

Usul al-Fiqh

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9. Revealed Laws prior to Shariah of Islam & Fatwa of Sahaba

Revealed Laws Prior to Shariah of Islam: Islam believes that all truly divine laws emanate from Almighty Allah (Ref. Quran 42:13). The Quran contains that the Torah was a source of guidance (5:44). The question is what it means in terms of source of law after the revelation of the Quran. The general rule to be stated is that laws revealed before Islam are not applicable to the Muslims (except as mentioned hereunder)

The Ahkam (laws) of Islam (Shariah) is self-contained. The rules of Shariah should not be sought in any source other than the Quran and Sunnah because the rules of other religions do not constitute binding proof for the Muslims.

The Quran refers to the previous Shariah in three forms:

- a. The Quran may refer to the Previous Shariah and make it also obligatory on the Muslims. For instance, fasting was prescribed on the earlier nations and has also been prescribed for Muslims (Baqarah 2:183). Such rulings of the previous Shariah are parts of Islamic Shariah.
- b. Secondly, the Quran (or Sunnah) may refer to a ruling of previous Shariah and may abrogate it. For instance, some restrictions on food on the Jews have been withdrawn from the Muslims in the Quran (Ref. 6:146). Muslims can not follow previous Shariah in these respects.
- c. Thirdly, the Quran may mention a ruling of the previous Shariah without mentioning whether it is upheld or abrogated (for instance, 5:35, 5:48). Majority of Jurists consider these to be part of Shariah of Islam which should be followed. Minority does not accept this position (see, the arguments of both sides in the text book). Majority position is correct in this respect according to Hashim Kamali.

Fatwa of Sahaba (companion of the Prophet (SM)): Fatwa (opinion or ruling) of Sahaba is indeed very important and deserves highest consideration, they being close to the Prophet (SM) and because of their direct knowledge from the Prophet (SM). There is some disagreement as to who is a Sahabi. Majority hold that anybody who met the Prophet (SM) while believing, is a Sahabi. Minority hold that "Suhbat" (continuity of companionship) is a requirement to call person Sahabi of the Prophet (SM) (Shawqani, Irshad quoted by Kamali). Both points of view have justifications and can not be ignored. The fact of being Sahabi can be established by continuous Testimony (tawatur) or by affirmation of any other companion or even by own claim (if the person is upright).

Fatwa of Sahaba means an opinion reached by a Sahaba by way of Ijtihad. As regards whether fatwa of Sahaba constitute a proof on succeeding generations, there are three views:

1. First view: It is an absolute proof. The proponents of this view quote the Quranic verses 9:100 and 3:109. They also quote Hadith like "my companions are like stars" or "Honour my companions". First view is held by Imam Malik. Imam Shafii and Ahmad Bin Hanbal also have been quoted in its support. Against this view, it has been suggested that these refer to the status and dignity of Sahaba. These are not categorical (Qati) regarding compulsion to obey their decisions).

2. Second view: Ijtihad of a companion is not a proof and does not bind the succeeding generations. Hanafi jurist Abul Hasan al Karkhi, Imam Ahmed (according to one view of him) and Asharite and Mutazilite scholars hold this view. They quote the Quranic Ayat 59:2 ("Consider, O You who have vision"). It is argued that the Ayat makes Ijtihad an obligation of all who are competent and makes no distinction between Sahabis and others. Imam Gazali and Amidi consider it preferred view. To me this is the best view.

3. Third view is that of Abu Hanifa himself. He says that ruling of a companion is a proof if in conflict with Qiyas, but not when it agrees with Qiyas. The aforesaid are the main views. There are some other views which may be seen in the books of Usul or in the text book by Hashim Kamali.

It can be concluded that the Fatwa of a companion is a source of guidance which merits careful consideration (though not binding except in case of their clear Ijma).