Chapter - 4

Dr. Muhammad Hamidullah’s Views on Islamic Law
1. Definition of Law:

Dr. Muhammad Hamidullah defines the law as “the knowledge of what is for and upon one”. In other words, the law signifies science of the rights and obligations of man. At another place, he says that law means rule of conduct. But he further stated that every rule of conduct could not be part of law such as people do something under compulsion of their rulers, people act deliberately which are related to their own personal life and does not directly leave impact on the life of others, men act differently among themselves in their capacity of reasoning and choosing of an action etc.

2. Islamic Conception of Law:

In view of Dr. Muhammad Hamidullah, the Islamic conception of law may be derived from the Quranic verse:

الْآَنِيْنَُّ كَيْفَ كَبَّرَ اللَّهُ مَنْ أَدْرَكَ كَبْلَمَةً طَيِّبَةً كَسَحْرٍ طَيِّبٍ أُسْلِحَّهَا نَافِئًا وَفَرَعَهَا فِي السَّمَاءٍ (إِبْرَاهِيمٌ ٤۰)

(Seest thou not how Allah sets forth a parable? a goodly word like a goodly tree, whose root is firmly fixed, and its branches (reach) to the heavens). In other words, the source of Islamic law is a small seed but the tree which sprouts forth from it reaches the sky and its branches cover everything. If we
consider the Qur'ān and Hadīth as the root or the seed, we shall see that the tree sprouting forth from it, has become so strong with all its sprawling branches, that it is able to meet all human requirements till the end of time.4

3. Philosophy of Law:

Discussing the origin of law with reference to the Muslim jurists. Dr. Muhammad Hamidullah observed that the things may be divided mainly into two categories: good and evil. He also says that the man must always do what is good and keep away from what is evil and take special care of the intermediate stages like plausible, permissible and dislike.5

In materialistic world where everything is being changed and developed with time, it is often impossible to find out unmixed goods from mixed up material, sometimes, the things contains good and evil material. At many places, it is also possible to say that a given act contains neither good nor evil. So, what should be way to adopt unmixed good or abstain unmixed evil? In this situation, Dr. Muhammad Hamidullah says that predominance will decide the preference: a matter of predominant good will be recommended (Mustahab) and one of predominant evil discouraged (Makrūh). He also pointed out that, all divine orders are not of same category and he divided these orders of Islamic law into five categories.

1. Unmixed good will be ordained as an obligatory duty (Fardh)
2. Unmixed evil will be ordained as an obligatory prohibited (Harām)
3. A matter of predominant good will be recommended (Mustahab)

4. One of predominant evil will be discouraged (Makruh)

5. The matter where good and evil are equal or where one is unable to see either good or evil, law will leave it to the discretion and choice of the individual to act or not to act.6

4. Features of Islamic Law:

Dr. Muhammad Hamidullah has discussed important features of Islamic law. In his opinion the characteristics of Islamic law may be given as:

1. The Islamic law is based on the commands of Allah and it is quite different from man-made law. No human being is entitled to change it.7

2. Islamic law comprehends all aspects of human life. It deals with belief, prayers (worships) as well as society, politics, economics, criminal law and International law.8

3. Every action of material life which is being discussed under Islamic law is a means to achieve the spiritual value. For example, the worship of Allah is manifestation of relation between the worshipper and Allah and this action which is governed in Islamic law is a means to seek spiritual advancement. In the same way, payment of Zakát shows relation between man and man and this is also the means to seek spiritual value. Moreover, following the orders of a ruler is not only the obedience of the ruler but also means of acceptance of order of Allah and this action would bring reward of Allah for him.9
4. The scope of Islamic law is quite wide enough and its provisions are worthy to be applied in every period till the end of this world. The principle that makes it dynamic is *Ijtehād* which has the sanction of the Prophet Muhammad (SAW) as given in the *Hadīth* of Hazrat Muaz Ibn Jabal(R.A.).

5. The institution of Islam had never been under the exclusive control of ruler. It was actually under the jurisdiction of jurists or experts of Islamic law. Every jurist was required to express his opinion or deliver judgments in accordance with the *Qurʾān* and *Hadīth*. If he could not find the requisite guidance in any of these sources, he was permitted to decide cases through his own discretion or *qiyās*.

If legislation or law-making had been under the purview of state or government, it would have resulted in a very complicated situation. In that case he says, Islamic law would have been influenced by the political requirements or expediency of the state. Suppose, one is the law minister, he will attempt to enact the law under the requirements of government. Since, he is in ruling party: his party members would not oppose his action. As a result of which, the law will be affected by the opinions of majority. However, in Islamic law every jurist, as stated earlier, is free to give his views. If a person express his views, it is easier for other person to criticize him and give a different opinion. The law made on the basis of this free discussion will be beneficial for government as well as its subjects.
He further states that Islamic law governs both aspects of human life—material and spiritual. This is evident from the fact that the command for performance of prayer and payment of Zakát is given in the Holy Qur’ân in a single verse:

(13) (Establish service of worship and pay the tax, Zakát).

This means that when Islamic law ordains for the worship of Allah, at the same time, it also prescribes rules for paying Zakát. In short, we can say that Dr. Muhammad Hamidullah gives two main sections (spiritual and material) of Islamic law and in these two sections, the followings things are discussed:


5. Principles of Islamic Jurisprudence (Usûl al-Fiqh):

In view of Dr. Muhammad Hamidullah, usûl al-Fiqh, which literally means root or principles of Fiqh, may be defined as the knowledge of science of those rules which directly or indirectly provide guidance to the science of Fiqh. The usûl-e-fiqh discusses in detail the nature of sources as well as methodology of deriving legal points from them. The other problems which are dealt with in usûl-e-fiqh are: Who is real legislator? How laws of Islam are being formulated? Whether these can be changed, amended or abrogated or not?
6. Legislation and Amendment in the Law:

As regards the administration of justice, Dr. Muhammad Hamidullah is of the opinion that it is based on two judicial officials: Qâzi (Judge) and muftî (Jurist-consult). The muftî gives legal opinion about the concerned or disputed case and the Qâzi delivers judgment with the regard to the case. Qâzi and muftî were the main judicial officers of the Islamic state from very early period of Islamic history. Prophet Muhammad (SAW) appointed Abu Bakr (RA) as a muftî of Madinah and had told his companions that if any of them wanted to enquire about any legal problems, he should approach Hazrat Abu Bakr. Accordingly, companions used to consult him on legal matters. In cases about which ruling of the Prophet was available, Hazrat Abu Bakr merely reminded the companions about it. Besides, in the same period, Qâzi were also appointed outside of Madinah such as Hazrat Muaz Ibn Jabal as Qâzi of Yemen.

With regard to the changes in Islamic law, Dr. Muhammad Hamidullah was of the opinion that a law can be changed either by the law-maker himself or by an authority higher than him. No person of lesser authority can change the law. If Allah has given a command, He alone can change it. If the Prophet has pronounced a verdict, he or another Prophet can change it and indeed Allah may, but no person (other than a Prophet) can change a rule laid down by a Prophet. He, however, thought that a jurist was entitled to change or reject the legal opinion or verdict of another jurist.
He further explains the same point in this way; this is an established principle that a law revealed by Allah can not be changed by anyone except Him. No human being can change it. If he does so, he would be considered an atheist who does not believe in Allah. A Prophet can formulate rule about matters about which no clear guidance is available in the Holy Qurʾān. When such law is made up by Prophet at the discretion, it can be subsequently changed only by another Prophet and not any other person of such as king, a jurist or a reformer. But Allah can amend or abrogate a law made by a Prophet.\footnote{19}

7. Sources of Islamic Law:

With regard to the classification of the sources of Islamic law. Dr. Muhammad Hamidullah does not agree with those jurists who divide sources into two categories- primary and secondary. In his masterpiece, Muslim Conduct of State, he simply listed them\footnote{20} but in A History of Muslim Philosophy, he categorized them as divine and other sources\footnote{21}. In Khutbāt-e-Bhāwalpur, he classified them as permanent and temporary.\footnote{22} In this way, we can say that Dr. Hamidullah has definite view regarding the classification of Islamic sources. Dr. Muhammad Hamidullah has however discussed sources in detailed ways which are summarized here.

The Qurʾān:

The Qurʾān is the word of Allah. It is a collection and compilation of verses which were revealed from time to time on the Prophet Muhammad (SAW)
through the agency of angel Gabriel, which lasted for about twenty three years. The Prophet is only an intermediary for reception and communication of revelation. His role is neither of an author nor of compiler.²³

The first revelation came in Dec. 609 A.D., when the Prophet was staying in the cave of Hira. In this revelation, Allah gave the command to an unlettered person to read followed by praising the pen.²⁴

With regard to the preservation of the Qurʾan, Dr. Muhammad Hamidullah points out that there have been two methods of preservation viz: writing and learning by heart (memorizing). In his own words “It was the tradition of the Prophet Muhammad (SAW) that whenever he received the revelation, he called one of his literate companions and copied the text to him. After it, he immediately asked the writer to read out what he had taken down. This idea was to ensure perfect accuracy. Along with this idea, Prophet Muhammad (SAW) also ordered his companions to memorize the revealed text and recite it in daily prayers. So that he may be able to preserve verses of the Holy Qurʾan in his mind”.²⁵

In addition to the above, Prophet Muhammad (SAW) had also taken special steps for learning and memorizing of the Holy Qurʾan. He directed that every Muslim should learn the Qurʾan from reliable teacher. Initially, every Muslim was required to read and learn the Qurʾan from Prophet. If anyone had a manuscript, he had to recite from it in the presence of Prophet. If the manuscript contained any error, it was corrected by the Prophet himself, if not, then it was certified that the
manuscript was correct and was able to be used for memorizing. When Islam spread and number of Muslims increased, the Prophet appointed a few companions to teach the Qur’ān, in whose knowledge of the subject he had full confidence. This process of the reading and learning through the teacher came down to us and is applicable in these days.\textsuperscript{26}

With regard to the Qur’ān as source of Islamic law, Dr. Hamidullah was of the opinion that the Qur’ān is the first source of Islamic law and has rules for different spheres of human life. Thus, the Qur’ān guides man in all walks of life: spiritual, temporal, individual and collective and gives the best rules relating to socio-economic, penal and international matters. The Qur’ān is source of guidance for Muslims of every period. Even in the modern period, the problems faced by the Muslims can be solved under the guidelines of this Divine book.\textsuperscript{27}

\textit{Hadīth:}

Importance of Hadīth as a second basic source is well-known. Highlighting this significance of Hadīth, Dr. Muhammad Hamidullah has discussed important aspects of Hadīth. In his view, Hadīth means the saying and action of the Holy Prophet as well as practices of companions (Sahābah) explicitly or silently approved by him.\textsuperscript{28}

With regard to the importance of Hadīth in Islamic law, Dr. Hamidullah has quoted following verses of the Holy Qur’ān:
(Obey Allah and obey the messenger, and those charged with authority among you);

(Whatever the messenger giveth you; take it and whatever he forbiddeth abstain from it);

(Nor doth he speake of his own desire; it is naught save a revelation that is revealed);

(And verily in the messenger of Allah ye have a good example for him who looketh unto Allah and the last day and rememberth Allah much).

In view of these verses, he thinks that it is obligatory on the Muslims to follow the commands of the Prophet (SAW) just like the commands of Allah Ta‘ālā. He was of the opinion that if any one expresses his belief in the Qur‘ān, but does not accept Hadith of the Prophet (SAW), he would not be considered a Muslim.

Moreover, in his view, Hadith has also importance from the point of view
that it explains or gives details of the Quranic command. For example, the Qur'an says

\( \text{اِقْبِيَّ مَا الْصَّلْوَةَ} \) (Establish the service of worship) without giving the details of manners in which it should be performed. It is in the Hadith that the rules for performing prayer are given in detail. The Prophet (SAW) is reported to have said

\( \text{صَلُّوا كَمَا صَلَّيْتُ وَأٍّمَّيْنِيْ أَصَلُّيْ} \)

(Look at me, see how I worship, and follow me).\(^{31}\)

Dr. Hamidullah has divided Ahadith into two major categories: - 1. The personal collections of the companions of the Holy Prophet and 2. Official letters and documents of the Prophet (SAW). The official documents consisted of treaties, directives to tax-collectors and governors, letters of da'wah (preaching of Islam), charters, census report and the like.\(^{32}\)

With regard to writing and collection of Hadith, Dr. Hamidullah pointed out that the companions of the Prophet (SAW) had devoted themselves to memorize Hadith and some of them had also recorded many Ahadith. In his opinion, their efforts for preservation of Hadith is more valuable than what was done by the followers of the other Prophets in their times.\(^{33}\) He did not agree with Goldziher and other orientalists that the collection and compilation of Hadith was started in 3\(^{rd}\) century of Hijrah. In his view, such statements are baseless as it is conclusively proved that writing and recording of Hadith had started in the period of the Prophet (SAW) itself.\(^{34}\)
It is confirmed that a number of the companions had taken up the work of writing or recording of Hadith and prepared their own collections such as the Sahifah Sadiqah of Abdullah Ibn Amr Ibn al-Âs, which contained about one thousand traditions. This Sahifah was taught for several years and many of its Ahadith are recorded by Ibn Hanbal in Musnad. It is reported that on the request of his disciples, Abdullah Ibn Amr Ibn al-Âs used to bring out his collection, and showing them, he would say “that is what I recorded from the sayings and the practices of the Prophet (SAW)”. In the same way, Hamam Ibn Munabbih compiled a collection of 138 traditions entitled Sahifat al-Sahihah which had been taught to him by his teacher, Abu Hurairah, the famous companion of the Holy Prophet (SAW). It was prepared in the first half of the first century of Hijrah. The text of the same work was edited by Dr. Muhammad Hamidullah and published under the title of Sahifah Hamam Ibn Munabbih.35

Moreover, Dr. Muhammad Hamidullah has also cited several written documents of the Prophet’s time. Some of which were of legal nature such as text of the famous Charter of Madinah, clauses of agreement with different tribes and letters of emancipation of slaves. Significantly, many of these documents are available in the present days also as given by Dr. Hamidullah in his famous work al-Wathâ’iq al-Siyâsiyah.36
Practices of Companions of the Holy Prophet:

In view of Dr. Muhammad Hamidullah, the practices of the companions of the Holy Prophet (SAW) are also worthy to be included in the sources of Islamic law because they understood better the meaning of the Qur’ān and Hadith. They had observed very closely the practices of Prophet Muhammad (SAW) and were fully aware of the situation in which the Holy Qur’ān was revealed. He further stated that if any action of the companions goes against the tradition of Prophet Muhammad (SAW), it should be understood that their action was based on some other tradition of the Prophet Muhammad (SAW) because it is well-known that the companions could never go against the traditions or practices of the Prophet.37

Regarding the differences of opinion among companions on the matters about which there was no clear ruling in Hadith, Dr. Hamidullah says that in such situations preference will be given to the personal eminence of the concerned companion. For example, if there is conflict between the opinion of any of the first four Caliphs and other companions, the preference will be given to the first four Caliphs over the others.38
The Earlier Divine Books:

In view of Dr. Muhammad Hamidullah, the books revealed on the earlier Prophets are also sources of Islamic law. In support of his view, he quoted verses:

(That was our argument which we gave to Abraham (to use) against his people. We raise whom we will degree after degree. For Thy Lord is full of wisdom and knowledge. We gave him Isaac and Jacob, all we guided. And before him, we guided Noah and among his progeny David. and Solomon. and Jacob, and Joseph, and Moses, and Aaron: thus do we reward those who do good. And Zakariya and John, and Jesus and Elias: all in the rank of righteous. And Ismail and Elisha, and Jonas and Lot: and to all we gave favor above the nations: (to them) and to their fathers, and progeny and brethren, we chose them, and we guided them to a straight way. This is the guidance of Allah; he giveth that guidance
to whom He pleaseth, of His servants, if they were to join other gods with Him, all that they did would be vain for them. These were the men to whom we gave the book and (ability of) judgment and Prophethood, if these (their descendents) reject them. Behold! We shall entrust their charge to a new people who reject them not. Those were the (Prophets) who received Allah’s guidance. Follow the guidance they received, say no reward for this do I ask of you, this is but a reminder to the nations.

Explaining these verses, he pointed out that the messengers sent by Allah Ta’âla from Hazrat Adam to the last Prophet are to be respected just like the divine command revealed on them. According to him, the provisions of law of past messengers of Allah are to be followed and the last Prophet should also act on them under certain conditions. But, he thought that the earlier revelations would be accepted under the following conditions:

1. The revealed books should have come down to us in the original form.
2. These books must be free from any change or alteration.

*Ijma’:

Dr. Muhammad Hamidullah defines *Ijma* as consensus of the ‘*Ulamā’* (who are expert in Islamic jurisprudence) of any period on any legal problem. He thought that consensus of entire Muslim community was not necessary for the validity of *Ijma*. The consensus of those ‘*Ulamā’* would be valid who have
special interest in Islamic law and are experts in this field. If any one is entitled to
give his opinion, it is not necessary that it would be acceptable to other jurists.
Another jurist may differ from him. In such situations, a third jurist would decide
as to which of the two opinions is acceptable. In this way, in my opinion utmost
care should be taken in accepting one’s legal opinion.\(^{42}\)

In his opinion, validity of \(\text{i}j\text{m}\text{a}’\) is based on the following traditions of the
Holy Prophet (SAW)

1 “My people will never be unanimous in error”

2 “The hand of Allah is over the collectivity, and whoever quits it. is sent to
   hell”

3 “What Muslims agree to be good is also good in the sight of Allah”\(^{43}\)

With regard to the change of an earlier \(\text{i}j\text{m}\text{a}’\), Dr. Muhammad Hamidullah
agreed with Abul-Yusr al-Bazdawi(d. 493 A.H./ 1099 A.D.) and Imam al- Razi (d.
606 A.H./ 1209 A.D.), who believe that \(\text{i}j\text{m}\text{a}’\) is neither permanent nor
unchangeable. He says that a new \(\text{i}j\text{m}\text{a}’\) can cancel or abrogate an old one, exactly
in the same way as a new Prophet can change the rule of an old one. Because, a
rule formulated through consensus is quite different from a law given by Allah or
His Prophet (SAW), as the \(\text{i}j\text{m}\text{a}’\) is based on the opinion of human beings and we
are not bound to follow it forever. A law made by a man can be replaced by
another man-made law which is responsive to the demands of the changing
circumstances. At another place, he says that where there is a consensus on a certain issue, we accept that it is valid and applicable but it does not mean that no one can oppose it. If someone presents another view with arguments and other jurists accept his point of view, a new consensus comes into being. Thus it replaces the old Ijmâ'.

Dr. Muhammad Hamidullah was of the opinion that when Muslim jurists unanimously give their opinion under Ijmâ’ about any matter, this would have the same validity as “a verse of the Qur’ân or the most reliably proved tradition of the Prophet; and whoever denies its authority is to be considered an infidel”. There is enough scope for disagreement with this standpoint of Dr. Hamidullah. In my view an Ijmâ’ even the unanimous one, can not be considered at par with a verse of the Holy Qur’ân or Hadith of the Prophet (SAW).

Dr. Hamidullah is of the opinion that the first Ijmâ’ in Islamic history is related to the consensus of Sahâbah for waging war against those who refused to pay Zakât. He did not agree with those scholars who considered selection of Hazrat Abu Bakr (RA) as Caliph as the first Ijmâ’ in Islam because certain companions of the Prophet had expressed disagreement over this selection.

Ijtihâd:

Dr. Hamidullah defines Ijtihâd as the opinion of individual jurist expressed about the new problem. The Muslim jurists generally recognized Ijmâ’ and qiyâs as the third and fourth source of Islamic law after the Qur’ân and Hadith.
However, Dr. Muhammad Hamidullah considered *IJtehād* as the third source of Islamic law. In support of his view, he quoted the *Hadīth* of Hazrat Muaz Ibn Jabal in which *IJtehād* is mentioned as third source of Islamic law during the lifetime of the Prophet. In this connection, he pointed out that the *IJtehād* may be called *qiyaṣ, istidlāl, istihsān* and *istislah* with slightly different meanings. At another place, he further explains this as, the effort of legislation in case of different new situation made by the jurists is called with different terms. *IJtehād* is one, *Qiyaṣ* is another, *Istidlāl* is yet another and so there is also *Istislah*. Further discussion on *IJtehād* will be made in later Chapter 5- Dr. Muhammad Hamidullah’s Perception of *IJtehād*.

**Treaties:**

In view of Dr. Muhammad Hamidullah, the agreement concluded between the Prophet (SAW) and some people or tribes are also to be treated as source of Islamic law. He thinks that if a treaty comes into existence with mutual agreement between the two states, its terms and conditions will remain binding for the duration of the treaty and these will become the part of our law. He writes, “In this way, the conditions and obligations agreed upon and accepted by Islamic state would become part of Islamic law and state will be bound to follow them during the operative period of the treaty”.

With regards to the cases of conflict between the provisions of Islamic law and any clause of the treaty, Dr. Hamidullah clarified, “in connection with treaties,
it must be recognized once for all, that there are certain rules in Muslim law which are imperatively compulsory and for ever. These can not lose their binding force except when, and so long as, one is in extreme stress and unavoidable necessity. *Except one who is driven by necessity, neither craving nor transgressing, it is no sin for him* (2: 173), is oft-repeated Quranic provision. And hence the maxim (stress renders the forbidden permissible). Again, there are rules in Muslim law though which are not compulsory yet but their execution is praiseworthy. The treaties concluded under stress against the injunctions of Muslim law are binding only so long as the necessity remains.\(^{50}\)

In view of Dr. Muhammad Hamidullah, it is necessary for the validity of a treaty that it must be in written form bearing the date of writing and enforcement as well as period of remaining operative. Moreover, it must also include solemn promises for giving respect to their contents and enforcement of their clauses and have the signature of the authorized persons.\(^{51}\) With regard to the amendment or changes in treaty, Dr. Muhammad Hamidullah is of the opinion that it would be valid on the condition that the changes are effected through mutual consent of the parties concerned. No ruler or state is entitled to bring change in the content of a treaty unilaterally.\(^{52}\)

**Customs and Usage:**

Dr. Muhammad Hamidullah has also included customs and usages (*Urf*-wa *‘Adah*) in the sources of Islamic law, provided that it is not related to an act
forbidden by Islamic law. At another place, Dr. Hamidullah argued that at least the good customs could be accepted and bad ones be discarded because the Qur'an constantly commands to follow *ma'āruf* (good known to and recognized as such by everybody) and to abstain from *munkar* (evil known to and recognized as such by everybody). It will be better to quote original words of Dr. Hamidullah:

"The Qur'an constantly commands to follow *ma'āruf* (good known to and recognized as such by everybody) and to abstain from *munkar* (evil known to and recognized as such by everybody). This applies to, or at least includes, custom". 

It is noteworthy here that Dr. Muhammad Hamidullah traces the validity of customs in Islam to the time of Prophet Muhammad (SAW). He argues that during the early period of the Prophet when there were only few revealed verses, the Muslims followed the customs of Makkah. Secondly, the Prophet kept silent about many practices of his companions based on old traditions and customs. This also showed their lawfulness in view of the Prophet (SAW). He further states that this is well-known fact that the message of Islam, spread from the Holy cities of Makkah and Madinah, reached every nook and corner of the world and subsequently Muslim states were established in different parts of the Arab and non-Arab regions. As a result of these developments, the Muslims came into contact with the Jews, Christians, Greeks, Spanish, Persians, Buddhists and Hindus and gradually they adopted many local customs and usage. In this
connection, he pointed out that Caliph Umar (RA) had followed some points of Sassanid law especially relating to revenue administration. But as regards the Byzantine laws which were in force in Syria and Iraq, Caliph Umar (RA) thoroughly investigated them and modified those laws which were against the Islamic law. Thus the validity of customs or usage is conditional. These would not be acceptable in case they contravene any rule of the Shari'at. He also clarified that the custom is not a permanent source of Islamic law. Its validity is to be decided by the Muslim Jurists of every period.

Reciprocity:

In the administrative matter, Dr. Hamidullah recognized the practices or rules of other countries as a source of law, if accepted by the Muslim rulers. In this connection, he has given the example from the times of Caliph Umar (RA). It is reported that the governor of Syria enquired from the Caliph Umar (RA) about the rate of custom or transit duties to be collected from the foreigner traders. The Caliph directed him to collect this tax from them at the rate at which Muslims traders are charged in the country concerned. According to Dr. Hamidullah, the principle of reciprocity would be in operation until the government decides to change the prevailing practice or rule.

8. Development of Classical Schools of Islamic Jurisprudence:

Emergence and development of four schools of Islamic jurisprudence have great importance in the history of Islamic law. Dr. Hamidullah has discussed this
issue thoroughly and given his findings in different works especially in the Khutbāt-e-Bahāwalpur. He thought that the origin of the schools of Islamic jurisprudence may be traced back to some well-known jurists from amongst the companions of the Prophet, particularly Abdullah Ibn Masud (RA) and Abdullah Ibn Umar (RA).

Elaborating the point, he stated that the main centers of fiqh were Madinah and Kufah. Madinah had been the homeland of the companions of the Holy Prophet and many of them were well-known as jurists. But later, Kufah also arose as a center of Islamic learning especially fiqh. Yemeni people lived there. Yemen was considered the center of ancient civilization. Kufah was also ruled by Persians. After the city was conquered during the Caliphate of Hazrat Umar (RA), the famous jurist Hazrat Abdullah Ibn Masud (RA) was sent there as a teacher. Abdullah Ibn Masud started the teaching of fiqh to the people of Kufah. Many students and scholars got benefitted by his lectures (dars) including Alqamah al-Nakhai, a Yemeni student, who taught Ibrahim al-Nakhai. Ibrahim al-Nakhai’s disciples included Hammad who was teacher of Imam Abu Hanifah. Imam Abu Hanifah came to be known as a distinguished jurist of Kufah. Later, he became famous in the whole Muslim world. He was a non-Arab (Persia) jurist and was founder of Hanafi School of Islamic jurisprudence.

Another well-known companion of the Holy Prophet was Hazrat Abdullah Ibn Umar (d.692 A.D.) and the Maliki School is ascribed to him. Abdullah Ibn
Umar passed his life mostly in Hijaz and left many disciples. Of them, Nafi (a manumitted free slave) was the most renowned one. He had been teacher of Imam Malik, the founder of Maliki School of jurisprudence. Moreover Imam Shafii was the disciple of the Imam Malik and the former himself was teacher of the Imam Ahmad Ibn Hanbal.

9. Imam Abu Hanifah’s Contribution to Islamic Law:

There were many jurists in the time of Imam Abu Hanifah such as Imam Malik and al-Awzai, who worked for the codification of Islamic law, but their efforts were individual and limited ones. According to Dr. Muhammad Hamidullah it was Imam Abu Hanifah who first of all paid his attention to the codification of Islamic law. For this purpose, he constituted a committee, which included forty jurists from among his disciples such as Imam Abu Yusuf, Imam Muhammad Shaibani, Imam Zufar, Abdullah Ibn Mubarak, Fuzail Ibn Ayaz, Dawud Ibn Nasir, Waki’, Hasan Ibn Ziyad and Hafs. In view of Dr. Hamidullah, these jurists were excellent in Islamic fiqh and were capable of exercising ijtehad.

There had been also experts of different subject among them such as scholars of Tafsir, Hadith, Sirah, rhetoric, grammar, linguistics, logic, mathematics and commerce etc. It is also notable that Dr. Muhammad Hamidullah had discussed in detail the method adopted by Imam Abu Hanifah to codify the Islamic law. He pointed out that Abu Hanifah first used to put the problem before his disciples or members of the committee of the jurists and then asked for their opinion. He
himself also expressed his own opinion and examined the views and arguments put forward by the others. Sometimes discussion continued for several days even for over a month in certain cases. When all the points about the problem became clear, the secretary of the committee Imam Abu Yusuf wrote it down. Dr. Hamidullah further points out that Abu Hanifah first completed a book on daily prayers (Salât) and named it as Kitâb al-‘Arûs. He continued the work and compiled material on purification (Tahârat), economic transactions (Mu‘âmalât) and inheritance. In view of Dr. Hamidullah, Abu Hanifah was the first who compiled a monograph on inheritance and wrote on conditional contracts (Sharâ‘ît). He was also first, who rendered Islamic International law as an independent branch of Islamic law under the juridical term Siyar.

Another contribution of Abu Hanifah highlighted by Dr. Hamidullah is related to the Ijtihâd. Dr. Hamidullah says that Abu Hanifah wrote a book on râ‘e (opinion), which is known by the name of Kitâb al-Râ‘e (Book of considered opinion). In this book, he has explained, how to use reason to change law, to understand its intent and to interpret it.

10. Roman Law vs Islamic Law:

Sometimes, it is assumed that Islamic law has nothing in original and that many of its provisions are borrowed from the Roman law. According to some western scholars, when Islam came into contact with Byzantine Empire in Syria and Egypt, it adopted the law of Byzantine. Refuting this claim, Dr. Muhammad
Hamidullah pointed out that the assumption of the influence of Roman law on Islamic law can be ascertained only by a thorough study of the provisions of both the laws, otherwise such statements are unacceptable. In view of his findings, he came to the conclusion that in no way Islamic law borrowed any thing from the Roman law. So, it is a mere conjecture to say that the Roman law influenced Islamic law. But it is surprising that inspite of his categorical denial for the influence of Roman law on Islamic law he held the view that in civil transactions (Mu‘amalât), there appeared to be some influence of Roman law. According to him, it may be that during the early encounters of Muslims with the Roman people Syria and Egypt, they would have been influenced by the Roman law prevailed there about mutual transactions. He categorically stated that there was no impact of the Roman law in devotional services (Ibâdat), Penal law (Hudūd), law of inheritance and the law relating to lending money (Qarz), marriage, divorce and legitimacy and international affairs.  

Moreover, Dr. Hamidullah also stressed that the contents of the books of Roman law might be divided under three parts- Persons, Property and Acts. On the other hand the works on Islamic law contained, first of all, chapters on Ibâdat (prayer, fast, pilgrimage to Makkah and Zakât). This is followed by civil transactions (Mu‘amalât) and criminal law. No book of Roman law had discussion on Ibâdat.
Further, there is lot of difference in the terminology of Islamic law and Roman law. For example, the Roman law uses the term Jus for law, while under Islamic law the term *Fiqh* is being used. *Jus* means “rights” and the word *Fiqh* means “to know” “to understand”. The Muslims never used the term *jus* to define or interpret law. It may be also kept in view that the Roman law was written or codified in Latin and no Arabic translation of the Latin work on the Roman law was available till the second half of twentieth century. In short, Dr. Hamidullah thought that it was totally wrong to trace the origin of Islamic law to Roman law.
Notes and References

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9. Ibid., p. 1231; Muhammad Hamidullah, *Khutbāt-e-Bahāwalpur*, op. cit., p. 186


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18. Ibid., p. 145

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