Imam Muhammad ibn Yazid bin Ibn Majah al-Qazwini, d. 887 CE) compiled about 200 years after the Prophet’s death.

<sup>8</sup> The fact that all six major compilers of *ahadith* were from Persia reinforces the idea that since Prophet Muhammad, as revealed in *Sahih Muslim*, initially did not allow the writing of *ahadith* (just in case they are mixed up with the Qur’an since the Qur’an was not compiled in the present form during the Prophet’s lifetime) the Arabs did not take major initiatives in compiling the *ahadith* except for some minor *sahifas* (e.g., *Sahifah Hammam ibn Munabbih*) that were in existence during Prophet Muhammad’s lifetime.

<sup>9</sup> Most importantly almost 1/3rd of the *Hadith* text in the *Sahih Bukhari* and *Sahih Muslim* (discounting the repetitions through different ‘chains of communication’) is referred to A’ishah—the Prophet’s wife (who was about eighteen years old at the Prophet’s death).

The *Shi'a Muslims* recognize *ahadith*, sourced only to the members of the Prophet's family, compiled by Imam Jafar al-Sadiq (702–765 CE) (Nomani and Rahnema 1995, p. 6), and thus give less importance to the variedly sourced 'Authentic Six' of the Sunni Muslims (who, in return, do not recognize the former collection).

The other sources of the *Shari'a* have only expanded the human relationship issues without infringing the original individual rights. Most religious aspects of an individual's life are "private and non-justiciable", and thus many aspects of the regular prayers, fasting (dawn-to-dusk refraining during the whole ninth month of the Islamic calendar from worldly pleasure including eating and drinking), the *hajj*, and "almost all of what is classified as recommendable (*mandub*), reprehensible (*makruh*), and permissible (*mubah*) 'are not legally enforceable.'" "The private and civil rights of the individual are also immune, by the express injunctions of the *Shar'ia*, against encroachment by others, including the state."<sup>10</sup>

To deal with the matters not covered in the Qur'an or the *Sunnah*, there are *ijtihad*<sup>11</sup> and *ijma* (consensus *ijtihad*) as the next major sources of Islamic jurisprudence. The *qiyas* (analogical deductions among the Sunni Muslims) and *aql* (human reasons; among the Shi'a Muslims) are also additional methods of Islamic jurisprudence. Personal opinion of the legal experts (*ra'y*), often manifested in the application of *ijtihisan* (juristic preference), in *ijtihad* has played important roles in the adaptation of Islamic law to the changing needs of society.<sup>12</sup> *Ijtihisan* is a method of exercising personal opinion (*ra'y*) to avoid rigidity and unfairness that might result from literal application of the law. The decision of Caliph Umar ibn al-Khattab, during the famine, to suspend the *hadd* (God ordained corporeal punishments; pl. *hudud*) penalty of amputation of a thief's hand for stealing is an example of *Ijtihisan* (Hannan 2003). This personal opinion (*ra'y*) ensuring equity is based on a fundamental principle of Islamic law that forbids imposition of any duty (*taklif*) to anybody without the granting of a corresponding right (*haqq*). Since the term 'duty' also comprises "liability to punishment", "before anyone's hand can be cut off for stealing, the Islamic state must ensure that every citizen, Muslim as well as non-Muslim, has economic, social, and political protection and security." Thus amputation of a thief's hand is applicable only within the context of an already existing, fully functioning social security scheme, and in no other circumstances.<sup>13</sup>

<sup>10</sup> For example, "no government agency, nor even the *Shar'ia* courts, has powers to grant discretionary changes in the private rights and properties of individuals, without the consent of the person concerned". The quotations and the information in this paragraph are from Kamali (2005, p. 282).

<sup>11</sup> *Ijtihad*, opposite of *taqlid* or imitation, is a jurist's independent analysis and decision about an issue not covered in the Qur'an or *Sunnah*.

<sup>12</sup> Hanafi, Maliki, and Hanbali jurists have accepted, while Shafi'i and Shi'a jurists have rejected *Ijtihisan* as a method of '*ijtihad*' (independent analysis).

<sup>13</sup> These quotations are from Zaman (2002, p. 86) who refers to the commentary in the '*Message of the Qur'an*' by Muhammad Asad. This is also the opinion of Abul Ala Mawdudi who argued that the *hudud* punishment could be implemented only if a society was thoroughly Islamized, see Nasr (2005). Also see, Mawdudi 2007.

Most noteworthy is the fact that the verses in the Qur'an related to *hadd* punishment demands the observation of justice, not retaliation.

Further, if the amputee (of a *hadd* punishment) becomes a burden to the (state) social security system (or even to the family), the state/court should focus on other suggested alternatives. The Qur'an advises the Believers to do righteous things and be away from all types of wrong doings. The amputation of a thief's hand cannot be seen as a regular recourse for a petty crime because it is "a punishment by way of example" (5:38), so the need for being forgiving is always emphasized,<sup>14</sup> just in case. The Believers are required to choose between a penalty by being guilty of doing excess in retaliation or a reward from God for forgiving, because "if any show patience and forgive, that would truly be an exercise of courageous will and resolution in the conduct of affairs" (42:43).

A major aspect of the *Shari'a* is that local customs (*urf*) and *adat* (customary laws) not contradicting the fundamental principle of the Unity of God (*tawhid*) or any explicit injunctions became parts of Islamic principles of social and economic relationships (Hannan 2003),<sup>15</sup> especially among the Sunni Hanafi School.<sup>16</sup> 'Adat' was part of Islamic law since the early history of Islam. So much so that Imam Shafi'i changed many of his legal opinions after settling in Egypt. During the times of conquest, Muslims, coming into contact with peoples of diverse cultures and religions, recognized and tolerated different ritual practices within the *ummah*<sup>17</sup> (Platteau 2008, p. 333).

The Qur'an and the *Hadith* referring to state, its leader, community, individuals and their respective duties and responsibilities, and their inter-relationships are said to be the foundation of the *Shari'a* law (Moosa 1998). In the modern world, scholars like Muhammad Abduh opines "Muslims should not imitate their forebears in interpreting the Qur'an, but must be authentic and true to their own understanding" (Haddad 2005, p. 47) because as Hassan al-Banna contends Islam "offers the only path to happiness and fulfilment" and its general principles are "sufficiently flexible for adaptation to any place or time"<sup>18</sup> (Cummins 2005, p. 134) to create diversity.

<sup>14</sup> "As to the thief, male or female, cut off his or her hands: a retribution for their deed and exemplary punishment from Allah and Allah is Exalted in Power, full of Wisdom (al-Qur'an, 5:38). But if the thief repents after his crime, and amends his conduct, Allah turneth to him in forgiveness; for Allah is Oft-Forgiving, Most Merciful" (al-Qur'an, 5:39). Forgiving thus may be beneficial to the victims (not knowing if the perpetrator is already forgiven for his/her repentance).

<sup>15</sup> For example, Prophet Muhammad did not mind the people of Medina dancing at festivals because it was their tradition; for more see, Qaradawi (2001).

<sup>16</sup> The Malikis used a similar principle, called *athar* (shortened for '*athar al-Madinah*').

<sup>17</sup> Literally meaning 'community' or 'nation'. Though the Medina Charter of Prophet Muhammad regarded all residents of Medina (including the Jews) as the '*ummah*', the later use of the term tends to refer to Muslim fraternity.

<sup>18</sup> Thus al-Banna was critical of the *ulama* of the al-Azhar as "men anchored to irrelevant interpretations of Islam, steeped in the concerns and methods of a bygone age" (Cummins 2005, p. 134). Also see, al-Banna, 2007.

## 2.2 Islamic Jurisprudence: The Traditions that Create Diversity

Islam approves different forms of doing things<sup>19</sup> because the emphasis is on the intentions and philosophical reasons (not on the ritualistic details). Pluralism, within the basic frame, resulting from this diversity in Islam, is further reinforced by the fact that there is no world body and only very limited governmental authority. Thus different Islamic communities are allowed to maneuver different practices within the basic principles of pluralism in Islam.

Pluralism in Islam relates to its political divisions—Sunni<sup>20</sup> and Shi'a (a short form of *Shi'atu* Ali meaning the 'faction of Ali' often anglicized as the 'Shiites') Muslims (Shi'a in short). Sunnis accept the first four Caliphs of Islam (including Ali ibn Abi Talib) as the 'Rightly-Guided Caliphs'. The Shi'a Muslims consider the fourth Caliph (of the Sunnis), Ali ibn Abi Talib (a cousin of prophet Muhammad and husband of Fatima, a daughter of Prophet Muhammad from his first wife Bibi Khadija) the first leader (*imam*) after the Prophet,<sup>21</sup> and disregards the first three Caliphs.<sup>22</sup>

There are two major divisions in the Shi'a Islam: the twelvers (*Ithna Ashariyya*), who follow the first twelve imams including Ali ibn Abi Talib, and the Seveners (the Ismailis<sup>23</sup>), who follow the first seven (Fig. 2.1). In Shi'a Islam, two major *fuqaha* (pl. of *faqih*; Muslim jurists) are Imam Muhammad Baqir (677–733 CE) and Imam Jafar al-Sadiq (702–765 CE). About 10% of the followers of Islam now are Shi'a Muslims, who are mostly in Iran. Shi'a Islam has been popular in Iran for the last five hundred years, becoming the state religion of Persia (Iran) under the Safavid dynasty in the sixteenth century CE, and has some followers in Pakistan, Iraq, and Turkey.

Sunni Muslims follow four *madhabs* (Schools) of Islamic jurisprudence. These are the Hanafi School (Imam Abu Hanifa alias Nu'man ibn Thaabit ibn Zuti, 699–767 CE or 150 AH originally from Khorasan born in Kufa); Maliki School (Imam Malik ibn Anas al-Asbahi, 715–795 CE or 179 AH of Medina); Shafi'i School (Imam Muhammad ibn Idris al-Shafi'i, 767–820 CE or 204 AH of Gaza), and Han-

<sup>19</sup> See al-Qur'an, 2:177 and an explanation of the verse in Ali (1938).

<sup>20</sup> Taken from the root word *Sunnah* to claim to be its 'true follower' (unlike the Shi'a Muslims).

<sup>21</sup> Sunnis, however, believe that the selection was nothing to do with the family relations, rather the trust and belief of the then Muslims, *muhajirs* (the Muslims who moved to Medina from Mecca) as well as the *ansars* (the Muslims of Yathrib who offered refuge to the *muhajirs*), as to the ability of the individual who would be best able to carry the 'Torch'. In any event, however, the Sunnis add that the first two Caliphs were the Prophet's fathers-in-law and the next two were his sons-in-law.

<sup>22</sup> The fourth Caliph Ali himself took the majority decision of making Abu Bakr the first Caliph of Islam in the spirit of unity of the Muslim *ummah*, and became the fourth Caliph. His followers, the 'shi'a' or 'faction' of Ali, however, created the confusion by calling him the first *imam*, and not a Caliph (to be different from the Sunni system), to perpetuate the division.

<sup>23</sup> Those who regarded Ismail, the oldest son, the rightful heir of Imam Jafar al-Sadiq; the others accepted al-Sadiq's designation of the younger son as the next *imam* (Esposito 2010, p. 44).

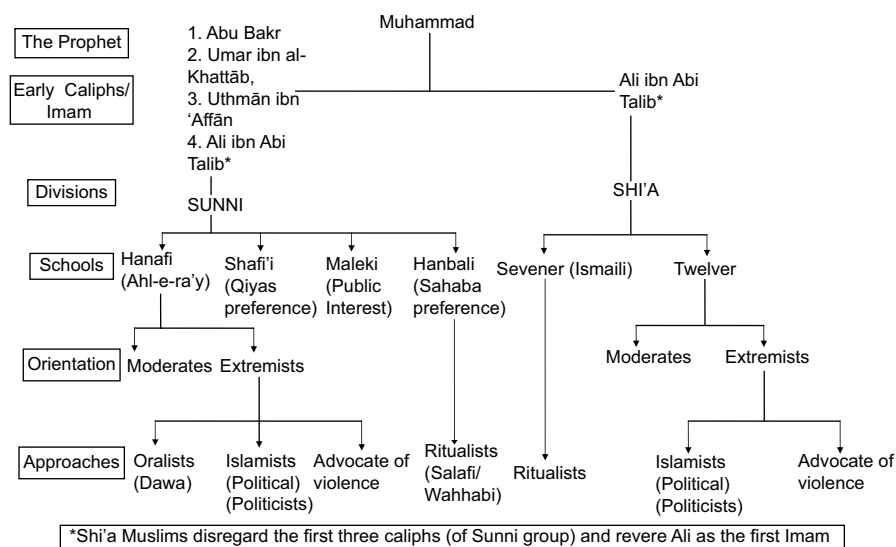


Fig. 2.1 Islam: major divisions, schools, and approaches

balī School (Imam Ahmad ibn Muhammad ibn Hanbal, 780–855 CE or 241 AH of Khorasan).

The Hanafī School is the most liberal of the four Sunni Schools because it provides importance to ‘public interest’ (*masalih al-mursalah*) test for the jurisprudence and similar importance to *ijma-i-sukuti* (agreement among some of the jurists) and *ijma-i-haqiqi* (agreement among all the participating jurists). The Maliki School “gives equal importance to public interest (*masalih al-mursalah*), analogy (*qiyas*), and the juristic preference (*ijtihad*)”<sup>24</sup> (Table 2.1), but regards *ijma* (consensus) of the people of Medina as the third most important source of Islamic law (after the Qur’an and the Hadith;) (Table 2.1). The Shafi’i School strikes a balance between reason (*qiyas*—regarding it as the third most important source) and authority, and combines dogmatism with practical requirements (Table 2.1),<sup>25</sup> preferring *ahadith* with the best ‘chain’ (*sanad* or *isnad*—a chain of narrators of a particular *hadith*). The Hanbali School emphasizes puritanical aspects of Islam and adheres to orthodoxy and accepts *qiyas* (analogical deduction) as the last resort.<sup>26</sup> A well known group of followers of Hanbali School are the *Salafis* (the pious ancestors)<sup>27</sup>

<sup>24</sup> Maliki School is still followed, mainly in North Africa, and to some extent in sub-Saharan Africa, and the Gulf states (Bahrain, Oman, Kuwait, and Saudi Arabia east).

<sup>25</sup> The followers of Imam Shafi’i are in parts of Egypt, Indonesia, Jordan, Lebanon, Malaysia, the Philippines, and Syria.

<sup>26</sup> The Hanbali School is followed by Muslims, mainly in: Qatar, Saudi Arabia (north, west), and Yemen.

<sup>27</sup> Created by Muhammad ibn Abdul Wahhab (1703–1792 CE) who, calling for a return to the ‘pure beliefs’, condemned ‘worshipping’ of the Prophet Muhammad. Being led by Abdul Aziz

**Table 2.1** Four Sunni *Madhabs* (Schools) and their respective sources of jurisprudence

Sources (With Preference)	Hanafi <sup>a</sup> 699–767 CE	Maleki 715–795 CE	Shafi'i 767–820 CE	Hanbali 780–855 CE	Remarks
The Qur'an	✓	✓ <sup>b</sup>	✓	✓	Imam Shafi'i considered the Qur'an and the Sunnah as equal in formulating legislation
Sunnah Tashri'ah or legal Sunnah (not Sunnah Ghair Tashri'ah)	✓		✓ That is handed down by trustworthy persons	✓	
A Hadith	✓	✓	✓ Preference to the best 'chain'	✓ Preference to an authentic <i>hadith</i> over other sources listed below	No other sources consulted; preference to the closest of the apparent meanings (Imam Shafi'i; Imam Hanbal)
<i>Ijma</i> (consensus)	✓ Silence is viewed as a consent	✓ The third after Qur'an and <i>Hadith</i> (if agreed upon by people in Medina)	✓ Consensus of the 'entire community' (Silence cannot be viewed as a consent)	✓	To Imam Shafi'i and Imam Hanbal it is more authoritative than or preferred to a single person transmitted Hadith, who reject Maliki position
<i>Ijtihad</i> (independent judgment)	✓ High emphasis	✓ Public benefit, and practice of Medina		✓	Only where the ranks of a <i>hadith</i> are broken.
<i>Qiyas</i> (analogical deduction, only for social and financial matters)	✓	✓	✓ Third after the Qur'an and Sunnah <sup>c</sup> based on public interest	✓ The last resort	For Imam Shafi'i same as <i>ijtihad</i> which must also be based on reasoning
<i>Ra'y</i> (personal opinion of the jurists)	✓				Imam Shafi'i did not accept; Imam Malik criticised; Imam Hanbal rejected
Acted upon obligatory commands	✓				Unless constrained from acting upon
Definitive and categorical expressions	✓	✓			Both with equal implications



Table 2.1 (continued)

Sources (With Preference)	Hanafi <sup>a</sup> 699–767 CE	Maleki 715–795 CE	Shafi'i 767–820 CE	Hanbali 780–855 CE	Remarks
<i>Ijtihās</i> (Juristic preference)	✓	✓ Preference of public interests		✓	Abandoning analogy, if needed. Rejected by Imam Shafi'i
<i>Ijtihāb</i> (juristic equity)		✓			That ensures continuity of the proven
Narration-action congruence	✓				Accepting the practice if it is different from the narration
Practice of People of Medinah		✓			Rejected by Imam Shafi'i
Public interest tested ( <i>masalih al mursalah</i> ; <i>ijtilah</i> )	✓	✓		✓	Traditions transmitted by a single person (Imam Abu Hanifa); Rejected by Imam Shafi'i
Statement of the Companions	✓	✓		✓ Fourth important	In case of variation the closest to the Qur'an irrespective of the 'chain'
<i>Urf</i> (Respecting the tradition)	✓	✓	✓		Accepting some pre-Islamic laws
Variant practice of a Companion	✓				Only as specific evidence

Imam Abu Hanifa (Persia)—Rationalist; Imam Malik (Medina)—Traditionalist; Imam Shafi'i (Palestine or Yemen)—Moderate; Imam Hanbal (Khorasan)—Fundamentalist; extremist. They differed on some substantive points of law, and also "on the principles of legal reasoning (*usul al-fiqh*), and in particular on the place of *Hadith* and the legitimacy, limits, and methods of *ijtihad*." (Hourani 2005, p. 69)

<sup>a</sup> For Imam Abu Hanifa: Quantity does not affect validity; No consideration of a general proposition with a condition or qualification; No acceptance for a single person transmitted tradition that may harm public welfare;

<sup>b</sup> Reliance on the unequivocal verbatim text of the Qur'an; Reliance on the clear or manifest meaning when it is general; Validation of evidence from the Qur'an of a divergent meaning (*mafهوم al mukhaalafah*); Validation of a harmonious meaning (*mafهوم al muwafaqah*); Reliance on the Qur'an's warnings or cautioning as the effective reason for avoiding anything which is an abomination or is immoral.

<sup>c</sup> Analogy from a principle which has already been deduced from a previous principle is not admissible  
Based on: al-Awani (1993); Nomani and Rahnema (1995); Hourani (2005), pp. 67–69; Zakaria (1988)

(or *ahl-e-Hadith*; or the Wahhabis) who condemns innovations (*bidah*) or any deviation from the Qur'anic injunctions and thus strictly adhere to the Scripture (even for the allegorical matters, as interpreted by themselves<sup>28</sup>) (Fig. 2.1; Table 2.1; Esposito 2002).

In South Asia, where about 45% Muslims of the Muslim majority countries (MMCs; the focus of this Volume) and about 30% of the world Muslims live, the Hanafi School has three major divisions: the Deobandis (followers of the Deoband Madrasa), *Brelwis* (or *Barelvis*; followers of Rida or Riza Khan of Bareilly), and *ahl al-Hadith* (spelled '*ahle hadees*' in South Asia; do not follow any of the Sunni Schools, discussed above). The Deobandis are affiliated with or do adhere to the Deoband Madrasa, established in 1867 (in Deoband near Delhi), to offset the influence of the 'modernist and rationalist approach to Islam',<sup>29</sup> believe in *taqlid* or blind following (desisting *ijtihad* or independent analysis) of the old interpretations and rulings (cf. Rahnema 2005).<sup>30</sup> The *da'wa*<sup>31</sup> movement (the 'oralists'—promoters of script-less interpretation-free transmission of the tradition of the Prophet because of the low level of literacy of the Muslims; commonly known as *Tabligi Jamaat*<sup>32</sup>) of South Asia also have been helpful in spreading the Deobandi influence in the region and beyond (to a certain extent). The *Brelwis* (or *Barelvis*) emerged as an opposition to the modernist movement (of Sir Syed, fn. 29) and to the emphasis of *taqleed* of the Deobandis and *Ahl al-Hadith* intended to preserve Islam "as it had

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bin Baz, this group named themselves al-Jama'a al-Salafiya al-Muhtasiba (the Salafi Group that Commands Right and Forbids Wrong) in 1965 (Lacey 2009, pp. 10, 11). The *salafis* (pious ancestors), due to their claimed adherence to the teachings only of the Prophet Muhammad and the *Sahabas* (first generation of Muslims who were Companions of the Prophet) are also called the *Ahl-e-Hadith* or the people of *Hadith* (Esposito 2002). In common parlance, they are only known as the Wahhabis.

<sup>28</sup> Often fortified by tribal customs and biases (cf. an enlightening sub-editorial piece by Tariq A. al-Maena, a Saudi commentator, in the *Gulf News* 24 October 2010).

<sup>29</sup> In particular the establishment of Scientific Society by Sir Syed Ahmed Khan to reform Islam by integrating Western education and re-opening *ijtihad* (independent analysis; opposite of *taqlid*). Please see Rahnema (2005) and Malik (1999) for good discussions.

<sup>30</sup> This group is now politicized and are organized as Jam'iyyat al Ulama e-Hind (in India) and Jami'yyat-e Ulama-e Islam (in Pakistan), but also has a mystical order represented in the Naqsh-bandiyyah (Malik 1999) and is believed to have been followed by 15% of the Sunni Muslims in the region.

<sup>31</sup> '*Da'wa*' (literally meaning invitation) to Islam is now organized in many countries under the auspices of the government (e.g., Malaysia, Saudi Arabia). But the Deobandi off-shoot has a unique feature that can be called 'bare-foot' Islam inviting the Muslims to the 'right path' through the words of mouth. It has spread all over South Asia with the largest center in Dhaka, Bangladesh where the annual *ijtima* (gathering) claim to attract at least two million Muslims making it the largest gathering of Muslims in the world after the Hajj pilgrimage.

<sup>32</sup> Started in 1926 (opposing the Khilafat Movement as well as the modern educational system for Muslims spearheaded by Sir Syed Ahmed Khan, please see note 29) by a teacher in the Deoband Seminary who wanted to promote Islam through oral transmission because most Muslims in the (British) India were illiterate.

evolved to the present”, including the traditions and ritual practices of Sufi Muslims (cf. Malik 1999).

The *Sufi* or the mystic philosophy in Islam also has significant influence in the growth and shaping of the contemporary expression of Islam. The followers of mysticism, Sufism, in Islam, the *Sufis*<sup>33</sup> emphasize on inner self and philosophical reckoning in comprehending God by subjugating and praying to him through the minds. The mystical philosophy “owes its origin to the esoteric significance attached by an important section of Muslims to the words of the” Qur’an. Sufis, like Imam al-Ghazzali, are the preachers of “inward light” in Islam emphasizing that “the intuitive knowledge of God is inherent in the Faith” (see Ali 1964, pp. 455–478). The Sufi path is a “way of purification (*tasawwuf*), a discipline of mind and body whose goal is to directly experience the ultimate reality” (Esposito 2010, p. 101). Sufism with its greater spiritual appeal, because of its individualist philosophical striving for the union of God (as opposed to the rigid rituals), was seen as a threat since the establishment’s doctrine lost its vitality and ability to develop (cf. Abun-Nasr 1987) and faced oppression (e.g., Syed Nursi, 1878–1960 CE, a major force of Sufism in Turkey suffered humiliation and exile).

*Sufism* became controversial because of certain order/tradition’s belief that bliss in the Hereafter and well being in this world can be attained through the *Baraka* (grace) derived from *awliya* (sing. *Wali*, favorite of God), upon whom God bestows spiritual powers for no merits of their own (Abun-Nasr 1987, p. 23), especially the Chisti Order in South Asia (initiated by a Syrian Abu Ishaq Shami in the tenth century CE in Chest in Afghanistan) that strives to evoke divine presence through songs (*qawwali*) or the Mawlawi or Mevlawi order of Jalal al-Din Muhammad Balkhi (or Jalal al-Din Muhammad Rumi of the eleventh century CE) in Turkey who seeks divine union through dance (whirling *dervish* or *darweesh*).

Nonetheless, since Islam emphasizes philosophy and intentions behind ritual practices, different interpretations of Islamic principles and practice are equally accepted<sup>34</sup> and none is claimed to be superior to the other, because they all accept the basic principles of Islam and differ in the ways of implementation and detail aspects of its practice.<sup>35</sup> Muslim scholars like Ibn Taymiyya (1263–1328 CE) asserted the middle path adding that since the Prophet said a Muslim is a brother of another Muslim “how then can it be permitted to the community of Muhammad to divide itself into such diverse opinions that a man join one group and hate another simply on the basis of presumptions or personal caprices, without any proof coming from God?” (Hourani 2005, p. 180). Thus for many Muslims these differences may not

<sup>33</sup> The term may have originated from a root word ‘*suf*’ meaning ‘wool’ used in the cloaks worn by the early adheres; or ‘*safa*’ meaning pure or clean; or both.

<sup>34</sup> For an interesting and enlightening discussion on the sources of jurisprudence in each of these Schools and related differences and issues, see Abdelkader (2000), especially pages 39–61 where the author deals with the matter very diligently.

<sup>35</sup> This paragraph is based on Malik (1999, pp. 4–7); and Rahnema (2005, pp. xxx–xxxvi).

be reasons for conflicts, and the *shari'a* could become divergent with varied systems and policies (Nomani and Rahnema 1995).<sup>36</sup>

For historical reasons and other recent developments, as discussed above, Islam has diverse manifestations tolerated, in general, by all creating pluralism in practice.<sup>37</sup> The acceptance of many forms of 'doing things' are acceptance and encouragement of pluralism in Islam. The problem is though the basic philosophy, teachings, and practice of Islam, as discussed above, are opposed to the zero-sum approach, in practice, however, "truth tends to be seen as a zero-sum game, and those find themselves in disagreement are prone to call each other infidels" (Cook 2003, p. 6) creating problems within the Muslim communities. For example, following a recent fatwa justifying the killing of Shi'a Muslims as apostates (*murtad*), sectarian violence resulting in deaths has exponentially increased in Pakistan. Even among the Sunnis in South Asia, the *Brelwis* call the *Deobandis* unbelievers (*kafir*) because of the latter's rejection of the post-Prophet Islamic practices; while the Deobandis are critical of certain practices of the *Brelwis* (e.g., celebration of the anniversaries of the saints—*dervish* or *darweesh* and *sufis*; and offerings at graves).<sup>38</sup> It seems the 'champions' of one or the other ritual practices of Islam and self-proclaimed defender of the religion forgets a major warning in the Qur'an of not judging the goodness of another man; only God can do it. A 'bad' man in a Believer's judgment can be a good person in God's judgment,<sup>39</sup> because God knows what is in people's heart and human beings do not (49:11; 2:235). At the end, only a clear and submissive heart that matters to God which is likely to create diversity in the religion and achieve peace through mutual respect leaving the rest to God.

Irrespective, the fact remains that since there is no central authority or priesthood in Islam, owing to their adherence to one or the other methods of practicing Islam, Muslims define human relationships differently. Bearing in mind this fact and its possible impact, it is most important in understanding the differences in human relationships in Islam which is influenced by (and do influence) the relationships among state, the religion, and people.

<sup>36</sup> Many Muslims, however, do not follow any particular School. For example, since the state constitution of Perlis, Malaysia, specifies that Perlis people follow the Qur'an and *Sunnah* and not a particular *Madhab*, Muslims there do not follow any *Madhab* nor do the followers and members of the Muhammadiyah Organization in Indonesia (Hasan 2007).

<sup>37</sup> For an excellent work on unity and diversity in the Muslim world, please see von Grunebaum (1955).

<sup>38</sup> Information available in the Wikipedia under these topics.

<sup>39</sup> "O ye who believe! Let not a folk deride a folk who may be better than they (are) (al-Qur'an, 45:11)" because "... Allah knoweth what is in your minds, so beware of Him; and know that Allah is Forgiving," Clement (al-Qur'an, 2:235) and about 90 other verses.

## 2.3 Islamic Jurisprudence: Imams<sup>40</sup> who are Turning Things Around

Islam recognizes no mediation between the Believers and God. According to Muhammad Abduh, there is no such thing as ‘religious authority’ in Islam because human beings are invited to develop direct relationship to God through informal submission to His will, and formal adherence to the five pillars.<sup>41</sup> Each soul has the physical ability and Divine approval to rise to its Creator without the intervention of a priest, thus each human being is allowed to be his/her own priest (Ali 1964, p. 165), and is responsible directly to God for his/her actions. The elimination of the power of religious authority, according to Muhammad Abduh, sets the Believers “free from any supervision” (Haddad 2005, pp. 38–43).

Throughout history, Muslims all over the world have endeavored to deal with this informal and decentralized character of Islam (the absence of a central ‘religious authority’), primarily based on the traditions of the land, the previous practices, or through the new ruler’s authorization (which often was purposive). Due to different categories of knowledge dealing with different aspects of Islam, different types of knowledgeable people in Muslim communities have been grouped under one term—*alim* (one who has acquired knowledge, *ilm* about Islam; pl. *ulama* or *ulema*). An *alim* may be an ‘[I]mam’ of Shi’a Islam<sup>42</sup> (also known as *Mullah*; who assumes a pivotal position among contemporary Shi’a religious scholars and enjoy some theological leadership position); a *qadi* (judge; with acquired proficiency in Islamic law and its application); a *faqih*—an expert of Islamic *fiqh* or jurisprudence; a *mufasssir*—an expert of exegesis of the Qur’an; a *muhaddith*—expert of *al-hadith* and its *isnad*; and the (recent) *mufti*—one who is authorized to issue *fatwa* (rulings on contemporary issues not covered in the literature or by others before).<sup>43</sup> Often a formal title, *Maulana*<sup>44</sup> (var. *moulana*; master or a higher position holder), is ascribed to people receiving formal education from *madrassa* (in South Asia, in particular). An *[i]mam* (a prayer leader) has a different meaning and is not required to have any of the above expertise, especially in poor communities in Africa and Asia

<sup>40</sup> Please see the second paragraph in this section for an implied explanation of using this term instead of any other.

<sup>41</sup> Declaration of faith (on the Unity of God, His Messenger, all other prophets, their Books, the Angels, and the Hereafter), Prayer, Purification, and growth (*zakat*; philanthropy), Fasting and the Hajj (if financially able with own money). Shi’a Muslims also add the guardianship (*imamate*), and personal struggle (*jihad*) in the list of ‘pillars’.

<sup>42</sup> The champions of four respective *madhabs* (schools) in Sunni Islam are also known as *imam* (discussed earlier).

<sup>43</sup> The term, *alim*, is not used for a *hafiz* (var. *hafeez*—literally a ‘guardian’ or protector of the Qur’an because of the memorization of the complete text), often acquired also by many children before their tenth birthday (memorizing for six years from the age of four); some acquire it in less time, of course; or a *qari*’ (one who can recite the Qur’an following the proper rules).

<sup>44</sup> In Turkey a similar title, *Mevlana*, is exclusively used to refer to Jalal al-Din Muhammad Balkhi (or Jalal al-Din Muhammad Rumi) of the eleventh century CE with reverence, who is credited for the *Mawlawi* or *Mevlawi* order of Sufism.

(where most Muslims live). In the MMCs, the *imams*, in about 2 million mosques,<sup>45</sup> are the most numerous and are in a position to significantly influence local (low/not enlightened) people's minds and behavior.

The repositioning of the Muslim power center to Damascus (from Medina) at the beginning of the Umayyad period (661–750 CE), witnessed an endeavor to separate the rulers from the *ulema*, and the latter became a separate group. The rulers, however, endeavored to influence the latter to get religious rulings always favoring themselves (the rulers) or for legitimizing their actions often through torture and intimidation. For example, Shi'a Imam Jafar al-Sadik, Imam Abu Hanifa, Imam Malik, Imam Hanbal, in the early years of Islam, suffered different types of humiliation, intimidation, or torture at different levels for not supporting or following the establishment's line. The intimidation did not spare scholars in the thirteenth century (ibn Taymiya) or in the twentieth century (Syed Qutb).

From the thirteenth century CE the rulers of the Maghreb did not seek legitimacy as the leaders of the reform movements, rather brought "the *ulama* into the orbit of the state as counselors and associates" (Abun-Nasr 1987, p. 21) like the Ottomans, and later the Mughals. The rulers created a new position of *mufti*<sup>46</sup> (to issue *fatwa* on questions of human actions not covered in the classical literature or by the previous Muslim scholars) often to use for reinforcing the former's grips on power and assert control over religious matters creating new relationships between the state and the religion. The *ulama* were not (or could not be) in control of the rulers (nor could the state become a theocracy) because the rulers used to deal with the *ulama* as individuals (not as a corporate body like the Christian Church). So in the relations between *ulama* and the rulers, the latter had the 'upper hand' and could replace the former at a whim<sup>47</sup> (Abun-Nasr 1987, p. 21).

This relationship in some countries was revised for the creation of a new political authority. For example, the establishment of the Saudi political system is a result of a strategic pact concluded in 1733 CE between Muhammad ibn Saud (eager to extend authority from the Arab/Persian Gulf to the Red Sea to rule the 'lands and

<sup>45</sup> On an average one mosque for every 500–600 people (as evident in South Asia) may add up to at least 1.6 million mosques in the MMCs (for about 1 billion Muslims); and at least a quarter of that in other Muslim communities with much lower density (for about 500 million Muslims). The figure is in contrast to about 700,000 Catholic priests worldwide. Further, most *imams* are not subject to any common code; the priests are (nationmaster.com).

<sup>46</sup> Introduced by the Ottomans (following Christian examples), having "a hierarchy of *muftis* culminating in the Chief Mufti of Istanbul". After the fall of the Ottomans, the practice continued in the Ottoman successor states in West Asia, where governments appointed functionaries with the title of Chief (or Grand) Mufti exercising religious and ecclesiastical jurisdiction over a city.

<sup>47</sup> The Muslim jurists of the Umayyad and Abbasid times stayed away from the establishment, but the later day clerics, as individuals or as a group, were always interested to remain in the good books of the rulers because the latter used to appoint the favored '*ulama*' to prestigious posts, or grant them tax exemption, funds for mosques, *madrasa*, *ahbas* (pl. of *habus* or religious foundations to provide salary and other expenses of the '*ulamas*', and maintenance expenses of the respective institutions) (Abun-Nasr 1987, p. 21). For more on 'cosy' or mutually supporting relationships between the *ulamas* and the rulers through the management of *waqf* (for many worldly benefits), please see Hasan (2007).

men') and Muhammad ibn Abd al-Wahhab (who promised to supply the former with 'glory and power' in exchange for championing his puritanic message of 'going back to the basics')<sup>48</sup> (Lacey 2009, pp. 10, 11). Further, the grievances resulting from the dismemberment of the Ottoman Empire and the subsequent failure of the Arab nationalists and secular governments to deliver economic development reinforced the role of Islam in political change in a range of countries in the second half of the twentieth century<sup>49</sup> (Deneulin and Rakodi 2010) and created an interest in the *Shari'a* law to weaken the government's 'upper hand'. The establishment of the Muslim Brotherhood in Egypt in 1928 helped in the re-emergence of the idea of inseparability of religion and state (Deneulin and Rakodi 2010).

The application of the *shari'a* law in many MMCs, however, mostly relates to monitoring the individual's behavior within the context of certain code of conduct, and not in achieving good governance or as an overall framework for regulating the government, its members, and its relationship with the 'governed'. For example, in the present form, in many MMCs, the moral principles of the national or local leaders are never questioned or made subject to scrutiny. Autocratic rulers in countries like Nigeria, Pakistan, or Sudan in order to consolidate power tend to play the *shari'a* card by introducing Islamic laws in a piecemeal fashion arbitrarily as it serves their intended (political) purpose. In many MMCs, the process of filling in the gap in Islamic scholarship is often used to serve a social or political need (more than a religious need). For example, in exchange for enlisting the beneficiaries' support, the government of Pakistan offered official positions (of defining and defending Islamic law) to ill-educated (or trained) 'mullahs' by recognizing their short training as post-graduate degrees.<sup>50</sup> These people then purposively help to perpetuate the misuse of *Shari'a* law. There are some recent instances where the *muftis* are challenging the state authority, as in Saudi Arabia, to assert the former's position in influencing people's economic and social behavior.<sup>51</sup>

This purposive misuse of the *Shari'a* law by the political (as well as religious) elites is often intended to divert the people's mind from the existing broader and more important things not approved by Islam. This value-based and selective (or purposive) application of the *Shari'a* seems to give rise to two sets of problems. Its application can be discriminatory, and the failure to apply it at the macro level is

<sup>48</sup> That was reinforced once in 1932 by Abdul Aziz bin Abd al-Rahman al-Saud (a great-great-great grandson of Muhammad ibn Saud), and again in 1965 by Abdul Aziz bin Baz (no relation with Muhammad ibn Abd al-Wahhab; Grand Mufti of Saudi Arabia 1993–1999).

<sup>49</sup> Cited by Deneulin and Rakodi (2010). *The Global Resurgence of Religion and The Transformation of International Relations*. Basingstoke: Palgrave Macmillan.

<sup>50</sup> For example, in Faisalabad (in the Punjab province of Pakistan), General Zia ul Haq, facing opposition from the heartland of Muslim League, in exchange of the support from the clerics, recognized a six-week *madrasa* training, offered to local *mullahs*, as a master degree (Platteau 2008, p. 344).

<sup>51</sup> In a fatwa on 31 August 2010, the Grand Mufti of Saudi Arabia and six of his colleagues, mentioned that the action of the government to employ women as cashiers in the retail business (who are already banned from working as sales girls) is "not permissible" because that will result in the women "mixing with unrelated men" (*Gulf News* 3 November 2010, p. 10).



bound to result in weak outcome and lack universal credibility. The Muslims, in general, have developed a '*shari'a*-phobia' due to its misuse and lopsided application.

The irony is on the one hand, religious institutions seem to be barren or ill equipped (manned) to create great thinkers or learned individuals (*ulama*),<sup>52</sup> on the other hand Islamic revivalism seems to be reactive (as a response to the Western onslaught on traditional Islamic values), and as such is greatly influenced by the Western political thoughts.<sup>53</sup> For example, among the six most influential Sunni scholars of the last hundred years or so Jamaluddin al-Afghani (1838–1897 CE of Afghan ancestry), Muhammad Abduh (1849–1905 CE; Egyptian), Abul Ala Mawdudi (1903–1979 CE; Indian/Pakistani), Sayyid Qutb (1906–1966 CE; Egyptian), Rashid Rida (1865–1935 CE; Syrian), and Hassan al-Banna (1906–1949 CE; Egypt) and two Shi'a scholars, Grand Ayatollah Ruhollah Moosavi Khomeini (1900–1989 CE; of Kashmiri ancestry educated in Iran) and Ali Shariati (1933–1977 CE; Iranian), only three<sup>54</sup> had any formal education in Islamic jurisprudence or studies. In Muslim societies "both traditional and modern elites have failed to provide a new synthesis that clearly offers some continuity between tradition and modernity". As Esposito (2010, p. 297, 298) thinks, scholars in Muslim societies ought to combine modern disciplines with the "true awareness of their tradition necessary to make changes that are sensitive to the history and values of their cultural milieu" (instead of uncritically adopting western assumptions and models as the case with most Muslim elites "trained in Western-oriented secular schools").

The situation is aggravated for four reasons. First, in the absence of a religious (or civil) central authority to monitor the quality of the local *imams*, the management committee (often too political) arbitrarily hire the former through kinship or ethnic connections to suit their purpose. Second, the local *imams* are then used (or enticed) to establish (or protect) the mosque committee members' position in the society (often by identifying 'faults' in the oppositions' behavior, dress, eating habit, etc.) and eventually start issuing judgments about health, family and private matters (encroaching the areas of family relationships—not a subject matter of the *Shari'a*). Third, the general public, a large number of whom is deterministic, being ignorant about the basic tenets of the religion (because of a lack of good literature in vernacular) or the *imam's* role in one's life, seek suggestions on trivial private matters (e.g., if the children can be sent to the local school where the classmates eat pork). Further, being warned by the local *imams* (who are eager to reinforce their position with fictitious claims) about the risks for the individuals of attracting divine wrath by forming any independent judgment or for using rational thinking on matters related to living in modern societies (e.g., 'permissibility' of work in a

<sup>52</sup> As Esposito (2010, pp. 297–298) observes, the graduates of religious schools were "ill prepared to understand and response to the demands of modernity".

<sup>53</sup> For a detail understanding of this contention, the readers may look at Volumes like Rahnema (2005).

<sup>54</sup> Muhammad Abduh and Hassan al-Banna, both educated at the al-Azhar; and Imam Khomeini educated in Iran.



commercial bank or under a non-Muslim supervisor). These *imams* ignore the fact that most religious aspects of an individual's life are "private and non-justiciable", and that 'moral police' is an innovation because the Qur'an does not prescribe any worldly punishment for these nor does it authorize the state authority for any punitive actions (Kamali 2005). In the process, the imams have created conflicts with some Muslim communities, confused some others, alienated some, and radicalized the rest in matters of human relationship influencing human development in the MMCs.

## 2.4 Conclusion

Islamic law has transformed over the years within the basic frames of the Qur'an and the *Sunnah* through analogical deductions, human reasoning, independent analyses and judgment, consensus, and local customs. Thus Islam has created a world civilization that is "poly-ethnic, multi-racial, and international" (Moten 2005, p. 236). Based mainly on the Qur'an, the *Hadith* literature, and other secondary sources of information, the chapter highlights the contention that Islamic law is primarily normative rather than prescriptive and is designed mostly for moral education (Zaman 2002), and does not encourage rigidity except for the concept of the Unity of God, and its basic principles, and in turn promotes plurality.

Islam approves actions not contradictory to the Unity of God or explicitly forbidden in the Qur'an, and emphasizes 'public interest' (*masalih al-mursalah*) as well as *ijtihad* (juristic preference) in the interpretation and application of laws. The acceptance of varied approaches to many Islamic practices, of the *urf* (local customs) and the *adat* (customary laws) as sources of Islamic law, and of individual responsibility in such practices (in the form of *ijtihad*) highlights a moderate philosophy and promotes pluralism in Islam.

Many historical incidences have shaped the characters of Islamic jurisprudence as well as its essence. Throughout the ages, the fear of intimidation on the one hand, and the humiliation of being seen as a pet '*faqih*' (jurist) on the other, forced many Muslim jurists to stay away from dealing with contentious economic, political, or social issues. The 'gap' has been filled by some opportunists in the government and in the society to impose their religious prejudices or preferences on others. In the process, many confused Muslims (claiming to have authority) intentionally or ignorantly tend to blur the distinctions between *Sunnah Tashri'ah* (legal *Sunnah* a part of the *Shari'a*) and *Sunnah Ghair Tashri'ah* (non-legal *Sunnah* and thus not part of the *Shari'a*) as well as to snub the universality clause or social justice requirements (*haqq*) of the *Shari'a* often colluding with the respective government (eager to have supports of the *imams* or the so called *muftis* to stay in power).

A law is not an independent entity; every law is the law of a group, a community, or an individual who subscribes to it. It is more so in Muslim communities because there is no central 'religious authority' to impose uniformity even in the *Shari'a*

matters. A great feature of Islam (flexibility) has become its drawback because of intentional misuse by some individuals (in and outside the governments). There are, however, scholars who appreciate and defend pluralism in Islam adhering to the God given rights of the Believers in defining and undertaking actions, in particular in human relationships, within the fundamental parameters of *tawhid*, to protect peace, public interest, and social justice. The observance of the Islamic principles (of economic, political, and social relationships) is thus context dependent. It is worth noting that scholars as prominent as Ibn Taymiya (d. 1328) held the view that one global rule is not necessary for the Muslim community because the unity of Islam is far more fundamental than the unity of government—the latter being a means and not an end (Rahman 1982).

Muslims are widely scattered in the world living under diverse systems of governance, differently practicing many rituals adhering to the basic tenet—‘peace’ by ‘submitting to the will’ of God. Every MMC is different and creates different political relationships with the religion and people because Islamic *shari’a* supports plurality. The social, economic, and historical contexts and the unique political environment influencing the character of Islamic jurisprudence need to be understood to comprehend human relationships in Islam. There cannot be a policy or theory of human relationship or of human development in Islam that could be applied to all times and places because of the subjectivity of different Islamic jurists, the existence in the primary sources of disparate or even contradictory positions (and a tendency among Muslims of selectively using sources to support one’s position) on important issues, and the prevalence of secondary literature that can reinforce all (contradictory) positions.

This Volume is set to explore this varied world of human development in all 47 MMCs in Africa and Asia. The question, however, is what human development is and how differently the Western and Islamic literatures deal with the subject matter? The next chapter analyzes the relevant (human) development issues to ‘set the scene’ for the analyses of the phenomena in the MMC contexts.

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