THE SOURCES AND DEVELOPMENT OF ISLAMIC LAW

Islam means the surrender to the Will of Allah, as embodied in the Law (Shari'at), revealed through the Book (Kitab) and the Traditions (Sunnah) of the Prophet.

The Law is wrapped up in moral admonitions like the bones and the flesh. Morals subsist only in the strict observance of the Law and not apart from it.

With Law and Morality man is urged to develop the best in his nature, participating fully in an affirmative manner in the life of this world. There is no renunciation, no withdrawal from, or abhorrence of material life as such.

The emergence of the Society is *the result* of the surrender to, and the practice of, the Law, which is effective in political, economic and artistic activity, though there is latitude for variety of laws of nature which are effective in all scientific development in unlimited variety and complexity of forms of inventions.

With the onward march of life new situations arise, calling for new rulings not explicit in the Kitab-Sunnah. The Law is not subject to *change*. Allah is the only Law-giver and he has given the Law once for all. But the Law is dynamic and capable of *growth* and development without any limitation of time or magnitude.

The *growth* and development of the Law is achieved through human intellect working on Kitab-Sunnah for deduction by Analogy (Qiyas) and judgement inspired by a dedicated, thorough and deep study of the revealed fundamental Law. The effort of the intellect is termed 'Ijtihad (= the exertion to the fullest extent).

The in-built system of Ijtihad in a revealed law is a distinctive feature of Islam. It has been aptly termed a philosophical activity springing in Islam from within and characteristically its own. The Law grows like a tree but the taller it grows the deeper go its roots in the Kitab-Sunnah. Exercise of intellect in the legal sphere independently of Kitab-Sunnah is the antithesis of Islam (surrender to the revealed Law).

There is no ordained priesthood in Islam. Ijtihad is a privilege of the learned and the competent. There is no question of a referendum of the incompetent masses. Ijtihad is concerned with the Divine Will and not with the wishes of the people. As individual jurists exercise their skill upon Kitab-Sunnah, in course of time a *consensus* (Ijma) is arrived at, which is given the force of law.

In addition to Kitab-Sunnah and Qiyas, this (Ijma) is another source of Islamic Law.

The main problems are (a) the authenticity of Kitab-Sunnah, (b) the normative character of the Sunnah, (c) the sanction behind Ijtihad and Ijma and (d) the methods and conditions of Ijtihad. Lastly, a general survey of the fundamental law in Kitab-Sunnah and the history of its development and codification in early Islam.

In modern times (the last 150 years) the failure to appreciate the following points has caused some confusion about Islamic Law:—

(a) Kitab-Sunnah is one entity, an integral whole. Tearing the one from the other is like cutting a body into two, rendering both parts dead and ineffective. The separate treatment of the Kitab and the Sunnah in the classical formulation has been misunderstood to run down the normative character of the Sunnah.

(b) The Tenets of the Faith (Aqidah) and the morals subsist only in the law. Islamic Ideology or Islamic moral values are unthinkable except in the context of Islamic Law. It is the prescribed punishment for these which is the true measure of the abhorrence of the crime.

(c) An Islamic Society or Islamic Culture and Civilisation without Islamic Law (in its entirety) is a mere illusion.

II

The Prophet was *just a human being* (nothing of the supernatural in him); only he was commissioned to receive revelations from Allah and to teach Kitab and *Hikmah* to mankind. Hikmah means the felicity of translating the law into practice through personal example. The result of Hikmah is the Sunnah (Tradition of the Prophet).

The Kitab was revealed *bit by bit* in a span of about 23 years (13 years at Mecca and 10 at Medinah). The last verse revealed a few weeks before the death of the Prophet said: Today I have completed the religion for you.

The piecemeal revelation facilitated *progression* from general admonitions to final, definite legal pronouncements on some points. For example, in the case of wine the first announcement was: (a) it is a sin though it is useful in some ways, the second: (b) do not take wine when you are at prayers, and finally: (c) it is entirely prohibited.

This *progression* is sometimes called ABROGATION of one verse by another, which is not a very precise expression in as much as the latter revelations do not in any way contradict the earlier ones.

The point is emphasised in the Quran that the language of the Book is plain, easily understood and designed to provoke thought. (It is far from magic formulae or the unintelligible jargon of the oracles.)

The Quran challenged the Arabs (and through them the whole of mankind) to produce a book (or even a few verses) comparable to the Quran in form and content, i.e. a complete code of life presented in a manner most appealing to human nature as a whole. The believers take the unattainable excellence of the Quran as proof of its divine source.

The Book has been preserved throughout the centuries by memorising and by *writing as an aid to memory*. The Prophet had a band of scribes around him who wrote on pieces of flat bones, membranes, palm leaves and wooden tablets whatever was revealed. The writings were deposited in the Prophet's house and the scribes made their own copies also.

About 2 years after the death of the Prophet, his first Caliph, moved by the death of the Quran-readers in the early wars, collected the whole of the Quran in one complete volume (previously it existed in scattered pieces only).

The third Caliph (about 15 years after the death of the Prophet) made more or less 6 copies of the collected volume and sent them to be deposited in the principal mosques of the provincial capitals. To the present day all copies of the Quran have conformed to the original one mentioned above. Until a few decades ago one of the copies prepared by the Third Caliph was said to be preserved in the Leningrad Museum, but it is not traceable now. The reliance on memory is still noticeable in the traditions of the Muslim communities throughout the world.

The Meccan part of the Quran does not concern the law very much. The Muslims were a persecuted community there and had no power or institution to administer laws. As soon as the community shifted to Medina a city state was set up and laws were revealed from time to time to meet the actual needs of the situation. There are just about 200 verses concerning the laws proper. One should not look for dry legal codification in the Quran. The laws are accompanied and interwined with exhortations and warnings and, above all, with arguments to make the laws understood by reason and accepted on moral grounds. The Quranic laws can be divided into the following categories:—

(a) Prayers and similar religious obligations. The Islamic state concerns itself with these laws because they are regarded as social institutions essential for binding the community together and invigorating it with the moral sense, which almost compels a Muslim from within to observe all laws. Congregational and collective obligations are not to be left to individual conscience as a private affair.

(b) Family laws – marriage, divorce, inheritance, etc.

(c) Laws concerning business, commercial and financial dealings between man and man.

(d) Penal Laws – punishment for murder, adultery, theft, etc.

(e) Laws of war and peace.

The Western colonialists who ruled the various Muslim lands during the last 150 years have left only the Family Laws in force. The British law or the Code of Napoleon in various forms constitutes the Civil and the Criminal Code in Modern Muslim states even today after so many years of independence. The colonialist did not touch the Family laws much as a matter of political expediency. The modern Muslim states have shown

unwarranted boldness in amending them according to Western concepts and practices. For example, we find restrictions on polygamy *with freedom for extra-marital sex and prostitution* in utter disregard of the Islamic penal laws.

III

The Prophet performed the two-fold mission of teaching the Kitab and Hikmah (= Sunnah) simultaneously and in a complementary way. The primary concern was the institution of practice by personal example rather than enunciation of statutory provisions of law. The Prophet did often explain the Book and expound the principles of conduct but that was only to help the development of the practice and not to codify the same in legal terms. Conformity of the act of the Companions (the Sahaba) to the act of the Prophet was the true method of the transmission of the Sunnah. Prayers, Zakat (compulsory levy for social welfare) etc. are mentioned in the Book as mere labels of the actual forms of practice instituted by the Prophet.

Kitab-Sunnah is to be taken collectively and as an integrated whole to be the source of Islamic Law. The classic example is that of the punishment for adultery. The Quran prescribes 100 strokes of whipping but the Sunnah restricts this form of punishment to the unmarried and imposes the still more severe form of stoning to death if a married person were involved in the crime. (If the Kitab *and* the Sunnah were taken separately, the Sunnah would be said to be in conflict with the words of the Quran).

After the death of the Prophet the Sunnah was transmitted through the conformity of the acts of each succeeding generation to the acts of the previous one. The Sunnah also grew dynamically in the course of transmission. Whenever a new situation arose the First and the Second Caliphs used to issue a call for a general assembly of knowledgeable persons. It so happened that the rulings of the Prophet were of two kinds; (1) those which concerned the general community and were made known to everyone e.g., on prayers, zakat etc. (2) rulings in particular cases referred to the Prophet by individuals. At the assemblies called by the Caliphs, the restricted knowledge of the latter kind of rulings was laid bare to help the juristic effort. Each statement was verified in the manner of a solemn affirmation before a court of law. The Caliph accepted and adopted some of the statements while rejecting the others on grounds of lack of reliability and corroboration or even lack of soundness and plausibility of the assertions made. This provided the new *material for judgment*. Then the Caliph formed his judgment (to which he was entitled by virtue of his superb *knowledge* and unimpeachable *character*) and gave the final ruling, which, by the force of the consensus, was adopted and incorporated into the actual practice.

Thus there appeared another factor in the growth of the Sunnah, namely, the rulings of the Orthodox Caliphs and the judgments of the Sahaba (companions of the Prophet) fortified by the consensus of the learned jurists, which the general community willingly accepted in view of its faith and confidence in the competence and the purity of purpose of the jurists.

It may be noted that under the Orthodox Caliphs there was no gap between the knowledge of Kitab-Sunnah and the actual practice of the community. New material bearing on a new situation was verified and adopted and judgements were formed and immediately put into practice. Each competent doctor was entitled to form his independent judgment even though it stood rejected. The traditions and judgments rejected by force of consensus were not suppressed but remained on record for reference.

An example of the development of the living tradition after the death of the Prophet is the punishment for wine-drinking. The Quran lays down no specific form and in the early days if there was any case of wine-drinking it was enough to humiliate the erring person in public. Later on as the incidence of the crime increased the form of punishment was standardised into 40 to 80 lashes. (The prohibition applied to Muslims only; non-Muslim compatriots were free to indulge in wine without disturbing public law and order)

IV

During the Orthodox Caliphate (10—40 A.H.)

1. The Quran was collected in one volume and standardised beyond doubt.
2. The authority of the Sunnah was uncontested. The General Rulings of the Prophet formed part of the Living Tradition of the community. Only the knowledge of the Special Rulings was restricted to individuals.
3. An apparatus was devised whereby the restricted knowledge of Special Rulings was laid bare at assemblies of knowledgeable Companions (Sahaba) of the Prophet, verified in the manner of statements before a court of law and then adopted by authority of the Caliph on the basis of 'Ijma' (consensus).
4. Exercise of intellect (Ijtihad) on the above material was recognised as means of developing the law to cover the new situations of life, which actually confronted the nascent community from time to time.

During the Umayyad Period (40—125A.H.)

1. There was a worldly administration concerned mainly with temporal affairs such as maintenance of law and order, collection of revenue, streamlining the machinery of state and achieving brilliant military conquests.

2. The development of law was left to private efforts of individual Companions and learned doctors. There was no Official Code and each Qadi (judge) exercised his own judgment or depended on the judgment of prominent Companions and learned doctors.
3. The task was carried on by the Companions, who were now dispersed in the various provinces. Each one of them dispensed religious knowledge according to his own lights and enlightened the people of the locality with talk (HADITH) about the acts and saying of the Prophet.
4. The statements of the Sahaba (companions) concerning the words and deeds of the Prophet circulated freely and increased immensely. The machinery for verifying and determining the value of such statements for purposes of 'Ijma' (which was instituted by the Second Caliph) broke down. Similarly, the freedom of '*Ijtihad* was maintained without the presiding authority of the Caliph to narrow down the differences and maintain uniformity of the Living Tradition of the community.

Thus the apathy of the State and its functionaries caused a gap to appear between *Knowledge of the Sunnah* (as reflected in the recorded statements of the Sahaba) and *the actual practice of the community* (languishing under the indifferent Umayyads).

As the faith in the *purity* and the *continuity* of the Living Tradition was shaken there was a clamour for scrutiny of the latter in the light of the accummulating Hadith literature. In other words, there appeared a new emphasis on *documentary evidence of the Sunnah* whereas previously no such evidence was called for.

But the Hadith literature itself had to be subjected to close scrutiny for verification because in the meantime political schisms had started fabricating traditions in support of their own stances.

Between 150 and 250 A.H. an elaborate science of Hadith was evolved. Every *hadith* consisted of (a) the text attributed to the Prophet and (b) the Chain of Narrators who handed it down to the time of recording. The text was judged by the standards of reasonableness, plausibility and conformity to the spirit of Islam. As for the other part, each narrator had to be adjudged sound of body and mind, intelligent, honest and trustworthy. For this purpose copious records were compiled of the minute details of the private and public life of the narrators.

By 250–300 A.H. the Hadith literature had been scrutinised and compiled in book form. There are six famous collections which are termed SAHIH i.e., verified and trustworthy.

The method of scrutiny of *hadith* is unparallelled in the history of the various religious cultures. Human intellect has yet to devise a better and surer method of assessing the true worth of a narration. It was the learned doctors of *hadith* who exposed the forgeries. To argue that they were honest in exposing the forgeries and unreliable in asserting the trustworthiness of the rest of the corpus of *hadith* is, to say the least, bad logic. The

detection of a few counterfeit coins can never mean that the entire currency in circulation is *ipso facto* counterfeit. Moreover, the forgeries concern mostly and primarily the non-legal traditions relating to dogmas, beliefs and political tenets. The source of Islamic law as such was in no doubt.

The legal traditions, numbering about 3,000 fall into three categories:—

(1) Traditions which were widely known at all times from generation to generation. There is no question about their authenticity.

(2) Traditions which are in agreement with the Living Tradition of the community. There is no controversy about them.

(3) *Isolated Traditions* (neither widely known nor in agreement with the Living Tradition but ascribed to the Prophet on the authority of individual narrators). These are the subject of debate among the legists.

V

'Ijtihad (exertion of intellect on Kitab-Sunnah) is an in-built device, a "principle of movement" in Islamic law to ensure its dynamic growth from within to meet the new situations of life for all time to come. It is expressly sanctioned by the Quran. It was also assiduously and methodically fostered by the Prophet. The Quran is not merely a bundle of "Do's and Dont's". It expounds general principles of conduct in a manner conducive to understanding by reason and enjoins upon man to "ponder over them". The 'Ijtihad is inherent in the situation of a Muslim: he has surrendered himself to the Will of Allah, he is committed to act according to the Will of Allah *in all the situations of life* (not only in the situations expressly referred to in the Kitab-Sunnah). He is, therefore, compelled to exercise his intellect upon Kitab-Sunnah to conclude and discover the Will of Allah in new and unspecified situations.

The presence of a prophet, or any towering personality for that matter, often tends to lull the people into complacency, intellectual lethargy and non-cultivation of their own judgement. The Prophet Muhammad took stern measures to shake his followers out of such deadening of intellect through disuse. He categorically told them: "you know best the affairs of this world of yours" i.e., not to turn to him on points of natural science, which grows through free experimentation, through trial and error. The remark was occasioned by the failure of the crop on the opinion of the Prophet against the practice of fertilisation of the female palm tree by grafting part of the male palm tree upon it — a practice long in vogue among the horticulturists of Medina. An error in science does not affect the moral stature of man and *vice versa*

The Prophet left his followers in no doubt that he was only a teacher of morals. Moreover, very often in his personal likes and dislikes and in his capacity as executive head of administration he acted as a man just like

other men. He practised the method of SHURA (consultation), invited the competent men to counsel him and had no hesitation in accepting the judgment of his followers in preference to his own.

Even in matters of morality and law, the Prophet would like his immediate followers to be content with what was revealed and to exercise their intellect to chalk out their course of action instead of pestering him with requests for new directives every now and then. He was highly gratified when Mu'adh, his agent in Yemen, asserted confidence in his own judgment to meet any new situation.

The Prophet received the mission in the 40th year of his life (He died at the age of 63). Thus for forty years he had only his intellect (unaided by revelation) to guide him through the maze of pagan practices and Jewish and Christian teachings. Any existing practice which appealed to moral sense and was approved by reason was assimilated into the Living Tradition of the community after Islam, no matter whether it was expressly sanctioned or not. This is termed 'ISTISHAB (confirmation and assimilation of an existing practice). It is the positive verdict of the Islamic conscience on the elements of upright wisdom and true revelation (Judaism and Christianity are acknowledged to be so by Islam) in pre-Islam.

'Ijtihad is a privilege of the competent – the well-meaning and dedicated scholars (but not ordained priests, there being no church in Islam). It must be distinguished from a referendum of the masses. 'Ijtihad is directed at discovering the Will of Allah as exemplified in Kitab-Sunnah and not the Will of the People, which is often swayed by immoral desires and a perversion of intellect and moral sense. The outstanding example is that of homosexuality. It is not expressly mentioned in the Kitab-Sunnah. In later times when the Muslims ruled over Persia, the legists had to pronounce judgment on the point of punishment for the crime. They proceeded on the analogy (qiyas) of adultery, which is an unlawful, yet natural, act between man and woman. Homosexuality, they argued, is not only unlawful but also unnatural (even the animal instinct is against it). Hence they prescribed for it a form of punishment much more severe than that laid down for adultery. In contrast with it, when the question was referred to the Will of the People as reflected in the British Parliament the heinous crime was almost legalised.

The prerequisite qualifications for 'Ijtihad are:–

(a) A thorough and scholarly knowledge of the Arabic language and its idiom so as to have direct access to the sources. Translations of the Quran are ruled out for this purpose. As a matter of fact, a literal translation of the Quran is just impossible.

(b) Secondly, it is essential to have a thorough knowledge and understanding of the Quran, the history of its revelation etc., the Science of Hadith, the Biographies of the Narrators, the judgments of the

Companions and the jurists who followed them, in sort, the development of Islamic law through the ages.

(c) A sound and realistic grasp of the unprecedented situation calling for a new ruling.

(d) Last, but most important of all, a special acumen for determining the "efficient cause" of a particular legal order. For example, what is the efficient cause of the prohibition of wine? Is it that the wine is distilled from grapes or that it is an intoxicant? As the efficient cause (as distinguished from incidental qualities) is determined to be intoxication it is straightaway applied on the basis of analogy (qiyas) to all intoxicants including hashish, marijuana and L.S.D.

VI

In the first quarter of the second century of the Hijra, the Quran had long been standardised and the traditions of the Prophet were being collected and codified. *Ijtihad* was recognised as a means of expanding and developing the law to cover the new situations of life. It was practised freely on an individual basis by the competent jurists who commanded the respect and the confidence of the people. There was no formal agency to coordinate or consolidate the ever-growing output of *ijtihad*. The Umayyad government was indifferent to the development of the law. Official *qadis* (judges) were there to decide the cases brought before them according to their own lights; there was no official code of law to bind them in their judgements. Of course, many of them were learned men competent to exercise *ijtihad* in their own right. They had the authority of the State to enforce their judgements but that did not prevent the other jurists in the town or the locality from criticising those judgements in public. Sometimes the jurists met to exchange thoughts and argue their viewpoints. Anyhow it was just a question of the survival of the fittest. Ultimately four schools of law crystallised and prevailed in the various parts of the Islamic world.

In the early period it was natural that a kind of regionalism developed in *ijtihad* under the aegis of the Companions of the Prophet, who were dispersed in the various provinces. Two schools of law emerged in Iraq and Medina. The school of Iraq is ascribed to Abu Hanifah while the school of Medina is known after Malik. The distinguishing feature of the school of Iraq is its extensive use of *qiyas*. There is a wrong impression that it did not concern itself very much with the Hadith (traditions of the Prophet). Of course, it judged the *hadith* by a rigorous test of credibility. But the approach to the text of the *hadith* (as well as the Quran) was radically different from that of the school of Malik. According to Abu Hanifah, all the injunctions of the Quran and the *hadith* are reasoned and it is for the jurist to deduce the underlying principle and the efficient cause of the express injunctions so as to judge a new situation thereby. It has been well

said that the collectors of Hadith are just like pharmacists while the Iraqi jurists are the physicians who know the proper use of the Hadith for the development of the law.

Abu Hanifah was a non-Arab. His grandfather was brought as a captive from Kabul. It is significant that by this time (roughly three generations after the Prophet) the non-Arabs rose into prominence as jurists. Even when the non-Arabs had certain grievances against the ruling Arabs they asserted their own allegiance to Islam and blamed the Arabs for deviation from it. In regard to the Arabic language they vied with the Arabs in mastery over it. Actually, most of the Arabic poets, writers and scholars in the Abbasisd age were non-Arabs. Abu Hanifah was a silk merchant. He had the advantage of knowing from personal experience the actual problems of business and trade, to which he sought a workable solution through his deep knowledge of the sources of Islamic law.

Abu Hanifah died in 150 A.H. The Umayyad dynasty was overthrown in 132 A.H. and supplanted by the Abbasids. Abu Hanifah was persecuted both by the Umayyads and the Abbasids for refusing to accept office under the State. It was a struggle between the Executive and the custodians of the law. The Umayyads were hated for their indifference to the law and the jurists like Abu Hanifah commanded considerable influence among the public for upholding the law. Acceptance of office under the State was tantamount to support for the ruling dynasty. The Abbasids came into power on the promise that they would restore the Islamic law to its prestigious position in state administration. Abu Hanifah, whose opposition to the Umayyads was in no doubt (although he did not play an active part in politics) was disappointed with the Abbasids, who turned out to be good at religious showmanship only. In Islam the ruling chief enjoys no privilege and the law applies to him as much as to the man-in-the-street. The personal character of the Abbasid caliphs was not above reproach while their opponents from the House of Ali were really learned and pious men. Hence Abu Hanifah's leanings towards them for their personal qualities (as distinguished from any sectarian ideology which developed later). The Abbasids persecuted Abu Hanifah more than the Umayyads until his death in prison.

A disciple of Abu Hanifah, namely, Abu Yusuf (died 182 A.H.) accepted the position so stoutly refused by his master. He was appointed the Chief Qadi. It was clear by that time that though the Abbasid rulers would not submit their personal lives to the law nor would they have any scruples in committing excesses upon their political opponents they were genuinely concerned with the development of Islamic law on the right lines and its application in all fields of administration. The Hanafi jurists were content with that. Actually there was a tremendous development of the Islamic law since the association of the Hanafi jurists with the administration of the state. Abu Yusuf himself drew up a manual of Islamic law

regarding the revenue and financial administration while another colleague of his (al-Shaybani) compiled a manual of laws relating to international relations.

Abu Hanifah gave full credit to the opinion of the Sahaba (Companions of the Prophet) for their understanding and interpretation of the law. But in the case of the later generations he thought he need not be bound by the views of others in *ijtihad*.

Abu Hanifah is also known for ISTIHSAN i.e., resort to 'good sense' in the application of general principles deduced from the sources of the law. He would not rigorously apply the general principles to the extent of absurdity. Rather he would apply the general principles with flexibility, reasonableness and the practical needs of the situation.

(1) For example, it is a general principle that the commodity which is the subject of a deal should be ready. One cannot sell a bird in the air or a fish in the water. But the advance purchase of crops was a common practice. The Prophet himself approved of the advance purchases on condition that the quality and quantity of the commodity and the time and place of delivery were specified so as to safeguard against all possibility of fraud or misunderstanding. Abu Hanifah approved of the advance purchase of crops in the same way as an exception to the general rule. It will be noted that the exception should derive sanction from approved sources.

(2) Similarly, the Prophet prohibited the resale of anything until the first buyer took actual possession of it. Abu Hanifah approved of the resale of immoveable property which was not subject to deterioration in the meantime.

(3) According to the original law, workers and artisans like the laundrymen and the tailors hold the customers' material in trust (like a deposit) and are not liable to pay compensation for any loss or damage due to accident. To check the increasing carelessness and irresponsibility on the part of the artisans, Abu Hanifah made them liable to pay compensation.

VII

ABU HANIFAH practised ISTIHSAN i.e., resort to 'good sense' with a view to making an exception and avoiding an absurd position if the strict application of a general principle lead to the same. Similarly he was wont to take into account the special moral and social conditions in which a particular precept originated. If there was a noticeable change in the milieu he would not mind amending the rule accordingly. For example in the early days of Islam the evidence of a father in favour of his son and vice versa and the evidence of a husband in favour of his wife and vice versa was allowed. It is a fact that in those early days when a son was often ranged against his father on the battlefield for the sake of religious faith, the sense of morality was very high and fidelity to truth superseded all considerations of filial attachment. Abu Hanifah was quick enough to

mark the deterioration in public morals and consequently disallowed in his own days the evidence of father in favour of his son and so on.

ADAT (customs and traditions of a society) is also recognised in law under certain conditions by most jurists, particularly Abu Hanifah. Historically speaking, custom had the force of law in society until it was replaced by a positive written law. For example, that was the case in France until the promulgation of the Code of Napoleon which made the text of the law supreme.

Much more so in a society which is based on a Revealed Law, claiming finality and universality for it. The pre-Islamic Arabian society had its own customs and Islam came precisely to change and reform those customs and to replace them with a positive written law. It is assumed that the Prophet examined each and every custom around him and if he did not change any custom or simply kept quiet about it, even his tacit approval was enough to make it positively Islamic, instead of just being a hang-over from the past. It is in this context that the practice of the people of Medina (where the Prophet spent the last thirteen years of his life and where he breathed his last) assumed a normative character in certain schools of jurisprudence. This is certainly not the case with the customs of towns and localities outside Medina. The admissibility of these customs depends upon the following conditions:

(a) that these customs should not be in conflict with any law otherwise known and established;
(b) that the sources if Islamic law be silent on the point, and
(c) that the custom be acceptable to reason and in general conformity with the spirit of Islam.

Abu Hanifah dealt with the Iraqian society where the economic conditions differed widely from those prevailing in Arabia. In his system of jurisprudence local customs found their due place on the conditions mentioned above. Yet it is a highly misleading and undoubtedly a very loose expression to say that ADAT was regarded as a 'source of law'.

Whatever the recognition given to ADAT, quite an illegitimate use has been made of it in later times to corrupt Islamic law and to defeat its purpose. For example, in certain parts of India it was a custom to deprive women of their share in inheritance. This is diametrically opposed to the express injunctions of the Quran. It is just a hang-over from the pre-Islamic past and quite untenable under Islam. Conversely, there is the *perpateh* system in certain parts of Negeri Sembilan, according to which all property goes to the female heirs. This is obviously a remnant of the pre-Islamic matriarchal system which prevailed in many parts of the Pacific region.

In Islam a woman has fully independent economic rights. She owns money and property in her own name and initiates business and commerce on her own. The husband is only a marriage partner and has no rights over

her independent holdings. Thus any remnant of the Joint Family system is automatically repelled by Islamic law.

Sometimes it is convenient enough to trace an ADAT in Islam itself in order to achieve an un-Islamic end. Certain business communities in India have made it a custom to put a very low ceiling on MAHR (the dower money bestowed by a husband upon his wife at the time of marriage) and to restrict it to the amount (just a few dollars) given to the Prophet's daughter, Fatimah, by her husband. In Islamic law, the MAHR gift is an essential part of the marriage contract and there is absolutely no upper ceiling on it, the only inherent restriction being that it should be within the resources and the ability of the husband to pay.

Not long after the death of the Prophet when the Muslim society suddenly rose to wealth and luxury, it became a status symbol to have the amount of MAHR ostentatiously high. It occurred to the Second Caliph that ostentation was a social evil and he proposed to impose a ceiling on MAHR. An old woman-in-the-street objected to it, reminding the Caliph that he would be violating the words of the Quran thereby. The Caliph gratefully submitted to her advice. So the matter was decided for all times. Yet it is pretended as if it were an act of piety (in pursuance of the Sunnah i.e., the practice of the Prophet) to reduce the *mahr* to a paltry sum, forgetting that Fatimah's husband was a poor man and her father – the Prophet – the poorest of the poor. As far as I can understand it, the custom is only a clever ruse to keep the wealth in the family, not allowing it to be transferred to the wife's family under any circumstances, which is the craze among the wealthy merchants.

The *mahr* is designed as security for wife in case of husband's death or dissolution of marriage. It also promotes a sense of responsibility, sobriety and realism on the part of the husband when the thought of breaking the family passes through his mind. Both these purposes are defeated if the *mahr* is restricted in the way mentioned above. Divorce becomes easy for flippant and irresponsible men and when the balance sheet is drawn the helpless woman is shocked to find that throughout she had a debit account only.

On the other hand, in the parts of India where feudalism prevailed it was a custom to have fabulously large sums entered in the marriage contract by way of *mahr*. The husbands were never serious about actual payment and even the courts were ultimately forced not to take full cognisance of the exaggerated entries.

MALIK (d.179 H) was the founder of the school of Medina. He was also persecuted for denying active support to the Abbasid government. Later on, however, he had better relations with the Abbasid Caliph, Mansur. Though Malik would not compromise academic honesty, he would avoid provoking the officially appointed *qadis* (judges) by criticising their court judgements and would put up with an unorthodox government rather than plunging into violent turmoil.

Malik was noted for his extensive knowledge of *hadith*. His school is characterised by special concern for the *hadith*. His great achievement was the systematic compilation of *hadith* in the form of a book called the MUWATTA. In the same context Malik attached great importance to the practice of the people of Medina and regarded it as normative in itself.

Malik also resorted to ISTIHSAN and applied the law with full regard for the practical needs of the situation and the valid interests of the common people. He further extended the point by developing the principle of "Absolute Necessity" as a valid ground for new legislation provided it did not conflict with the basic law. For example, additional taxation for defence was allowed at a time when the proceeds from the obligatory contributions (*zakat* etc.) fell short of the actual imperative needs.

VIII

The school of Abu Hanifah flourished in Iraq. It was characterised by an extensive use of QIYAS (analogy) and ISTIHSAN (resort to "good sense" in the application of general principles to particular situations). The other school of Malik prevailed in Medina and was distinguished by its reliance on an extensive knowledge of the traditions of the Prophet supported by the practice of the people of Medina. Having exhausted the traditions as a source of law, Malik also turned to qiyas and istihsan. He was inclined to still greater flexibility in sanctioning new laws to cope with *Absolute Necessity* in the overall interests of the community and in furtherance of the primary objectives of Islam.

SHAFI'I (died 204 A.H./820 A.D.) founded the third school of jurisprudence. He was brought up in Mecca and Medina and became a pupil of Malik, whose thought influenced him deeply in the early stages without curbing originality in him in any way. Having finished the course under Malik, he paid more than one visit to Baghdad, where he came into contact with Shaybani, the leading exponent of the school of Abu Hanifah at the time. Shaybani himself had close association with Malik for no less than three years and open discussion and frequent exchange of thought had already brought the two schools closer to each other when Shafi'i set about founding a third school of his own, incorporating the best features of the former two schools.

(i) SHAFI'I brought out the fact that the Iraqians fully accepted the primacy of *hadith* as a source of law; only they subjected the traditions to a severe test of credibility, which was quite understandable in view of the length of the transmission line between Medina and Iraq. They also did not bother enough to enrich their knowledge of *hadith* before rushing to *Qiyas* and the exercise of intellect. Malik's monumental work, MUWATTA, a systematically classified compilation of *hadith*, was a much-needed step in the direction of popularising the knowledge of *hadith*.

Anyway, Shafi'i in his system of thought ensured primacy for *hadith* as a source of law. Shafii would accord primacy to *hadith* even if it were not widely known — a condition insisted upon by the Iraqians. He also differed from his teacher, Malik, who stipulated that the *hadith* in order to be acted upon, must conform to the practice of the people of Medina. Shafi'i declared that the *hadith* by itself (provided only it is up to the prescribed standards of credibility) must prevail over all else.

(ii) Shafi'i was most concerned that the jurist, even while exercising his intellect and arriving at an independent judgement, should be bound by the spirit of Islam and judge things only by the standards of right and wrong as expressly approved by Islam. In ISTIHSAN particularly he sensed the danger of the jurists giving free reins to his personal likes and dislikes. He, therefore, opposed it. Even in the context of Malik's principle of Absolute Necessity, he stipulated that the necessity itself must be such as is recognised generally.

(iii) Shafi'i greatest achievement is his first successful attempt at systematising juristic thought as embodied mainly in his book called RISALAH. He was prompted in this venture by the same sense of danger that the future jurist may deviate from truly Islamic standards in his intellectual effort at forming an independent judgement. Actually no guidelines had so far been framed for the exercise of *qiyas* and other methods involving intellect in the development of law. Shafi'i fully deserves the compliment that he did for Islamic juristic thought exactly what Aristotle did for logic.

In the RISALAH Shafi'i determines the priorities among the sources of Islamic law. Further he lays down rules for the interpretation of the Arabic texts according to the usages of the Arabs. Shafi'i was specially qualified for the task in view of his eminence in Arabic poetry and literature. So far all effort had been concentrated on establishing the text of the Quran and the Hadith. Shafi'i guarded against pitfalls in understanding and interpreting the texts.

In this connection the most ingenious contribution of Shafi'i is his assertion of the organic relationship between the Quran and the Sunnah. A great many difficulties arise if they are taken as *two* separate sources of law, the one preceding over the other. Shafi'i showed the way to treat them as one organic whole and interpret them together in a single sweep of thought, each being interdependent on the other. Any possible contradiction or confrontation between the two sources of law is thus eliminated.

IX

The fourth school of jurisprudence is known after its founder, IBN Hanbal, who died in 241 A.H./855 A.D. At Baghdad he came into contact with ABU YUSUF, a pupil of ABU HANIFAH and Chief Qadi of the

Abbasids. Abu Yusuf differed from his teacher on many points of law and was inclined to make more and more use of the increasing volume of traditions being compiled assiduously by the specialists in the field. 'IBN HANBAL also learnt from SHAFI'I and was deeply impressed by the latter's advocacy of the primacy of hadith as a source of law in preference to qiyas and reasoning. As the Iraqians led by Abu Yusuf began to yield, Ibn Hanbal was quick enough to realise that the triumph of the traditionalists was almost complete if only one could produce a collection of traditions in book form ready for use by the jurists. He took upon himself the task of supplying this need of the hour. Whereas Malik, the author of the MUWATTA, had not moved out of Medina, Ibn Hanbal travelled far and wide to collect the traditions from most of the towns and ultimately produced his MUSNAD, a compendium of no less than 40,000 traditions. Obviously this deprived the jurists, whatever the school he belonged to, of their common excuse for rushing to qiyas and reasoning. In Ibn Hanbal's system of jurisprudence, traditions of the Prophet and the precedents of the Companions ranked as the main source of law, qiyas and reasoning being relegated to the last resort when there was no alternative to it. He would prefer a tradition to qiyas even though the authority for the transmission of the tradition were not entirely trustworthy.

A remarkable feature of the system of Ibn Hanbal is the high regard for the freedom of the contracting parties as responsible agents to incorporate into the contract any conditions which they consider to be in their best interests. According to him, the standard form of contracts, as handed down from the Prophet's time, is not restrictive so as to exclude any additional clauses provided only that they are in conformity with the nature of the contract and do not in any way violate the essentials of it as stipulated in the original sources. For example, he makes it lawful for a wife to insert in the marriage contract that the husband shall not take to a second wife or that he shall not compel her to move out of her home town or her parents' home. It has been well said that whenever Islam is under pressure to liberalise family laws or the laws of contract the school of Ibn Hanbal is called to rescue.

Abdur Razzaq Sanhuri, an eminent modern jurist of Egypt, relied on the same principle of Ibn Hanbal to win approval for insurance as a contract in Islam. But that is stretching the principle to breaking point.

In contrast with Ibn Hanbal's liberality in regard to the law of contracts, he is quite rigorous in enforcing the prohibitions of Islam. He had laid down a principle known as "*outlawing the means to a prohibition*". For example, he would nullify a deal in grapes if the seller knew that the buyer would press them into wine, which is prohibited. Similarly he would not allow the lease of a house if it were known that the house was to be used for immoral purposes.

Ibn Hanbal is still more rigorous in the tenets of the faith and the practice of the rituals. He upholds that the form of the rituals is iron-cast in the sense that no addition to it is admissible. Grave-worship, undue reverence for saints, celebration of occasions contrary to the practice of early Islam and additional prayers and chanting of verses in a collective ceremonial fashion – all such acts termed as BID'AH = innovation, are vehemently condemned by Ibn Hanbal.

Area-wise the school of Ibn Hanbal did not spread widely, remaining confined mostly to Baghdad and Damascus. But the seeds sown by Ibn Hanbal germinated in the following centuries and his school gave rise to a powerful force for social and political reform. IBN TAYMIYYAH (died 728 A.H./1328 A.D.) pressed for purging Islam of the ritualistic practices declared un-Islamic by Ibn Hanbal. Ultimately, Muhammad bin Abdul Wahhab (died 1201 A.H./1786 A.D.) led the Wahhabi movement which resulted in the establishment of the present kingdom of Saudi Arabia. The first act of the Wahhabis after coming into power was to demolish the mausoleums over the graves of the Companions of the Prophet and to penalise undue reverence shown to the grave of the Prophet. The Wahhabis follow the positive laws of Ibn Hanbal.

X

By the middle of the third century A.H. the four schools of jurisprudence had won general recognition for themselves after eclipsing a number of minor schools. The positive law was recorded according to each school and traced to its appropriate source. It was mostly the fruit of private effort. As yet there was no official code. The *qadis* (judges) appointed by the State decided the cases according to their own lights. Nevertheless they were quite capable of exercising *ijtihad* in their own right and did not mind soliciting the views of academicians, for whom the development of law was a labour of love. Sometimes the *qadis* also resented the criticism of their judgements on the part of the learned scholars outside the government.

Very often the need was felt for adopting an official code, unifying the law throughout the empire. Ibn al-Muqaffa, a Persian adviser to the second Abbasid Caliph, lamented the situation in which varying verdicts were given in the same case in the various provinces. Al-Mansur, the second Abbasid Caliph, proposed to adopt the MUWATTA of Malik as the official code. Malik himself would not allow his individual views to be thrust upon the people by the authority of the State. The leading jurists of all the four schools claimed no finality for their judgements. They would just enter their views for free contest and wait until a consensus was arrived at through the slow but sure method of argumentation and practical experience.

The development of law was based entirely on the Islamic sources. It is a mere conjecture that the development of Islamic law must have been influenced by the Roman law just because the Muslims ruled over some of the former provinces (like Syria) of the Roman Empire. No doubt, there were customs ('ADAT) peculiar to Syria as well as to Iraq, previously part of the Persian Empire. But Islamic law always superseded the local customs. Only those customs were taken into account which were not contrary to Islamic law and the general spirit of Islam and on which the Islamic law was silent. In the words of Professor Schacht, "it remains true that Islamic law, including the Maliki school, ignores custom as an official source of law. Custom is recognised as a restrictive element in dispositions and contracts and as a principle in interpreting declarations." Thus any existing custom was always at the mercy of the Islamic law, which simply could not be derived from an alien source. In a word, the nature of Islamic law as a revealed law with an inbuilt device of growth and development through *ijtihad* precludes any borrowing from outside.

It must be noted that the Arabs were always very honest and generous in acknowledging their indebtedness to the Greeks and other peoples in philosophy and natural sciences. But they never mention even in a casual way any borrowing from the Roman law. Further it is not recorded if any book on Roman law was translated into Arabic. There are vital points of difference too. In Roman law a woman had no economic independence; she was alwyas subservient to man, who could lay hands over the property of the members of the family. In Islam a woman has a separate account of her own, she owns all kinds of property, makes investment, initiates business and commerce and assumes liabilities on her behalf and in her independent right. Adoption of children is recognised in Roman law whereas it has no legal status in Islam. The law of *wakf* and the right of pre-emption have no place in the Roman law. In Roman law the share in inheritance of a woman is equal to that of a man whereas in Islam it is only half of that of a man. In Roman law the initiative for divorce belongs to both parties, in Islam it belongs to man only. The Penal Code of Islam is palpably different from Roman law. It must, however, be acknowledged that Greek logic exercised a very powerful influence upon Muslim scholars throughout. Thus in the formulations of Islamic law, particularly in the argumentations of one school of jurisprudence against the other, the influence of logic is unmistabkable.

Later on the adoption of an official code became imperative so that the plaintiff may know beforehand what law the *qadi* is going to apply to his case. It was inevitable also because of the decline in the calibre of the official *qadis*, who were no longer capable of *ijtihad* in their own right. So the easiest way was to adopt the positive laws of one of the four schools – the school followed by the rulers or the school most popular amongst the populace – as the official code.

Gradually, because of dwindling practical importance and a kind of mental lethargy, the interests of the jurists were restricted to the positive laws as opposed to their sources in the Kitab and the Sunnah and the methods of *ijtihad* through which they were arrived at. They were taken on trust, so to say, from the founders of the four schools. Thus handbooks on positive law, designed to cater to the practical needs of the judges, came into vogue. The most notable handbook of the kind is the FATAWA 'ALAMGIRIYYAH, compiled in the 17th century A.D. by order of the Mughal emperor 'Alamgir (Aurangzeb) of India.

As the interest in the sources and the methodology of the various schools declined, the students of law became just blind followers of one of the schools in positive law. Very often they developed a highly partisan attitude, which was most harmful for intellectual growth. This is called TAQLID (blind following) as opposed to *ijtihad*. Moreover, *ijtihad* fell into disuse also because there was no great need for it in the 4th and the 5th centuries A.H. It is a fact that the development of Islamic law reached its peak with the emergence of the four schools. The law as developed by the four schools was complete in the sense that it sufficed for the needs of the society considering the stage of civilization attained by it at the time. In the first two centuries of Islam the Bedouin Arab society took giant strides to transform itself into the best civilised society of the day. But in the 4th and the 5th centuries there was no new development in industry, commerce or the material conditions of life. Consequently, there are few new situations of life calling for new rulings of law through *ijtihad*. After all, there is no such thing as *ijtihad* for the sake of *ijtihad*. This led to the erroneous impression that the Gate of *Ijtihad* was closed for ever.

Independent thought was aroused in a curious way. In the 6th and 7th centuries there was an appaling outgrowth of BID'AH i.e., innovations in the form of grave-worship, saint-worship, belief in charms and amulets and additional collective devotional practices, which had no sanction in early Islam. Ibn Taymiyyah (d.728 H./1328 A.D.) led a vehement revolt against innovations and, as an off-shoot of it, rid the community of the curbs of *Taqlid*. Ibn Taymiyyah narrowed down the sphere of *ijma'*, practically limiting it to the Companions of the Prophet. Thus the learned scholars of a later period were free to revise the verdict of the previous generations so as to bring it more in conformity with the original sources of Islamic law, particularly the *hadith*. Similarly he insisted that *qiyas* should have its ultimate sanction in the Kitab-Sunnah. Yet actually he broadened the sphere of *qiyas* by adopting a more liberal approach to considerations of the peoples' good, which underlie the original Islamic injunctions and which must be kept in view while developing the law.

Explicitly, Ibn Taymiyyah rejected *taqlid*, restated in his own way many of the institutions of Islamic law and even revised some of the positive laws of the previous schools. He also encouraged TALFIQ i.e.,

combining the doctrines of more than one school instead of adhering to one particular school exclusively. On the whole, however, the positive law did not change very much. Ibn Taymiyyah's great achievement was to set the mind free for *ijtihad* whenever new developments in society and in the material conditions of life demanded the same. It was almost prophetic on his part to foresee the need for, and to assert the right of *ijtihad* in future.

Towards the end of the 15th century when Vasco de Gama touched the West coast of India, the Muslims were the masters of international trade from the Mediterranean right up to the China Sea. Naturally, it was during this period that many of the commercial and banking practices of today originated with the Arabs in the Middle East. This is evidenced by the French term "aval" from Arabic "hawalah" for the endorsement on the bill of exchange, by the term "cheque" from Ar. "sakk" and by the French term "sensalis" from Ar. "simsar" for the broker. This was really a new development calling for *ijtihad* to judge the admissibility of these practices from the strictly Islamic viewpoint. The task was entrusted to a commission appointed by the Ottoman Caliph and the results are embodied in the MAJALLAH finalised in 1879 A.D.

During the second half of the 19th and the first half of the 20th century the Western powers subjugated many a Muslim land militarily and politically. This was followed by the introduction of Western political, economic and educational institutions in the countries where Islamic law was supreme. The resulting intimate contact with Western arts and sciences produced a great ferment in thought and presented a host of real problems for *ijtihad*. As far as the administration of Islamic law is concerned, the ways of colonial administration were determined by political expediency alone. According to Professor Schacht, the colonial administrators in Northern Nigeria were inclined "to prefer a formal and explicit doctrine, such as is provided by Islamic law, to changeable and badly defined customs." The result was that "in the later years of the British protectorate, in the absence of any desire on the part of the British administration to interfere with the law applicable to the Muslim populations, pure Islamic law acquired an even higher degree of practical application than before."

The case of India was just the opposite. Again Professor Schacht deserves to be quoted at length on the point: "According to strict theory, the whole of Islamic law, including the rest of civil law, penal law and the law of evidence, ought to be regarded as sanctioned by religion, but no significant voice of dissent was raised when Islamic law in these last fields was superseded by codes of British inspiration in the course of the nineteenth century. This, from the systematic point of view, was an important departure. . . It showed that the idea of a secular law had for the first time been accepted by the leaders of an important community of Muslims."

"In 1772, too, British magistrates replaced the *kadis* in British India, and until 1864 they were assisted by *mawlawis*, or Muslim scholars whose duty it was to state the correct doctrine of Islamic law for the benefit of the magistrate. . . . As time went on the magistrates (judges) in the Muslim parts of British India came to be increasingly recruited from the Indian Muslims themselves. But the whole judiciary was trained in English law, and English legal concepts, such as the doctrine of precedent, and general principles of English common law and equity inevitably infiltrated more and more into Islamic law as applied in India. Last but not least, the jurisdiction of the Privy Council as a final court of appeal could not fail to influence, much against its intentions, the law itself.

"In this manner, more than by positive legal changes which were few, Islamic law in British India has developed into an independent legal system, substantially different from the strict Islamic law of the *shari'ah*, and properly called Anglo-Muhammadan Law. Out of this law there has grown a new Anglo-Muhammadan jurisprudence, *the aim of which*, in contrast with Islamic jurisprudence during the formative period of Islamic law, *is not to evaluate a given body of legal raw material from the Islamic angle, but to apply, inspired by modern English jurisprudence, autonomous juridical principles to Anglo-Muhammadan law.*" Perhaps an unsympathetic non-Muslim like Professor Schacht has the right to indulge in the jibe that "This law and the jurisprudence based on it, is a unique and a most successful and viable result of the symbiosis of Islamic and of English legal thought in British India." For a Muslim it is heart-rending that this hybrid law should continue to govern the lives of the faithful even after independence.

Anyhow the testimony of Professor Schacht is important. The whole of Islamic law could be enforced, as it was actually enforced in Northern Nigeria, only if it suited the purpose of the colonial administration. In India it was deliberate policy to assert the superiority of the English legal concepts and practices over the prevailing Islamic system. There was no difficulty in achieving the purpose with the help of the English-educated elite among the Indian Muslims.

The products of Macaulay's English educational system were ignorant of Islamics and had no power of resistance to the onslaught of Western thought and culture. In the first instance they derived their inspiration from the West, their sole aim was not to tend the growth of Islamic law according to its own nature but to graft the Western legal thought and practice upon the body of Islamic law, and this they sought to achieve in the name of *ijtihad*, for which they were utterly unqualified. In short, this is the essence of what is called "Modernism in Islam", which is not peculiar to India but has swept all over the Islamic world.

Curiously enough, this very lack of qualification for a primarily academic pursuit is now being turned into an excuse for transferring the

right of *ijtihad* to the Legislative Assemblies, as if the questionable vote of the ignorant rabble were a substitute for knowledge of Islamic law and its sources. Vide the observations of Justice Hidayatullah in the Preface to a recent edition of Mulla's Muhammadan Law:— ". . . where are the scholars who could be said to possess the necessary qualifications (for ijtihad)? The only alternative is legislation and, to a certain extent, liberal judicial interpretation of the root principles where possible. There is, however, considerable opposition to the Legislatures and the Courts palying the role of *mujtahids* (those who exercise *ijtihad*)."

There was an immediate reaction to Modernism in the form of the Salafiyyah movement led by Mufti Muhammad Abduh of Egypt (1849—1905) and his disciples. The movement took up the challenge of the modern times, acknowledged boldly and frankly the new problems that called for *ijtihad*, making a realistic appraisal of the issues involved, but went back to the SALAF (lit., ancestors) i.e., the Prophet and his Companions for inspiration and guidance in *ijtihad*. Whereas the modernists suffered from an inferiority complex vis-a-vis the West, the Salafis approached the problem of development of Islamic law with self-confidence and with competence too. No doubt, Abduh in a few instances tended to taking over in Islam some of the Western institutions (vide his legalisation of commercial interest) but such opinions of his never agained popular acceptance. On the whole, however, the movement, which gained great strength at the hands of Abduh's worthy disciples, succeeded well in keeping the modernists at bay while preserving the identity of Islam, ensuring the development of Islamic law from its own original sources and proving its viability in the modern world.

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SUATU TINJAUAN ATAS UNDANG-UNDANG REPUBLIC INDONESIA NOMBOR 1 TAHUN 1974 TENTANG PERKAHWINAN

PENDAHULUAN

Dengan melalui suatu perdebatan yang cukup hangat pada tanggal 2 Januari 1974 telah diperundangkan sebuah undang-undang baru tentang perkahwinan iaitu yang dikenal sebagai Undang-Undang Nombor 1 Tahun 1974.[1] Lahirnya undang-undang perkahwinan yang bersifat nasional ini merupakan suatu "surprise" bagi semua pihak memandangkan betapa hebatnya perselisihan pendapat di antara pihak-pihak tertentu pada waktu rancangan undang-undang tersebut diperbincangkan di Dewan Perwakilan

[1] Pihak Dewan Perwakilan Rakyat R.I. sendiri menyetujui rancangan Undang-undang tersebut pada tanggal 22 Disember 1973. Adapun tata urutan rapat-rapat Dewan Perwakilan Rakyat pada waktu membahas rancangan itu adalah sebagai berikut:

a. Dengan amanat President tertanggal 31 Julai 1973 no RO 2/PU/VII/73 telah disampaikan rancangan Undang-undang Perkahwinan kepada DPR RI; pembahasan agar diprioritaskan dan selesai dalam masa sidang tersebut.
b. Pimpinan DPR tanggal 13 Ogos 1973 memutuskan untuk membahas RUU tersebut dan akan dilakukan dalam gabungan Komisi III dan IX. Badan Musyawarah DPR akan menetapkan lebih lanjut.
c. Pada tanggal 30 Ogos 1973 Pemerintah memberikan penjelasan dan dalam hal ini diwakili oleh Menteri Kehakiman. Selanjutnya Pemerintah akan diwakili oleh Menteri tersebut di atas dan Menteri Agama.
d. Tanggal 17 dan 18 September 1973 pemandangan umum para anggota DPR. Berbicara antara lain satu orang dari Fraksi ABRI, satu orang dari Partai Demokrasi Indonesia, dua orang Fraksi Karya Pembangunan dan lima orang dari Fraksi Persatuan Pembangunan.
e. Tanggal 27 September 1973 jawapan Pemerintah atas pemandangan umum anggota
f. Tanggal 30 November 1973 Badan Musyawarah memutuskan pembicaraan tingkat III akan dilakukan antara gabungan Komisi III dan IX. Kemudian akan dibentuk suatu Panitia Kerja yang bertugas sebagai komisi dengan jumlah anggota sepuluh orang.
g. Rapat gabungan Komisi III dan IX DPR dilaksanakan tanggal 8 Oktober 1973 membicarakan prosedure teknis pembahasan RUU.
h. Lobbying antara Pimpinan DPR dan Fraksi-fraksi tentang prosedure teknis pembahasan RUU.
i. Prosedure teknis pembahasan RUU dirapatkan oleh Komisi III dan IX pada tanggal 10 Oktober 1973.
j. Inventarisasi persoalan-persoalan ditampung oleh Pimpinan Komisi III dan IX di bawah koordinator wakil ketua Domo Pranoto dan wakil ketua Drs. Sumiskun.
k. Pembicaraan tingkat III itu dilakukan dari tanggal 6 sampai dengan 20 Disember 1973.