

A RESEARCH REVIEW OF HALLAQ'S IDEOLOGY ABOUT EVOLUTION AND DEVELOPMENT OF ISLAMIC LAW DURING CALIPH'S PERIOD (632C.E-670C.E)

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Abstract

In our article "A Research Review of Hallaq's Ideology about Evolution of Islamic law in Prophetic Period (610 C.E- 632 C.E)' We described in detail the evolution of Islamic law from 1AH-10AH. According to Wael Hallaq, since this process of evolution continued, therefore, from 11AH to 40AH(632C.E-670C.E), the Caliphs played an important role in this evolution, in which the writing of Quran, collection of text, editing of the Qur'an, the derivation of rulings from it, their practical implementation and the most important feature of this caliph's period is that the concept of the theory of Consensus (ijma), Sunnah, Hadith and the use of opinion (later it was renamed as Ijtihad) was laid. All these sources became the basic components of the legal theories of post-Islamic law. Hallaq relied heavily on historical events in this regard, and he also worked with fabrication in the interpretation of these historical events. As a result, there are contradictions in his own statements at various points. Some baseless statements are also disclosed in his writings. In this regard, the sources of Hallaq's ideas are superficial and untrustworthy from the standpoint of Islamic research. The above-mentioned baseless notions of Hallaq regarding the evolution of Islamic law during the Caliphate period have been highlighted in the following article. A critical research review of his ideas has also been presented in this article.

Keywords: Evolution of Islamic law, Caliph's Period, Sources of Islamic law, Legal Theories.

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Introduction

The two sources of the evolution of Islamic law that are related to the pre-revelation of Prophethood, as described by Hallaq, are as follows:

1. Arabian Customary Law
2. Near Eastern Legal Culture

After the declaration of prophethood, Hallaq referred to the Qur'anic reforms as the third source. The article 'A critical study of Wael B Hallaq's understanding of Islamic law' contains the discussion about these three sources.ⁱ Hallaq's theory on the evolution of Islamic law in Prophethood is divided into two parts. The details of 1st part are available in the article 'A RESEARCH REVIEW OF HALLAQ'S "THEORY OF VARIATION OF ISLAMIC LAW"' ⁱⁱ While we have divided the second theory'' **The Theory of evolution of Islamic law''** into two phases. In the first phase there is only the description of evolution of Islamic law, while in the second phase, there is a description of "Evolution and Development of Islamic law". According to Hallaq's ideas, the details and critical review of the stages that Islamic law went through from 11AH-40AH are as follows during these two phases.

Evolution and Development of Islamic law (1st Period of 1st Phase: 11H To 40H)

There are several contradictions in ideas of Hallaq regarding development and nature of sources of Islamic law. In His opinion, The Quran is a man-made book and Sunna is an Arabic tradition and authority of caliphs is based on this concept of Sunna. But later on, he proves that The Quran itself supported the concept of Sunna and that caliph authority is political use of Arabian traditions. Similarly, he divided concept of Sunna, Sira or biography, hadith, caliph authority, theory of abrogation, role of Qadis and all other basic concepts into different stages and all these are contradictory to each other. ⁱⁱⁱ For example he thought that concept of story tellers and Qadis was given in garrison towns but later on he quoted examples of qadis from Abu Bakar's period, while his concept of garrison town was given in period of Umar I. Similarly, his concept of opinion or Ijtihad was developed during Umayyad's period but he uncourteously proved earlier those laws derived from The Quran were extracted by Ijtihad during Abu Bakar and Umar I period, i.e., punishment for drinking wine. All these are his assumptions regarding development and nature of sources of Islamic law. In Wael B. Hallaq's understanding of Islamic law, there are four steps of development of Islamic law. These are:

1. Evolution of Judiciary
2. Development of fiqh
3. Development of usul ul fiqh (legal theories)^{iv}
4. Formation of legal schools

However, here is given organized ideas of Hallaq regarding historical development of sources and theories of Islamic law.

Role of Companions of Prophet for development of law

In Hallaq's opinion after death of the Holy Prophet Peace be upon Him (11H / 632 C.E). His companions worked hard to propagate his message in all over the world. A concept of Authority was developed there to form a proper system of Islamic law. According to Hallaq, to build up authority of a person a concept of **Sunna** was present there in Arabia.^v

Hallaq repeatedly writes in all his books about the role of companions of Holy Prophet (PBUH) for development of Islamic law. Hallaq specially discussed the role of first four caliphs. He ignored the period of 4th caliph for development of law and only use the name of hazrat Ali (may Allah be pleased with him) as a qadi, appointed by Holy Prophet (SAW) towards different tribes of peninsula.^{vi} (It was not role of Hazrat Ali as caliph but only as a qadi. Here is also contradiction in Hallaq's ideology that qadi's concept was not developed from garrison towns in period of Umar 1. But it was still present there from prophetic period. While the role of 1st three caliphs is given below:

a) Period Of Abu Bakar

According to Hallaq's ideology three basic concepts regarding political and legal issues of Islam are related with this period^{vii} :

1. Selection as Caliph (Preliminary concept of Ijma)
2. Enforcement of laws
3. Collection of The Quran

Selection as Caliph

According to Hallaq, the Prophet (peace be upon him) did not solve the issue of succession in his lifetime. Therefore, it was the first issue for the new state and this decision was made by the majority in favor of Abu Bakar Siddique. Abu Bakar was appointed the first Caliph of Islam. He gave the most emphasis on the Prophet's Sunna, thus working on the following issues.

Enforcement of Islamic laws

According to Hallaq Abu Bakar's role about enforcement of law can be divided into three types:

1. Rulings about Drinking wine
2. The Wars against the rebels^{viii}
3. Addition of socio-religious culture of law.

According to Hallaq, in 1st case the rule of 40 lashes punishment was introduced by Abu Bakar. In 2nd case he fought with the rebels of different tribes and imposed Islamic law and order in whole of the Arab. In 3rd case following address of Abu Bakar is given much importance by Hallaq:

“When you enter the land, kill neither old man nor child. Establish a covenant with every city and people who receives you, give them your assurances and let them live according to their laws. Those who do not receive you, you are to fight, conducting yourselves carefully in accordance with the ordinances and upright laws transmitted to you from God, at the hands of our Prophet.”^{ix}

From this address he wants to prove that Islamic law is combination of different socio-religious cultures. His opinion has no worth because the behavior of Abu Bakar was not self-regulatory but it was based on The Quran o Sunna. The Holy Quran Says:

”لَا إِكْرَاهَ فِي الدِّينِ ۚ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ ۚ فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمِن بِاللَّهِ فَقَدِ اسْتَمْسَكَ
 بِالْعُرْوَةِ الْوُثْقَىٰ لَا انْفِصَامَ لَهَا ۗ وَاللَّهُ سَمِيعٌ عَلِيمٌ“

“There is no compulsion at all in religion; undoubtedly the right path has become very distinct from error; and whoever rejects faith in the devil (false deities) and believes in Allah has grasped a very firm handhold; it will never loosen; and Allah is All Hearing, All Knowing.”^x

Similarly ruling about drinking wine was also given by Prophet (صلى الله عليه وسلم). However, its implementation procedure was given a status of Ijtihad.

Failure in Collection of The Quran

According to Hallaq, The Quranic Text was not in Bookish form, Abu Bakar tried to collect it but failed. He has not put a single argument or evidence to prove his claim right. Why Hazrat Abu Bakar failed? What were the processes he used? What was the reason to collect the Quran? The first question is answerable for Hallaq. While others two are clearly explained from Islamic literature and books of Uloom ul Quran.

In Hallaq's opinion, there was no use of opinion or qiyas in Abu Bakar's period so, the rule of 40 lashes punishment was applicable for victims. While after that during the reign of Umar (1) 80 lashes penalty was fixed because of use of qiyas. It proves that the use of qiyas or ra'y was not started during Umayyads period or at the end of first century but it was used in caliphs' period as well. If the punishment of 80 lashes was based on Ijtihad, then how does this prove that the punishment of 40 lashes was not based on ijtiḥad or analogy?

b) Period Of Umar I

According to Hallaq's ideology four basic concepts regarding political and legal issues of Islam and development of judiciary are related with this period^{xi} :

1. **Appointment of Hazrat Umar as Caliph:** Hazrat Umar was nominated by Hazrat Abu Bakar. Hallaq called it new political world order (II). This world order was given by Umar I.^{xii} While he renamed the qur'anic reforms during Prophetic period as new political word order (I).^{xiii} It is clear here that, In Hallaq's opinion, the development of Islamic law is a gradual and variable process.
2. **Enforcement of law:** Firstly, Use of qiyas. The 80 lashes as punishment of drinking wine were enforced.
3. **Concept of Garrison towns:** It is fabrication of Hallaq^{xiv}, all his ideology about the **development of Islamic law** is based on this concept, and Muslim Juristic historical perspectives do not support it.
4. **Caliphal legislation and legislative intervention^{xv}:** Much of the caliph's legal authority rested on precedents, primarily the generally accepted customs and practices of earlier caliphs, the Prophet's close companions, and naturally the Prophet himself. Hallaq writes:

“In fact, every good model was meant to be imitated. Umar I is said to have advised Shurayh to see that his decisions are in

accordance with the provisions of the Qur'an, the rulings (but not yet the Sunna) of the Messenger of God, and the rulings of the "righteous leaders". There is no reason to believe this. The caliphs themselves did not follow the same sources for legal guidance.^{xvi}

It is misunderstanding of Hallaq. Quran itself gives authority to caliphs. As it is clear from following verse:

”يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ ۚ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا“

“O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result.”^{xvii}

c) Period of Uthman

According to Hallaq's ideology two basic concepts regarding the development of Islamic law are related with this period^{xviii} :

1. Selection based on the concept of Sunna 2. Compilation of The Quran

1. Selection based on the concept of Sunna

In Hallaq's opinion, Hazrat Uthman was selected as caliph because of acceptance to follow the Sunna of all his pioneers. It is historical background of Sunna given by Hallaq. It was not as a source of law at that time then how a sensitive matter of caliphal authority can be solved by this concept?

2. Compilation of The Quran

As it is earlier discussed that in Hallaq's opinion Abu Bakar was failed to compile the Quran, But Uthman in his caliphal period was succeeded to collect and compile it. It is also fabrication and misconception of Hallaq, because he did not explain and justify the process and reasons of collection and compilation of The Quran in Abu Bakar and Uthman period. He also did not justify and explain the reasons of their failure or succession in doing so.

Preliminary concept of Sunna

In Hallaq's point of view, the Concept of legal authority was based on the concept of Sunna. It was developed gradually. However, its basic concept was developed during the selection of Hazrat Usman. we have discussed it earlier. However, from Sunnaic perspective Hallaq has discussed the concept of Sunna in two ways:^{xix}

1. Introduction to Sunna 2. Historical development of Prophetic Sunna

1. Introduction to Sunna

In Hallaq's opinion, Sunna was an Arabian cultural and tribal tradition.^{xx} An understanding

of Sunna was developed by all tribes and their saints. This idea was applied as a legal device to create laws. The Muslim Umma also used it as a source of law and derived it from the Quran around the end of the first century. Following verses were supportive to this concept.

مَنْ يُطِيعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ ۖ وَمَنْ تَوَلَّىٰ فَمَا أَرْسَلْنَاكَ عَلَيْهِمْ حَفِيفًا^{xxi}

Whoever obeys the Noble Messenger has indeed obeyed Allah; and for those who turn away – We have not sent you as their saviour.

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا^{xxii}

And accept whatever the Noble Messenger gives you; and refrain from whatever he forbids you.

لَقَدْ كَانَ لَكُمْ فِي رَسُولِ اللَّهِ أُسْوَةٌ حَسَنَةٌ لِّمَن كَانَ يَرْجُو اللَّهَ وَالْيَوْمَ الْآخِرَ وَذَكَرَ اللَّهَ كَثِيرًا^{xxiii}

Indeed, following the Noble Messenger of Allah is better for you – for one who is confident of Allah and the Last Day, and remembers Allah much.

Hallaq himself has given references to the above-mentioned verses. How funny and strange that he gives references to the Qur'an which is related to the era of the Prophet (peace and blessings of Allah be upon him) while promoting the concept of Sunna or Hadith from the second century. In Hallaq's opinion, following steps took place during development of concept of Sunna or hadith.

- Development of concept of prophetic Sunna from Arabian culture, traditions and customs. It was supported by The Quranic verses. Some of them are given above.
- Development of concept of caliph's Sunna. From this concept of Sunna, all caliphs established their own Sunna. As we have discussed earlier that the selection of 3rd caliph Uthman was based on this concept of caliphal Sunna (authority to be followed).^{xxiv}
- The concept of garrison towns was developed in period of Umar I. Here a commander of town, a mosque, sermon of Friday prayer provided them opportunities to develop their own laws.^{xxv}
- Role of story tellers is most important for development of concept of Sunna and Sira. Story tellers and The Quran teachers were those people who played their role to explain legal authority of The Quran o Sunna based on biography of Prophet (Sira).^{xxvi}
- The proto qadis were supporters of qadis. They also played their role to develop judiciary in garrison towns.^{xxvii}
- The qadis were the actual players of this field. All developed judicial systems of Islam was organized and implemented by them.^{xxviii}

2. Historical development of Sunna

Hallaq's concept about Sunna may be divided into following phases.^{xxix}

- Four caliphs played their role to develop the concept of prophetic Sunna and their personal Sunna.
- There was a difference between concept of Sunna of different territories, i.e., Medina and Iraq etc.^{xxx}
- The concept of Sunna, Sira and hadith were separated at the end of 1st century.^{xxxi}

Graphical Representation

Here is given a graphical representation of Hallaq's ideology about above given concepts:

Prophetic Message (The Quran)



Use of concept of Sunnan by Caliphs



Development of concept of Sunna (Prophetic Sunna and Caliph's Authority)



Evolution of concept of Sira from Prophetic Sunna.



Evolution of ra'y or qiyas (Use of Legal Authority by Caliphs)

Conclusion

The preceding discussion demonstrates that both Hallaq's speculations are based on historical events that occurred between 11AH to 40AH. He refers to the stages of Islamic law and legal theories as "**Essential Attributes**" of Islamic law in order to present them in a systematic manner. In the next phase, what happened during the reign of Banu-Ummiyyah and Banu-Abbas is called "**Accidental Attributes**" by Hallaq. Because Hallaq believes in the continuous evolution and variation of Islamic law, in which jurists play an important role. This change, according to Hallaq, is bilateral, so there is a contradiction in Hallaq's own statements. To resolve this contradiction, fabrication is required, and Hallaq is exposed as a result of this fabrication. Because Hallaq's sources are Western scholars' books and theories, this problem remains in the research of all Western scholars. To avoid these misunderstandings and contradictions, it is necessary to understand the narratives of Muslim scholars while keeping their perspective and explanation in mind; otherwise, a solution to this problem is impossible.

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- ^{xiv} Misuse of reference is noticed here.
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