

## **Different Characteristics of Islamic Law from Other Law Systems**

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### **Abstract**

This article focuses on the different features of Islamic law (sharia) from other law systems. Firstly, it was examined that Islamic law is a divine-based legal system. Later, although it was divine origin, the issue of developing Islamic law by jurists was discussed. Again, information was given about the fact that Islamic law has worldly and destructive sanctions. In addition, it was emphasized that Islamic law was developed with the Kazuistic (problematic) method, but it also used the abstract method.

**Keywords:** Islamic Law, Sharia, Source, Ijtihad, Mujtahid, Sanction, Religion, Kazuistic Method, Abstract Method, Universality.

### **INTRODUCTION**

Legal systems are divided into two as divine and human legal systems by source. Human legal systems originate from human thought, while divine (religious) legal systems originate from God. Religion is a divine law that leads intellectuals to good, with their will (Elmalılı, 1997: 353). Islamic law is a religious legal system because its origin is Islamic religion. There are other religious legal systems in the world such as Jewish law and church law (Ansay, 1954: 14).

The other name of Islamic law is Shariah. Shariah is a concept used almost in the same sense as Religion. Shariah means in the dictionary, road, guiding such as (Ekinçi, 2006: 11). In the Quran, the Shari'ah is used to refer to the religious rules that are proclaimed through the prophets: "He has ordained for you of religion what He enjoined upon Noah and that which We have revealed to you, [O Muhammad], and what We enjoined upon Abraham and Moses and Jesus - to establish the religion and not be divided therein. Difficult for those who associate others with Allah is that to which you invite them. Allah chooses for Himself Whom He wills and guides to Himself whoever turns back [to Him]." (Qur'an, 42:13)

As a concept, the sharia is defined in two ways as broad and narrow. In a broad sense it means Sharia, religion and nation. Shariah in the narrow sense refers to the religious provisions given to a prophet (Yaman and Çalıř, 2013) Shariah, which is used in the sense of religious provisions, is narrower than Sharia which is used in the sense of religion.

There are other differences between Islamic law and human legal systems, apart from resource differences. In order to better understand this difference, we will provide information about the general features of Islamic law.

### **The Different Features of Islamic Law**

#### **A. Having A Legal System of Religious Origin**

As a religious legal system Islamic law has two main sources. The first source of Islamic law is Quran and the second source is Sunna: "When God and His Messenger have decreed a matter, it is not for a

believing man and a believing woman to have an option insofar as they themselves are concerned. Whoever disobeys God and His Messenger has evidently gone astray. " (Qur'an, Ahzab, 36.) Other sources of Islamic law are based on the interpretation of the Quran and Sunnah. For this reason, Islamic law is a system of law, which was born from the divine source and developed through ijihad.

The fact that there is a religious legal system separates Islamic law from human legal systems. Human legal systems emerge as the product of the human mind. In contrast, religious legal systems are products of revelation, divine origin. However, mind has an important place in Islamic law. The mujtahid jurists who develop Islamic law also use mind when making ijihad. But the mind depends on revelation and comes second.

Islamic law, based on a divine source, is the most appropriate and perfect legal system for human fidelity. Allah, who created man, other living things and the whole universe, bestowed upon the prophets the best and most perfect rules of law (Kardavi, 1997, 36). It is illogical to think of someone who will know human beings and other beings better than Allah who created them: "Should He not know, He that created? And He is the one that understands the finest mysteries (and) is well-acquainted (with them)." (Qur'an, 67:14.)

## **B. Islamic Law Have Religious Sanctions and Legal Sanctions**

Sanction is a threatened penalty for disobeying a law or rule. According to Islamic law, no crime and no rights violations are left unrequited. The punishment of an injustice is given in this world or other world, unless it is forgiven. "Judgment day will be given to the rights owners. Even without horns sheep himself will get his sheep horns." (Hanbel, Musned, II, 235, 323, 363, 442.) the hadith refers to this. As it is seen, the punishment of injustices in Islamic law is not limited to people, but also includes the realm of animals.

The fact that the slightest injustice will be given has led to the formation of a halal culture in Islamic societies. Because the punishment of an injustice will be given in this world or in the Hereafter, people have adopted a way of making their rights unlawful (Buhari, Mezalim 10, 11; Rikak, 48).

Sanctions in Islamic law are divided into two as religious and legal. This is because Islamic law is a religious legal system. In other words, in Islamic law, crimes are punished with both legal penalties and otherworldly sanctions (Demir, 2018: 100).

According to Islamic law, only religious sanctions are foreseen against some unlawful acts. For example, trades made after prayer at the time of Friday prayers are legally valid but not religiously permissible and require spiritual responsibility. In addition to this, the punishment for not fulfilling worship is religious sanctions. Crimes such as manslaughter and wounding are punished by both legal and religious sanctions.

Anyone punished for his injustice in this world will be punished again in the Hereafter? Although there are different opinions on this subject, there are verses in the Qur'an that tell us that those who commit a heavy crime will be punished again in the Hereafter after they are punished in the world. For example, those who commit the crime of terrorism and mischief will be subject to greater punishment in the Hereafter after heavy penalties are given. " The recompense of those who fight against God and His Messenger, and hasten about the earth causing disorder and corruption: they shall (according to the nature of their crime) either be executed, or crucified, or have their hands and feet cut off alternately, or be banished from the land. Such is their disgrace in the world, and for them is a mighty punishment in the Hereafter. " (Qur'an 5: 33). There is a similar situation with regard to the murder of manslaughter: " Whoever kills a believer intentionally, his recompense (in the Hereafter) is Hell, therein to abide; and God has utterly condemned him, excluded him from His mercy, and prepared for him a tremendous punishment" (Qur'an 4: 93).

### **C. Establishment of Islamic Law by Mujtahid Scholars**

Although Islamic law is a divine law system, the mujtahid jurists have also contributed to the creation of the law. Because the verses and hadiths directly related to the number of law is very few. Therefore, the application of the verses related to law to various and rich issues of life was carried out by the mujtahid lawyers (Demir, 2018: 101).

In the first centuries of Islamic law, many mujtahid jurists were trained and they have been involved in many ijihad activities. In these early periods, many schools of law were founded. This situation provided a very rich legal accumulation to Islamic law.

The issues identified in detail in Islamic law by verses and hadiths, are worship, marriage, divorce, some penalties and inheritance. Apart from these, general principles were determined. These general principles constitute the basic structure of Islamic law. Mujtahid jurists applied Islamic law to all areas of life by means of ijihad based on these basic principles.

The Mujtahids have made three kinds of ijihad in solving legal issues: 1. Clarificaiton (beyan) jurisprudence is to determine the meaning of the verses and hadiths by the language and methodology based on the rules. For example, the verse "and wipe over your heads" (Qur'an 5:6.) does not mean how much of the head and how to mesh. These issues were determined by the jurisprudence of the mujtahid jurists.

2. Syllogism jurisprudence: Finding the justification of a clearly defined matter in verses and hadiths and applying the same provision to other issues that have no clearly defined matter (Köksal, 2008, 94; Sava Paşa: 192; Ebu Zehra, 1986, 197). For example, drinking wine in the Qur'an is designated as haram, but the provision of other drunken drinks has not been determined. Because of their intoxicating properties, they are considered haram (Şener, 1974: 101).

3. Maslahat jurisprudence: To give a judgment on the new legal problems which are not determined in verses and hadiths due to public interest. For example, many new issues, such as obeying traffic signs, have been stipulated in this way (Demir, 2018: 69).

### **D. Establishment of Islamic Law with Kazuistik (Problematic) Method**

There are three methods as problematic method, abstract method and mixed method. Like many jurisdictions, Islamic law has been established and developed by the Kazuistic method. Islamic law It was formed by the answers of the Prophet and Islamic jurists to the questions asked to them (Ansay, 1954, 6).

In Islamic law, the abstract method was used in addition to the problematic method. For example, Shafi'i Sect was established on abstract method. Because Imam Shafi'i wrote er-Risale fihi-USul book and has established the sect according to this book. This book of Imam Shafii is the first work in the history of world law written on legal methodology.

The general principles reveal the abstractness side of Islamic. From the 4th century onwards, the general principles books are written in Islamic law. These books show that Islamic law has also been developed by abstract method (Zerka, 2001; Ruki, 1998; Zeydan, 2003, 7; Ali Haydar, 1330).

### **E. Islamic law having Universal and Continuity Features**

Islamic law is a system of divine origin, universal and continuously. Islamic law is not limited to any region, time, community or nation. This feature of Islamic law stems from the universal and continuity of Islam. Islamic law is universal and continuous like the provisions of Islamic religion.

Another exception to the universality of Islamic law is places that Islam has not reached. These are people who are far from civilization, people living in remote places or children of non-Muslim parents. Such people are not responsible for the religion of Islam. This is the case of the people of the period of the fetret that the message of the Prophet did not reach. This is the opinion of the Eş'ariye sect. According to the Maturidi sect, the person who is smart and has reached adolescence should find the Creator with his mind, although he is not aware of Islam. However, this person is only responsible for finding the Creator with his mind, is not held responsible for worship. Because worship is not something to be found with reason, but it can be learned with revelation.

#### **F. The Terms of Islam Based on Wisdom and Maslahat (benefit)**

The provisions of Islamic law are based on wisdom and maslahat (benefit). Thus, people understand the wisdom of the Islamic law. While some of these maslahats are clearly visible, some may not be clearly visible.

The reason and wisdom of the provisions concerning faith are the necessity of the existence of a creator. There are innumerable evidences to believe in Allah, angels, holy books, prophets, the Last Day, and fate. Man and the universe can only be created by a creator with unlimited power and knowledge. This creator commands man to believe in himself, in angels, in books, in prophets, in the Last Day and in fate.

Worship also has a variety of reasons and wisdom. The reason of the prayer being important part of the worship in certain times of the day, is considered a great wisdom that benefits the soul, body and society of man. The wisdom of Zakat is to cleanse the sins of Muslims that gives it out to the neediest and to meet the needs of the poor, and to ensure the redistribution of goods to the society in ameliorating hardship. Zakat is the expression of gratitude given from the rich to the poor within that underscore the Islamic concept of social-economic policy. The wisdom of fasting is to improve health situation of the human body and the increase faith of the believers. It further taught Muslims perseverance and wisdom of knowing or sharing a feeling of destitute or poor men within the society that cannot afford to be eating daily. In other words, fasting informed the rich and well to do persons that some people are living without the means to eat and therefore Allah in his infinite wisdom prescribed fasting to able bodied persons to make them feel or share the feelings of poor or neediest in the society. The wisdom of Hajj is to ensure the brotherhood of Muslims, to show the strength of Islam in the world.

In Islamic law, punishments have various reasons and wisdoms. The wisdom of the punishment is for the correction and deterrence in life. People will be afraid of misbehaving that will stop them from committing crime. Qisas punishments prevent people from committing crimes such as wounding and killing. Consumption or drinking alcohol or other prohibited substance are forbidden to protect human mind, body, family, society from deteriorating and catastrophe. Adultery is forbidden to protect the generation and family from serious ailments and wrath of God.

#### **G. Having the Principle of Convenience in Islamic law**

In accordance with the principle of convenience found in Islamic law, it abolished the customary provisions of previous legal systems. "Allah wishes you convenience, with no difficulty" (Qur'an, 2, 185) With the verses "Allah will not impose the burden that you cannot carry" (Qur'an, 2, 286). "In your religion is the convenience of" (Hanbel, Musned, V, 32). and "Make it easier, do not make it easier, give good news, ... " (Hanbel, Musned, V, 32.) The hadith explained the principle of convenience provided by Islam.

Due to the principle of simplicity, the language of law has been made simple to understand by everyone. The language of law should be free of artistic and literary expressions. Especially in education, it is very important that the language of law is easy to understand and simple.

One of the practices of the principle of convenience is the freedom of what is not prohibited. So the main thing is freedom; limitation and prohibition are exceptions. With the principle of freedom, Islamic law provides a general area of freedom for the people, and limitations are made when needed.

Another reflection of the principle of simplicity is to determine the general rules in Islamic law by verses and hadiths and to leave the details to the mujtahids. Although the verses and hadiths do not change, the opinions of mujtahids vary according to time and various conditions. In this way, lawyers interpret the law according to time and conditions and make people's lives easier. Furthermore, according to the principle of convenience in Islamic law, there are alternative provisions such as farz, wajib, sunnah, mustahab, mubah, azimet and ruhsat. In this way, people do not only deal with prohibitions or freedoms, but also have many alternative provisions.

#### **H. Religion, Ethics and the Rule of Law in Islamic Law**

The rules of religion and ethics along with the rules of law are also to regulate the life of people and society. The rule of law alone is not sufficient to regulate community life. If all social order rules are applied together, people can live in peace and happiness.

This rule, which is valid in the human legal systems, is also primarily applicable to Islamic law, a religious legal system. Because, in Islamic law, the rules of religion and ethics are the basis of law. Each of the rules of Islamic law is directly related to religion and morality.

In Islamic law, there is a unity of purpose between the rules of religion, morality and law. For example, acts of manslaughter, theft and extortion are sins in the sense of religion and are punished by acts of infidelity; it is considered to be bad in terms of morality and shame by society; in terms of law is considered to be illegal and punishable by material sanctions. Similarly, respect for the elderly and behaviors such as help to the poor are accepted in favor of religion and rewarded in the Hereafter; they are considered good in terms of morality and appreciated by society; it is also ordained by law.

If the rules of religion and ethics are not taken into consideration, the implementation of Islamic law becomes extremely difficult. An important part of human life is experienced outside the legal field. Unless there is a complaint, the private life of man is out of law. The life of society is outside the legal sphere until it threatens public order. However, in this area outside the law, the rules of religion and ethics continue to be applied. For this reason, after a decision on a dispute, the Prophet reminded the parties about the rules of religion and ethics: "I am only a human being. You are coming to me for trial. Maybe one of you can better defend his case. I judge him in his favor. In favor of whomever I take the right of his brother, I will set him apart from hell." Buhari, Şehadat 28, Hiyel 10, Ahkam 20; Müslim, Akdiye 4.) Again, the Prophet emphasizes the importance of religion and morality with the words "Mufti give you the fatwa, ask the heart of you" (Darimi, Büyü' 2; Hanbel, Musned IV, 194, 227, 228.).

#### **I. Islamic Law Being Civil and Liberal Law System**

Islamic law began and developed through the analogical activities of independent jurists without the intervention of the state. The first four caliphs can be seen as an exception to this. However, although the first four caliphs were heads of state, they were also mujtahid jurists (Okur, 2010, 28).

For this reason, Islamic law continued its independence and civilian character. During the Umayyads and Abbasids, the state did not play a leading role in the development of law. Islamic law was created with the private law of mujtahid jurists such as Abu Hanifa, Imam Malik and Imam Shafii (Berki, 1955, 30).

The development of independent mujtahid jurists has allowed Islamic law to be a civil law. The general character of the laws created by the state is that they are statesmen. On the other hand, the legal systems established by independent lawyers are civilian, libertarian and citizens.

In the Umayyad and Abbasid periods, Islamic jurists tried to protect the civil and libertarian character of Islamic law, and rejected the offer of administrative duties of the caliphs. For example, Abu Khanifa did not accept offer of judge by Abbasid caliph Mansur. Ibn Idris, Hafis b. Gıyas and Veki b. Al-Cerrah did not accept the offer of caliph Harun Rashid's judge's offer. Imam Malik considered it to be invalid allegiance that Umayyads received from people through pressure. The scholars, such as Abu Yusuf, who accepted duty of Kadi'l-kudat, have warned the rulers who left the justice. Again, Abu Yusuf wrote his work Kitabu'l-Harac in order to make the state activities in accordance with the law. This work was the first example of Nasihatname type books which emerged in later periods and guided the rulers (Ebu Zehra, 1986, 46).

The creation of Islamic law by mujtahid lawyers also shows that it is open to change. In Islamic law, the provisions concerning worship, marriage and divorce, inheritance and certain punishments are detailed in verses and hadiths. For this reason, the jurisprudence of jurists in these areas is narrower. The jurisprudence of jurists is very wide, since there are no detailed arrangements with verses and hadiths in other areas of the law. Therefore, this large area was the part of the change of Islamic law.

## CONCLUSION

As it is seen, Islamic law is an original legal system in terms of source and other features. Islamic law is a civil law developed with the efforts of lawyers who are not civil servants. Islamic law has bilateral sanctions in this world and in the hereafter. Having bilateral sanctions in this way increases the effectiveness of Islamic law. In short, Islamic law is divine, but it is a legal system developed with the efforts of mujtahid jurists.

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