

## THE STAGES OF DEVELOPMENT OF ISLAMIC LAW AS A SCIENTIFIC AND LEGAL SYSTEM

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### Abstract

The article highlighted and analyzed stages of the development of Islamic law, which is considered in the aspect of scientific and legal system. All stages of the development of the law are studied in chronological order to trace its trend. Attention is accented on the characteristics of each stage and the reasons for the historical and legal processes.

**Keywords:** islamic law, the sharia, Abu Hanifa, mazhab

### 1. INTRODUCTION

History of law in general and Islamic law in particular is considered as a separate scientific discipline. Islamic fiqh in its development has passed several stages that are so intertwined and interrelated with each other, which is extremely difficult to distinguish one step from another. The only stage that fully delineated boundaries is the first - stage of the Prophet Muhammad, which began from the time of its revelation, and ended with his death.

### 2. OPINIONS AND DISCUSSION

Step one: the period of the Prophet Muhammad. It is a fundamental milestone in the development of Islamic law, since at this time there was a formation law that formed the basis of the Quran. Given the biography of Muhammad can be divided into two sub-stages - Meccan and Medina (Abdul K. Z., 2000). In each of these stages of the rule of law, which subsequently made the Qur'an reflect the specific historical stages in the work of the Prophet Muhammad.

And it should be noted that not all of the legal code, would that have been formulated for specific use cases, it has been taken by the Muslim community. Some of these were rejected as inappropriate the rest of norms of the Koran. An important feature of Islamic law at this stage of development is the absence of external

influences on it from the rest of the legal systems that existed at the time in the world (for example, Roman). The reason is pretty simple. Muhammad was not trained anywhere in any science, and not borrowed any one has any knowledge. Simply put, the reason for the absence of external factors influence the Prophet was illiterate and his environment in the context of the system of knowledge of that time.

In addition, the Muslim community was prohibited to analyze, organize, and even just write anything other than the Quran. The ban was due to the desire to eliminate the possibility of mixing the rules of the Koran from someone else's statements and views. Even the Prophet Muhammad forbade the first to record his statement. It was only after some time the Prophet's companions (Sahaba) were allowed to record some of the sayings (hadith), which subsequently formed the basis of the Sunnah. In particular, Ali (in life) were allowed to fix some of the provisions of civil and family law.

It should be noted that some legal provisions entered into force under the influence of any current events, subsequently canceled (for example, temporary marriages) (Hassan A., 2009).

It is safe to say that if in the Meccan period, the foundations of law as such, with its principles and methods were laid, the system of law of Medina already began to take on wave designed features, including a set of legal categories and concepts. It is in the Medina period lawmaking process has the greatest development. By the time of the Prophet Muhammad's death the right system has been finalized, including, first and foremost, sectors such as family, inheritance, civil law, business law.

Norm-setting at this stage might be two reasons:

1) The need for legal regulation makes it necessary to resolve the specific issue in public life. As a rule, the question was formulated and the public concerned are relevant to everyday moments of life (for example, marriage to "mnogobozhntsey", etc.).

2) the level of legal awareness of the Muslim community demanded the adoption of Law Code aimed at its improvement and development. This concerned mainly the general (fundamental) issues, such as payment of "Zakat", social networks, etc. Several features typical of this stage of the development of Islamic law can be identified.

I. The laws adopted gradually as the development of society, and were characterized by a permanent and a temporary sign.

II. Legal regulation was aimed primarily at addressing the problems in people's lives and to get rid of all the irrational (for example, the problem of Muslims who are traveling).

III. Legal regulations that lost their relevance due to the development of society, immediately replaced by new ones corresponding to the times.

IV. In Muslim society, there were no serious disagreement about the administration of various relations (Abdul, 2000).

Stage Two - the period of the Sahaba (companions of the Prophet Muhammad). It is characterized by a multiplicity of new legal situations that were not in the days of the prophet. This is explained by the fact that after the death of Muhammad began a rapid spread of Islam and the integration of Muslims in other communities. All this led to the fact that in view of the detection of new practices that were not previously known to Muslims, there is a conflict with some of the provisions of the Shariah, which had to be safely removed.

And here the most striking way revealed the role of the Sahaba, who are very well versed in law and legal opinion could do solely on the basis of Sharia. Such Sahaba was 13: Umar, Ali Zeid, Aisha Abdullah ibn Umar, Abdullah ibn Abbas, Moissy ibn Jabal, Abdullah ibn Maskhud, and others. At the same time it should be noted that there are situations in which some of the Sahaabah preferred to refrain from conclusions, to eliminate the risk of invalidation. These include, for example, Abu Bakr ibn Affan Guzman, Abu Mussal Ashali.

However, there were also those who were not afraid to deal with the specific legal situation on the basis of its conclusions on the interpretation of the meaning of sharia (Umar ibn al-Khattab and his pupil Ibn Abdullah Maskhud). In contrast, another group of Sahabah recognized only a literal interpretation of the rule of law without the possibility of its expansion (Abdullah ibn Umar). At the beginning of the second phase (during the time of Abu Bakr and Umar) there is a third (after the Koran and the Sunnah), a source of Islamic law - this is the opinion of the Sahaba (although this source of some scholars rightly considered to be part of another source - ijma). The procedure for its formation was the fact that the Companions at the general meeting

expressed their opinions about some new situation. If this view is in absolute the most part the same, then it is considered a must for resolving disputes.

As an example, a situation where the grandmother, is the sole heir in case of death of the grandson receives 1/6 of his share of the property. And if the two grandmothers, this share is divided equally between them. Attempts have been made on the second stage of development of the right to collect the Qur'an into one document, which was not done in the first phase. However, to make it presented a very difficult, because the Sahaabah spread throughout the residence of Muslims and put them together was not possible, for objective reasons. Under such conditions, an important role is played by a source of law as the ijma, since its formation, and it was possible to use in a situation where the Companions of the Prophet Muhammad were separated by a distance and could not come together. Opinion Sahaba always consistent with the spirit of his time and was of dynamic character. Thus, it was canceled, because it led to waste of land and weaken the army in the conquest of Iraq previously in force generally hand warriors allotments. Earth began to leave it to the owner and charged him with the tax burden (Abdul, 2000).

The end of the second phase is characterized by the emergence of numerous sects, and, consequently, unrest in the Muslim community, which significantly intensified after the death of Caliph Uthman (644 - 656 years of reign). Some sects have survived until today, and their main feature is the many false hadiths (sayings of the Prophet Muhammad and stories of his life) that have nothing to do with the truth.

And Sahaabah (and above all - the caliphs) were reluctant to ascribe to themselves the role of law-making primacy. For example, Abu Bakr (632 - 634 years of reign) attributed the following words: "If it is my word, if it is correct then it is from Allah. If it's not right, it is my fault, and if you find something other than my words in the book of Allah, leave my word, take, what the book of Allah (Abdul, 2000).

Thus, in the second stage of the development of Islamic law clearly algorithm blocked out removal of legal opinions: has always been the primary source of the Quran, the Sunnah then applied. And only if the first two sources was not a legal decision comes into force a review of the Sahaba. The third stage of the formation of Muslim law was characterized by the emergence of Taabi'een - those who had the opportunity to communicate with the Sahaabah and came to replace them. Starting this stage in 41 Hijri year (663 years). The only indisputable source of law at this stage was the Koran.

Since Taabi'een sought to distance himself from the various sects and turmoil that these sects have sown in the Muslim community, two trends began to form among the followers of the Sahaba. The first (in present-day Saudi Arabia), based on the text of the Koran and the words of the Prophet Muhammad, who is absolutely reliable (ie, the chain of transmitters has been minimal, and the transmitters themselves - the most reliable). Among the most prominent representatives of this trend should be allocated Abdullah ibn Umar and his assistant Syed Ibn Musaeba who lived in Medina. The second representative of this current was in Mecca, which was led by Abdullah ibn Abbas.

The second current was based on the territory of present-day Iraq, and was based on logical reasoning, the main instrument of which was Kiyas (reasoning by analogy). Its founder is considered to be Abdullah ibn Maskhud. The founders of the second course are very tough approach to determining the authenticity of the hadith, without any regret to note those who cause even a small doubt their veracity. The reason for such a categorical approach is the political situation in Iraq, which at that time was the center of various sects and movements that opposed themselves to Islam. Accordingly, they are often used in bad faith a source of law as Sunnah to strengthen its position.

Persians living in Iraq belonging to the Shiite direction, actively oppressed by Sunni Arabs. The Kharijites, in turn, in their usual radical spirit of fighting with the followers of Caliph Ali. All this taken together require very meticulous approach to the determination of the reliability of the traditions of the Prophet Muhammad in order to avoid distortion of the whole of Islam as a religion in general. It was during the second Taabi'een, whose followers are widely used logical reasoning in deriving legal decisions, it emphasizes mainly on questions of law.

We cannot say that these were the only two streams in their territories. On the territory of Saud observed not only followers of a literal interpretation of the Koran texts and absolutely authentic hadiths, but also supporters of logical sense to expand the rule of law (eg, Rabia Tugnui Abdurahman - the teacher of Imam Malik, the founder of one of the four schools of thought). And in Iraq, there were those who did not accept the extended interpretation inherent logical conclusions (Gamer ibn balls, better known as Ashshagli).

An important feature of the period Taabi'een is that the bulk of knowledge while carrying not Arabs, and other peoples, who often were either former slaves (mawdli), or their descendants. Among the non-Arab scholars

can distinguish the former slave Abdullah ibn Gumarov (Medina), Abdullah ibn Gabbas (Mecca), Syed Ibn Juba (Kufa), etc. At the same time, we can not say that there were no scientists among the Arabs who have made contributions to the development of Islamic law. Among them - Said ibn Museyd, Gamer Shamba, Ibn Al Eich della Kalsa, etc.

The separation was very conditional, because at that time scientists had been taken to divide the Arabs and non-Arabs. Islam as a religion abolished the division along ethnic lines.

However, you can select the reason why among the Muslim jurists of the time there were many non-Arabs:

1. The Arabs were engaged mainly military matters. The positions of military commanders put the Arabs as the most "trustworthiness."
2. freedmen non-Arabs like to contribute to the development of religion, but as a way to leadership positions they have been closed, they chose science.
3. Among these scholars were those who at one time took on the education of the Sahaabah (to those not executed). Naturally, these former slaves had access to the knowledge of the Companions, who subsequently implemented.

For the system of rights of Muslim society at that time was characterized by the absence of any legal system as such in the strict sense of the term. Obligation to comply with the legal regulations ensured the authority of the concrete person. During this period, Community legal scholars active enough in terms of the interaction between its members. Lawyers freely communicate with each other, participate in discussions, taking easy, while, the view of his opponent, if they saw that it is more correct. The main goal of every scientist was to achieve truth. Everything else pales into insignificance.

The fourth stage. Began in the last years I century (according to other sources - in the beginning of II century) AH (720 - 730 years).

It is characterized by the beginning of the formation of the Sunnah as a source of law, which at the time was still aligned with the legal decisions of the Companions and Taabi'een. The appearance of the Sunnah is closely connected with the name of the caliph Umar ibn Abd al-Aziz, who ruled in 717 - 720 years. That he had the idea that with the passage of time not only lost sayings of the Prophet Muhammad and stories about his actions, but the sayings of the Companions and Taabi'een, and therefore the need to take measures for their conservation. To carry out this was only possible in the absence of the danger of mixing the provisions of the Koran, saying people masquerading as the Koran. Therefore, Umar ibn Abd al-Aziz issued a decree according to which all the information on the words and deeds of the Prophet, as well as on legal solutions Sahaba and Taabi'een had to be encapsulated in a written form and is built into the system to use it as a source of law.

It should be noted that the Sunna and the legal conclusions scientists jurists (ijma ') began to form in parallel, rather than after each other. During this period, there is division of scientific fields through the narrow specializations - history, philology, theology, etc. At the same time, such a division by specialization of scientific knowledge and, as a consequence - high qualification in individual scientific fields, providing opportunities to scientists of other specialties to keep under scrutiny legal scholars. The reason for this "young" Law as a separate science, which allows, for example, historians and linguists to analyze and critically evaluate, respectively, historical and linguistic components of law.

Inside most of jurisprudence have also begun to stand out specialization, which in turn led to the emergence of the first law schools. This was the root cause for the fifth stage of development rights. The fifth stage. Started at the beginning of the II century AH (beginning with 723 years) and continued until the middle of the IV century AH (starts at 923 years). In this time interval the system of sciences has emerged ever more clearly. The reason for this was the emergence in some scientific fields scientists who specialize only in them, and therefore to organize and systematize this knowledge, introduced them into practice, developed terminological apparatus. In the exception, and jurisprudence. Some authors of this historical stage is called the "golden age of law" (Abdul, 2000).

There are the following reasons for the rapid development of jurisprudence at this stage: 1) A closer attention to the state of science in general and in particular to the law. The development of the state apparatus demanded more and more precise and detailed regulation of its activities. This inevitably led to frequent appeals of the authorities to the legal scholar. Thus, the Caliph Harun al-Rashid (786 - 809 years of reign) addressed to the student of Abu Hanifa - Abu Yusuf with a request to make a normative legal act in the field of monetary policy. This was born the famous work of Abu Yusuf "Al-kharaj" (Abdul, 2000). Caliph Al-Mansur

(754-775 years of the reign) attempted to do a book on jurisprudence of Imam Malik "Muatta" one law for the whole state. However, Imam Malik spoke against it. Malik pointed out that each scientist - his views on Sharia, which is not without signs of subjectivity, so the recognition is only one point of view is not only correct contribute to the truth.

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2) The borders of the state of Muslims in the study period extended from Spain to China. On this vast territory inhabited by many peoples with their orders and norms of behavior. In such circumstances, the problem of Muslim scientists was to synthesize the local rules with the rules of Sharia in the part in which the first does not contradict the second. Under such conditions, there is a lot of questions about compliance with local customs, traditions and setting the rules of Sharia, which, in turn, result in a high demand for clarifications legal scholars, as only they can fully and competently resolve the situation.

3) There was a group of scientists, which has focused its efforts on the development of jurisprudence, giving her a formal, systematic and practical. Thus, these scholars sought to block the needs of the state in the legal regulation of its activity. As a result, there were entire institutions, typical of separate and independent legal systems.

4) As a result of careful attention to the law such as the source of law and public Sunnah it was systemic. Because of this more and more jurists began to use actively and promptly put it into practice. Here it is useful to recall that at the time of the Prophet Muhammad was forbidden to record his actions and statements that there is no mixing them with Sharia.

During the time of the Caliph Umar (634 - 644 during the reign of) the Companions of the Prophet were within striking distance of each other, so the need to commit in writing the provisions of the Sunnah was not. It was only during the time of Umar ibn Abd al-Aziz, an attempt was made to fix in writing this knowledge. The Abbasid rule, this trend has been further disseminated. At the beginning of the Prophet's sayings and statements of the Sahaba were recorded together and considered a single source. But then it was decided to divide them and recorded separately. It is to this period is the emergence and rapid development of the legal schools, the publication of a large volume of scientific literature. At this time, the question becomes relevant systematization of the sources of law to make the legal system more clarity. The sixth stage covers the period from the end of IV century AH (beginning with 923 years) before the fall of Baghdad in the year 636 AH (1258). It was a time of stagnation law, which inevitably occurs after a period of rapid development. Gradually the great scientists whose influence went far beyond the individual law schools, left this world. Come to replace them students trying not to go beyond the particular legal school (madhhab) and "cooked in its own juice".

These students were content with the legacy of his teachers and tried to create something new. The situation has reached the point that it became quite common opinion about the "perfection" of Islamic law and there is no need to develop it. It should be understood that appeals to "close the door of ijthad" (LINK) did not arise out of nowhere. This was aided by the socio-political situation in the society. In particular:

a) central government weakened and the state begins to divide into parts. The weakening of the country's unity is naturally reflected in the Islamic law, as under such circumstances the state's attention to the law became less and less;

b) the formation of the main legal schools completed. Almost they developed the basic principles, terminology unit, power system, law enforcement rules in every Madhhab. All this gave reason to believe that

in the future development needs no law;

c) at the beginning of scientists, lawyers disappeared motivation for self-development, as they believed that they could not reach the level of scientists during the birth of schools of thought. And it was the ability to self-development, the pursuit of truth were typical of the early scientists-jurists.

On the other hand, in the "closed doors", and there were obvious advantages, due to the level of development of society at that time. In terms of "weakening" the ranks of scientists, lawyers, there were many people who wanted to withdraw legal decisions, but did not have the necessary qualifications for this. Under such conditions, restricting access to the possibility of any change in the legal knowledge made it difficult to influence on them by the "unskilled" scientists.

There is no doubt that the right to development should take place continuously. But at the same time, the time necessary to eliminate the possibility of a "hollow" effect on it. Of course, from a historical point of view it would be better not to this stage, efforts to develop the knowledge, to cultivate new highly qualified scientists. And they would have been that a natural barrier in the way of false knowledge. But the application of the principle of the "closed doors" at this stage came to fruition. You can highlight the main achievements of the jurists of the time:

1. Background and rationale of the legal conclusions made in previous historical periods, but for various reasons remained unfinished.
2. Customization of each law school by removing unique to her rules and regulations. Completion of the formation of Islamic jurisprudence as a science, which is considered to be the ancestor of Imam Shafi'i, who wrote the book "Rizal".
3. Formation of source hierarchy within each law school and the elimination of the principles of the hierarchy (for example, it may be noted competition analogy and feasibility).
4. Separation of the right to "general" and "special" on the principle of classification standards for legal schools. In other words, it was allocated provisions common to all schools, and conditions specific to each law school alone.

Stage seven. It begins after the fall of Baghdad in the VII century AH and continues up to the present time.

### **3. CONCLUSION**

The principle of blind adherence was developed at the sixth stage of to everything that has already been produced before, it continued to exist. Probably, it is necessary to recognize natural that people try to follow the already established law school, not to invent something new. But now there are individuals who are questioning the very existence of legal schools (schools of thought). These so-called supporters of absolute ijthihad call for direct adherence to the legal norms of the Koran and the Sunnah, not limited to the scope of schools of thought. From the supporters of this view can be distinguished Ibn Taymiyyah and his followers, his pupil Ibn Kayumov Ashshaukani, who wrote the book "Neulyud Aitarou ay" and drugix.

Proponents of this view has always been in the minority and did not receive the support of the majority of scientists-jurists. This is understandable, since the bulk of scientists operates only categories of a single madhhab.

It should be noted that the Shari'a and Islamic law-making cannot be restricted to any one legal school as Shariah in its essence is much wider any madhhab. That it includes all legal schools, and not vice versa. Law School (and including - the Hanafi madhhab) are the only means of interpretation and explanation of Shariah texts, one of the species of their understanding.

For a specified historical period characterized by the fact that the learned community send their forces to interpret and comment on books and sources that have been written previously. There were collections of short texts, explanations and comments of the truncated text, the various codes of precedents meetings, etc.

Currently, there is reason to believe that the interest in Islamic law will increase again, which will lead to the emergence of new legal scholars, who can be brought into line with modern realities of the canons of law schools, so that they become completely harmonious part of modern society.

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