When someone is asked a question that what is a religion, the answer that one would expect is "Christianity, Judaism, Islam, Hinduism, Buddhism, Sikhism, Confucianism and Shinto and so on." Although if the question is rephrased a little and it is presented simply as what is religion, the answer is little more complex. We begin with describing the word religion. It is derived from Latin word *religio*. This had a variety of interconnected meanings. Originally, it seems to have referred to fear or reverence for God or the gods, then later to the rites offered to them. Indeed, there is some confusion about whence *religio* originates. It may come from *relegere*, 'to gather things together' or 'to pass over things repeatedly.' If so, that would indicate religion's concern for, some would say obsession with, establishing rites and rituals and reflecting on past precedent and customary practice. However, most scholars think that it derives from *religare*, 'to bind things together.' That would emphasize religion's communal demands. "Religion is not just personal piety, though it is that too, but draws people into common rites, practices and beliefs." Religion is a set of common beliefs and practices generally held by a group of people, often codified as prayer, ritual, and religious law. Whether it is the Hindu law, Sharia, Halakha or the Ten Commandments, it has existed in every religion and has been studied rigorously and developed over the course of centuries. A religious school of law can be thought of as the ordering principle of reality. It would include codes of ethics and morality which are upheld and required by God. (Lewis 1976)

This research is primarily based upon how the Islamic law has developed over fourteen centuries and what are the challenges that it faces now. It discusses the schools of thoughts that originated during the so called golden age of Muslims where *fiqh* and *sharia’h* was vastly studied and compared and contrasted with prevalent faiths and religions of the time. The prime purpose of my effort is to present an Islam which is very accommodating and rational rather than assertive and illogical.

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The religion Islam originated in the desert of Arabia in the city of Mecca. The Arab society was based on tribal loyalties and these, in turn, arose from blood kinship, adoption and affiliations. The norms of the time, as it might not come as a surprise to a historian, were tribal revenge, rivalry and plunder. Their family structure was week and women were not treated with the best of conduct. Despite this type of social structure, the law was not something that was in its premature stages. There were laws governing relationships between tribes. Oaussama Arabi states that "Makkah and Madinah were trading centres and market transactions were governed by the customary law of property, contract and obligations." ¹ With the revelation of Islam in 610 AD, however, the Arabian peninsula saw far-reaching modifications that not only changed the life of the Arabs but also the future course of history. Over time, the primitive law of Arabia was gradually converted into a mature legal system that served many nations and people.

The basic sources for Islamic law are Quran and the Sunna. *Fiqh* and *Sharia'h* originate from Quran and Sunna. Both terms are often used interchangeably but there is a distinction between the two. The literal meaning of *Sharia'h* is road to the watering place or path or, in explanatory sense, the path to be followed. In technical sense, it is the totality of God's commands or as Muhammad Khan defines it, "Shariat means matters which would not have been known but for the communications made to us by the Lawgiver."² On the other hand Fiqh refers to human reasoning, knowledge and understanding. According to Hashim Kamali "Fiqh is a rational endeavor and largely a product of speculative reasoning, which does not command the same authority as Sharia'h."³ Thus, the path of Sharia'h has been laid down by God and His prophet whereas Fiqh is the result of human endeavor. Fiqh signifies science of law and Shariat is the divinely ordained path of rectitude. It is however difficult to make a sharp distinction between the two terms as the law in Islam is so intermixed that even a pure secular act which is in accordance with texts gets religious merit and blessings of God. Therefore, in practice both terms are used synonymously as the criterion of all human actions, whether in the Sharia'h or Fiqh; seeking the approval of God by conforming to an ideally perfect code. As both terms have already been defined and explained, it would be easy to see that Sharia'h has the "clear rulings on the fundamentals of Islam: its basic moral values and practical duties such as prayers, fasting, legal alms, the Hajj and other devotional matters."⁴ Its decisions are based upon what is lawful (halal) or unlawful (haram). But in other questions like criminal law, with the exception of
some prescribed punishments, Sharia'h remains flexible and provides only general guidelines. Fiqh, on the other hand, is knowledge of practical rules as derived from Quran and the Sunnah. "The practicalities of conduct are evaluated on a scale of five values; obligatory, recommended, permissible, reprehensible and forbidden."5 A very important idea to understand is that although most of the Islamic law and jurisdiction is based upon human reasoning, none of it goes against the basic sources of Law; the Quran and the Sunnah.

The history of Islamic law is divided into different time periods. The divisions of time periods vary with historians but generally the history of Islamic law is divided into seven periods. The life of Holy Prophet, the period of Rightly Guided Caliphs, the period of Tabi'in (followers), the rise of the four schools of Law, the period of maturing of the legal system, the age of Qanun and codification and finally the period of colonization onwards. The first period commences with the first revelation and ends with the final revelation (610 AD to 632 AD). There were only two sources of Law in this period; the Quran and the Sunnah. The Quran was revealed over a period of a little over twenty two years of which twelve years represent the period where the Prophet was in Mecca and the remaining ten years fall within the Medinan period. The laws laid down in the Quran covered the position of women, children, orphans and the weak; restrictions on the laxity of morals and strengthening of the marriage. Most of these laws were revealed in a gradual manner in response to issues and cases faced by the Muslims. The second source of law was the Sunnah. Like Quran, Sunnah too was laid down in response to actual cases of the society. Sunnah was not a written text during this period, however, it was later compiled in books by different Muhaddiths. Fiqh was not developed as an independent subject in this period. Law was clothed in the general ethical and moral teachings of the Sharia'h.

The second period begins with the death of the Holy Prophet in 633 AD and ends with the commencement of the reign of Mu'awiyah, the first Umayyad caliph in 663 AD. During this period Islam spread rapidly out of the vicinity of Mecca and Medina. This meant that the legal system of Islam which had just started developing would meet several different legal systems and would have to modify itself to meet the needs of the people that Muslims had conquered. This, for obvious reasons, influenced the growth of Fiqh. Another source of law was added. In addition to Quran and Sunnah, Ijma was practiced. Ijma means consensus of opinion. This arose from the practice of the Orthodox Caliphs of consulting the
Companions on important issues. Although some of the Companions were using other methods too like *qiyaṣ*, *istihsan* and *maslahah* but they were not known by these names at this time. Quran was collected and compiled during this time and further some rules could be discerned in the practice of the Companions with respect to the acceptance of traditions, however, the companions in this period were very strict in accepting traditions. "It was in this period that the foundations of the Islamic legal system were refined and developed. A large number of legal principles were laid down and established"⁶.

The third period begins in 663 AD and extends to the mid eighth century. The entire period, then, falls within the rule of Bani Umayya or the Umayyad Dynasty. They concentrated on waging wars against the Byzantine Empire and other oppositions and their regulations were concerned with the fields of the law of war. The use of analogy and *istihsan* became much more systematic towards the end of this period through the methods of the founders of the early schools. With the expansion of Muslim land and population, the occurrence of *IJMA* with the participation of the jurists of the *umma* became difficult and was now confined to the *IJMA* of the jurists of a region. This gave birth to different schools of law and the development of the major schools of law began in this period. The Umayyads imposed pure Islamic penalties as laid down in the Quran and they took important steps in appointing *Qazis*, Arabic for Judge. By the same token, however, "the governor still kept the power of reserving any lawsuit for himself or dismissing Qazis at his own will"⁷.

The tradition of the Holy Prophet called *Hadiths* became widespread as they were one of the only two sources of Islamic law. The need for knowing traditions had also increased due to new cases coming up for decision. The area in which knowledgeable companions lived became centres for learning of *fiqh*. The two most revered jurists of Islamic legal history, Abu Hanifa and Malik ibn Anas were born during this period. Abu Hanifa was about 52 years of age towards the close of this period and Malik ibn Anas was almost 40 years old. These two jurists were the founders of two of the four Sunni schools of law practiced today, the Hanafi school of law and the Maliki school of law. Collectively, these early schools decided such a large number of cases that the foundations of Islamic law as a legal system were firmly laid.

The major growth of Islamic law, however, occurred in the fourth period of the history of Islamic law which spans more than two hundred years. It begins after the Umayyad dynasty in 750 AD and continues up to 955 AD.
This period stands out compared to other periods for different reasons. The primary reason being that *fiqh* flourished in this period and achieved maturity. Compilation of all kinds of knowledge took place, the most remarkable being that of *fiqh*. The remaining schools of *fiqh* were formed in this period and established. The Abbasids had overthrown the Umayyads from all but Spain. One of the major steps that the Abbasids took towards Islamic judicial system was to make the office of *Qazi* permanent. Muhammad Qasim Zaman writes in his paper, "although this institution existed under the Umayyads but under the Abbasids it became a rule that Qazi had to be expert in Sharia". There were many factors which had an impact on growth of *fiqh* during this period. The most important of these were: the concern of the Abbasids for *fiqh* and fuqaha (masters of *fiqh*), most of whom were appointed Qazis. There was a freedom to express juristic opinions; the knowledge movement made unrivalled progress in every field leading to compilation and translation of innumerable pieces of knowledge. The Muslim scholars in general and fuqaha, in particular, took great advantage of these developments. Although the compilation of *fiqh* had begun towards the end of the Umayyad period, a great example of which is Malik bin Anas's *Muwatta*, major works of Islamic judicial history would take place in this period. There was a sea of knowledge which when facilitated by the Abbasid caliphs and governors, took shapes of books and huge volumes which, to this day remain guidelines for Islamic jurisprudence. Ibrahim al- Nikha'i collected the opinions of his teacher. This was followed by Abu Yusuf's *Kitab al-Kharaj*. Imam Muhammad al-Shaybani wrote *Zahir al- Riwayah* which determined the shape of all future works on Islamic law. As all of these works are huge, historical evidence suggests that the work must have commenced shortly after the death of Abu Hanifah in 772 AD. "Al-Shafi'i was another jurist belonging to the Quraish tribe and born in Ghaza. He wrote his first book on *usul al-fiqh* named al-Risalah in, what is believed to be, the last six years of his life." He was primarily a traditionalist and collected around 40,000 traditions in the six volumes of his *Musnad*. His school was later developed by his students.

During this period, *fiqh* became an independent science in which great thinkers specialized. Islamic history and history in general is witness to the achievements of these scholars. *Usul al fiqh* was also laid down as a science systematically. The four different schools of law that developed during this period simultaneously regarded Quran and Sunnah as their fundamental source of inference. The difference between them existed only because of the way different scholars interpreted the above
mentioned sources and applied it to other areas of law mainly because of their geographical, social and cultural norms and backgrounds. The Hanafi school traces its roots to Kufa, a city in Iraq. The Maliki school traces its origin to Medina or Hejaz, in general. The founder of Shafi'i school, al-Shafi'i although born in Ghaza lived in several cities during his life. Same goes with the founder of Hanbali school, Ahmad ibn Hanbal, although a resident of Baghdad, he traveled several cities collecting traditions of the Prophet. "So the notion that the only difference among the schools was because of difference in interpretation because of social and cultural differences is supported by the places of practice of these jurists. There were three other Sunni schools of law as well which are now extinct."

These include the Awaza'I, the Zahiri and the school of al-Tabari. There might be several reasons for these schools not flourishing. Marion Katz, a German historian states, "most of the schools did not accept analogy as a source of law, and this could be the reason for their extinction". "The doctrine of reasoning in Shia Islam is different from that of the Sunnis. For the Sunnis, divine revelation ended with the death of the prophet. For the Shiite, divine revelation continued to be transmitted after the death of the Prophet through Imams". This is reflected in the Shiite definition of Sunna, which includes acts and sayings of Prophets and Imams.

The fifth period extends from 970 AD to fourteenth century AD. Many writers have often labeled this period as that of stagnation or taqlid. Taqlid means to follow whatever has been ordered. Thus this period is regarded as a period of no development at all in Islamic judiciary. These labels do great injustice to the great minds of Muslims who lived in this period. This was the age of great systematizers. It was through their efforts that the Islamic legal system reached full maturity. This period witnessed the greatest mind, al -Jassas, al-Marwadi, al-Shirazi, Ibn Rushd, al-Ghazali and al-Maqdisi to name just a few. It is also that some of the doctrines and movements that may irritate some modern minds were also the product of this age. For example, taqlid, as a doctrine was formulated during this period.

The sixth period may be said to extend from the fourteenth century AD to the seventeenth century before the advent of colonization. "In this period some attempts were made to modify laws." Two outstanding examples are provided by the Ottomans in Turkey and the Mughals in the Indian subcontinent, especially the role of Aurangzeb Alamgir. The administration of justice within the Islamic legal system was carried out from the start through two cooperating spheres. "The state was responsible
for military, fiscal matters and crimes in general, while the jurists dealt with matters of personal law, waqfs, commerce and the *hudud* penalties."^{14} The authority exercised by the state was called siyasah. This was a wide area and covered almost every area that the *fiqaha* did not deal with. The *qadis* had their own courts and were more or less autonomous. A code means a set of laws promulgated and enforced by the state. In that sense there had never been any codification in Islamic law. The first real attempts at codification were made by the Ottoman rulers. These dealt mainly with the criminal law and were called *qanun namahs*. The process reached its peak during the ruler ship of Suleiman. Aurangzeb Alamgir, a Mughal Emperor in the Indian subcontinent made some efforts at codification too. He ruled in the 17th century. "He issued *firmans* relating to *ta'zirs*, but his major contribution was in the area of *Sharia'h* law based on the *Zahir al-Rawayah*, a book on law by *Imam al-Shaybani*.^{15} He appointed a commission headed by the Nizam of India. The result was the *Fatawa Alamgiri*. It is a comprehensive work based on the model of the *Hidayah* and comprises of six volumes. This, however, was not a code in the modern sense of the term as it was not binding upon the subjects.

The seventh period begins after the advent of colonization which saw the replacement of Islamic laws by western laws. Only the areas of personal laws were left intact. In Turkey, European laws were adopted by choice. It started in 1850 and contains examples of dropping shari'i penalties and permitting the taking of interest. "In India, the British rulers permitted the application of personal laws and a law was passed in 1772 that provided that the *Sharia'h* should be applied to all cases relating to inheritance, marriage and other personal matters."^{16} In Egypt, the Shafi'i law had been the official law, with some interruptions, till the Ottoman rulers made Hanafi law the official law of the country. In 1874, however, after independence from Turkey, the National Civil code was enacted and Maliki and Shafi'i laws were reintroduced.
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