

# Authority in Islamic Law

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## Overview

- What is Islamic Law?
  - Sources of Islamic Law
  - Authority in Islamic Law:
    - Nus: clear rule in the primary sources
    - Mujtahid (Muslim jurist):
      - Qualifications
      - Limitation
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## Objective

- To understand authority in Islamic Law
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## What is Islamic Law?

- Nature of Islamic law:
    - Islamic law is studied under Hukm (plural: ahkam) Shari
    - Hukm is a communication from Allah ... related to the acts of the subjects through a demand or an option or a declaration
    - Hukm in simple words is a rule
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## What is Islamic Law?

- Classification of Islamic law:
    - Obligatory rules (fard): binding
    - Prohibitory rules (haram): binding
    - Recommended (mandub): non-binding
    - Disapproved (makruh): non-binding
    - Permitted (mubah): non-binding
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## What is Islamic Law?

- Purpose of Islamic law
    - Maslahah (public ‘benefit’ or ‘interest’) by preserving:
      - Religion
      - Life
      - Progeny (family)
      - Intellect
      - Wealth
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## Sources of Islamic Law

- Divine sources:
    - The Koran
    - Sunnah of the Prophet Muhammad
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## Sources of Islamic Law

- Ijtihad (independent individual reasoning), i.e. Rational Sources:
    - Ijma: Consensus of opinion
    - Qiyas: Analogical deduction
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## Hierarchy of the Sources

- ‘O you, who believe, obey Allah and obey the Messenger and those in authority among you. Then, if you quarrel about something, revert it back to Allah and the Messenger’  
(Koran, 4:59)
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## Authority in Islamic Law

- Two sources of authority:
    - The Koran and the Sunnah, i.e. Nus
    - Mujtahid: Muslim jurist
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## The Koran and the Sunnah

- Nus in the Koran:
    - ‘The fornicating woman and the fornicating man, flog each one of them with one hundred stripes’ (Koran, 24:2)
    - ‘Those who accuse the chaste women (of fornication), but they do not produce four witnesses, flog them with eighty stripes and do not accept their evidence any more’ (Koran, 24:4)
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## Mujtahid: Muslim Jurist

- We need Mujtahid to derive rules from evidence in the Koran and the Sunnah, i.e.
  - To do Ijtihad: exerting maximum efforts to find what the rule is in the primary sources
  - Institutional Ijtihad
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# Qualifications of Mujtahid

- Basic requirements:
    - Muslim
    - Knowledge of the Koran and the Sunnah
    - Arabic language
    - Knowledge of ijma, qiyas and objectives of Sharia
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# Qualifications of Mujtahid

- Desirable:
    - Uprightness: Kamali
    - Living in a Muslim country: Shah
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## Categories of Jurists

- Mujtahid Mutlaq: full Mujtahid makes new rules
  - Mujtahid fi al-madhab: Mujtahid within a school
  - Mujtahid fi al-masail: Mujtahid for new issues
  - Ashab al-takhrij: jurists who clarify existing law
  - Ashab al-tarjih: jurists who prefer stronger opinion in a school to bring uniformity
  - The rest of well-known jurists
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## Authorities

- Mujtahid Mutlaq: full Mujtahid makes new rules
  - Mujtahid fi al-madhab: Mujtahid within a school
  - Mujtahid fi al-masail: Mujtahid for new issues (learned judges, professors fall in this category)
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## Limitation of Mujtahid

- Cannot change Nus
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## Non-Muslim scholars

- A non-Muslim scholar cannot become a Mujtahid
    - Commentators and analysts
  - The point is not to devalue the work of non-Muslim scholars
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## To sum up ...

- Authority:
    - Nus
    - Qualified Mujtahid
      - Cannot go against Nus
    - Non-Muslim scholars: commentators and analysts
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## Current literature

‘Islamic law or Sharia has in particular become an ugly term, as often associated with the chopping of hands and the stoning of women. An endless array of popular books have distorted Sharia beyond recognition’ (Hallaq, 2009)

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