

# The Divine Laws of Pre-Islamic Nations as a Source of Law and Their Issues in Islamic Jurisprudence

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## Abstract

In this study, we addressed the principle of the authority of previous religious laws, clarifying the points of contention surrounding it. We explained that the disagreement pertains to the rulings from previous laws narrated by God or His Messenger as historical accounts, without any indication in our Sharia that such rulings are binding upon us as they were upon them, or that they have been abrogated, as exemplified in the verse: "For that reason, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely." We also noted that the scholarly disagreement regarding this principle traces back to the question of whether the Prophet (peace be upon him) adhered to the previous religious laws before his prophethood. This issue, however, holds no significant relevance in the field of Islamic legal theory. Additionally, scholars differ on whether he (peace be upon him) and his community were bound by such laws after the advent of Islam. Some scholars view this disagreement as merely verbal with no real impact on legal rulings, arguing that those who invoke the authority of previous laws often support their stance with additional evidence from Islamic law itself. However, other scholars, particularly those well-versed in legal theory, assert that the laws of previous nations are applicable to us unless specifically abrogated by our Sharia. We provided several examples of legal rulings derived from previous religious laws, particularly those found in the Quran. The Sunnah is also not exempt from such instances, reinforcing the view that this disagreement is substantive and yields practical outcomes in legal rulings, rather than being merely verbal as some scholars suggest.

**Keywords:**

## 1. Introduction

It is well known that the rulings in every divine law are divided into two categories: fundamentals and branches. The fundamentals pertain to belief in God, His names and attributes, belief in resurrection, judgment, Paradise, Hell, and submission to God alone, dedicating worship exclusively to Him. These fundamentals have been agreed upon by all the prophets' laws, as stated by Allah: "Indeed, the religion in the sight of Allah is Islam" (Quran 3:19), and "And whoever seeks a religion other than Islam, it will never be accepted of him, and in the Hereafter, he will be among the losers" (Quran 3:85).

As for the branches, they differ among the various divine laws, and it is these branches that are the focus of this principle. The discussion around them can be addressed from two perspectives:

1. The first perspective: The consideration of what the Prophet (peace be upon him) adhered to before revelation. This issue is of little benefit for the jurist and does not require deep examination. It also holds no significant place in the field of legal theory (Usul al-Fiqh), as noted by Imam al-Mazari, except in its relation to refuting the Mu'tazila, who base their views on rational good and evil.

2. The second perspective: Whether we are bound by the laws of those who came before us after our Prophet (peace be upon him) was sent. Scholars have differed on this as well; some say we are obligated to follow those laws, while others say we are not.

The meaning of being bound by the laws of previous nations is that we take them as evidence for establishing rulings, since legal rulings are only established through evidence. It is well known that the agreed-upon sources of evidence are four: the Quran, the Sunnah, consensus (ijma'), and analogy (qiyas), though there is minor disagreement regarding the last one. As for the disputed sources of evidence, some scholars have expanded them to over forty, including: presumption of continuity (istishab), juristic preference (istihsan), the statement of a Companion, public interest (masalih mursalah), blocking the means to evil (sadd al-dhara'i'), custom ('urf), and the laws of previous nations, which we will examine in this study. Before addressing the differences among legal theorists on this issue and the impact of their differences on Islamic jurisprudence, it is necessary to define this principle and clarify the point of contention. This will be discussed through three sections:

- Section 1: Definition of the laws of previous nations and clarifying the point of contention.
- Section 2: The opinions of legal theorists regarding the laws of previous nations and their evidence.
- Section 3: Issues related to the laws of previous nations in Islamic jurisprudence.
- Section One: Definition of the Laws of Previous Nations and Clarifying the Point of Contention

## **First: The Definition of "Shar‘ Man Qablana" (Laws of Previous Nations) in Language and Terminology:**

### **1. Definition of "Shar'" in Language:**

According to the Mu'jam Maqayis al-Lugha, the root of the word "shīn," "rā," and "'ayn" is one fundamental meaning, which is something that opens up with an extension. From this comes the word "sharī'a," which refers to the place where water is drawn by those in need, and from this is derived the term "sharī'a" in the context of religion. Allah says: "To each of you We prescribed a law and a method" (Quran 5:48), and also: "Then We put you on a clear way of command" (Quran 45:18). Thus, "sharī'a" refers to what Allah has legislated for His servants regarding religion. "Shar'a" in verb form means to legislate or prescribe.

### **2. Definition of "Shar'" in Terminology:**

The word "Shar'" has been defined similarly by various scholars, with one of the most prominent definitions being that of Ibn Hazm, who said: "Sharī'a is what Allah the Exalted has legislated

through His Prophet (peace be upon him) concerning religion, and through the prophets before him.”

### 3. Definition of "Shar‘ Man Qablana" (Laws of Previous Nations) in Terminology as a Proper Noun:

There is no specific definition of "Shar‘ Man Qablana" from early scholars, possibly due to the clarity of its meaning. However, some contemporary scholars have provided the following definitions:

a. "Shar‘ Man Qablana" refers to “the rulings of those previous divine laws that were conveyed to us, which were binding on their respective peoples as the law of Allah for them, and which their messengers clarified for them.”

b. "Shar‘ Man Qablana" also refers to “the legal rulings prescribed in the laws of the prophets and messengers prior to our Prophet Muhammad (peace be upon him), as reported by the Prophet (peace be upon him) either in the Quran or through authentic hadith, and which were not abrogated by Islamic law.”

#### **Second: Clarifying the Point of Contention**

When the Quran or authentic Sunnah narrates a legal ruling prescribed by Allah to the nations before us, conveyed through their prophets, and explicitly states that it is binding upon us just as it was upon them, there is no disagreement that such a ruling is part of our Shariah and is obligatory to follow. This is confirmed by the validation of our own Shariah. An example of this is Allah’s statement: "O you who have believed, fasting has been prescribed for you as it was prescribed for those before you" (Quran 2:183), and His statement: "And We ordained for them therein a life for a life" (Quran 5:45), which is confirmed by the command: "O you who have believed, retribution is prescribed for you in cases of murder" (Quran 2:178).

Similarly, if the Quran or authentic Sunnah recounts a legal ruling and there is clear evidence from our Shariah that it has been abrogated, there is also no disagreement that it is not applicable to us. This is supported by the abrogating evidence within our own legal system. For example, in the Shariah of Moses, a sinner could only atone for their sin by taking their own life, or a garment contaminated by impurity could only be purified by cutting off the affected part. These and other rulings were heavy burdens imposed on previous nations, which Allah has lifted from us.

The disagreement arises in the third case: when the Quran or Sunnah narrates rulings from previous legal systems as historical accounts, but without any explicit indication in our Shariah that these rulings are either binding upon us as they were upon them, or that they have been abrogated. For example, Allah’s statement: "Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely" (Quran 5:32), and His statement: "And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds, legal retribution" (Quran 5:45). Another example is the statement in the story of Moses: "He said, 'Indeed, I wish to marry one of these, my two daughters, to you on the condition that you serve me for eight years; but if you complete ten, it will be [as a favor] from you. And I do not wish to put you in difficulty. You will find me, if Allah wills, from among the righteous'" (Quran 28:27).

**This final aspect is the focus of our study, which we will examine in the following section:**

## **Section Two: The Schools of Thought of the Usuliyyin (Principles of Islamic Jurisprudence Scholars) Regarding This Principle and Their Evidence**

The scholars of Usul al-Fiqh (Islamic jurisprudence) differed regarding the laws from previous nations that have been mentioned in our Shariah as being part of the legal systems of earlier communities, but without explicit clarification in our Shariah regarding whether we are obligated to follow them, whether they have been nullified, or whether they are still binding. Are we required to abide by them or not? This debate has given rise to three primary opinions:

### **The First Opinion and Its Evidence:**

Malik, the majority of his followers, the majority of the Hanafis, the Hanbalis, some Shafi'is, and the most well-known opinion attributed to Ahmad held that we are obligated to follow the laws of previous nations. The adherents of this view differed, however, regarding which Prophet's Shariah we are bound to follow. Some said we are bound to follow the Shariah of Ibrahim, others said it is that of Musa, others Isa, and still others said Nuh.

Within this opinion, the scholars expressed different views. Some argued that we are bound by the laws of previous nations because they have become part of the Shariah of our Prophet Muhammad (peace be upon him). Others contended that we are bound by the previous laws simply because they were the laws of the previous prophets. Still, others made a more general statement, saying that we are bound by the laws of previous nations, without specifying either of the previous considerations. The second view is typically attributed to the Hanafis, while the third view is generally understood to align with the first view because its proponents seem to intend that meaning. The first view is also attributed to the majority of the Hanafis, as well as to Malik and many of his followers, and to the Shafi'is.

Imam al-Mazari did not definitively include Nuh among the prophets whose laws we may be bound to follow. He said: "We previously mentioned that it has been said in some opinions that the Prophet (peace be upon him) before his mission was following the Shariah of Nuh, as Abu al-Ma'ali stated here. My understanding is that this view, which was mentioned earlier, should be reconsidered." This was confirmed by al-Ghazali in his work al-Mankhul.

**The proponents of this opinion provided numerous pieces of evidence from the Qur'an and the Sunnah:**

**As for the Qur'an, they cited several verses, including:**

A. The statement of Allah, "Those are the ones whom Allah has guided, so from their guidance take an example. Say, 'I do not ask of you for it any reward; it is but a reminder for the worlds.'" (Qur'an 6:90). The reasoning here is that Allah commanded the Prophet to follow their guidance and their Shariah, thus necessitating his adherence to it.

However, this interpretation was contested with the argument that the intention behind this verse is to follow the paths of monotheism and faith in Allah. This is further supported by the inclusion of individuals like Yusuf, who had no specific Shariah but was nonetheless a monotheist. Therefore, if we restrict the concept of following to the paths of monotheism, it encompasses everyone.

B. The statement of Allah, "He has ordained for you in religion what He enjoined upon Nuh" (Qur'an 42:13). This indicates the obligation to follow the Shariah of Nuh.

C. The statement of Allah, "Then We revealed to you, 'Follow the religion of Ibrahim, inclining toward truth, and he was not of the polytheists.'" (Qur'an 16:123). Here, the command to follow the religion of Ibrahim implies an obligation.

Imam al-Mazari objected to these two verses, just as he had to the previous one, stating, "These verses and similar ones that we mention are understood to pertain to following the principles of monotheism and belief in Allah, the Exalted."

In response to these objections, al-Shanqiti argued: "The interpretation of guidance in the verse 'So from their guidance take an example' and the religion in the verse 'He has ordained for you in religion' as being limited to monotheism and not extending to practical branches is not acceptable. The first is refuted by what al-Bukhari narrated in his Sahih, in the Tafsir of Surah Sad, where Mujahid asked Ibn Abbas: 'From where did you derive the prostration in Surah Sad?' He replied: 'Do you not read: 'And of his descendants, Dawud...' until the verse 'Those are the ones whom Allah has guided, so from their guidance take an example?' Dawud prostrated upon it, and so did the Messenger of Allah (peace be upon him).'

This is a clear and authentic statement from Ibn Abbas, indicating that the Prophet (peace be upon him) included the prostration of recitation in the guidance mentioned in the verse 'So from their guidance take an example,' and it is well-known that the prostration of recitation is a branch of practical rulings and not a fundamental principle.

As for the second argument, it is based on the fact that the Prophet (peace be upon him) explicitly stated in the well-known and authentic Hadith of Gabriel that the term "religion" encompasses Islam, faith, and excellence (ihsan). He said, "This is Gabriel, who has come to teach you your religion." Additionally, Allah stated: "Indeed, the religion in the sight of Allah is Islam" (Qur'an 3:19), and "And whoever desires a religion other than Islam, it will never be accepted from him..." (Qur'an 3:85).

The Prophet (peace be upon him) clarified in the aforementioned Hadith that Islam includes practical matters such as prayer, zakat, fasting, and pilgrimage. In the widely accepted Hadith of Ibn Umar, he said, "Islam is built upon five [pillars]." No one has claimed that Islam pertains exclusively to beliefs without practical matters. This indicates that the term "religion" in the verse "He has ordained for you in religion what He enjoined upon Nuh" (Qur'an 42:13) is quite evident, as the best interpretation of the Qur'an is found in the Book of Allah and the Sunnah of His Messenger (peace be upon him).

D. Furthermore, Allah stated: "Indeed, there has certainly been for you in [the example of] Ibrahim and those with him a good example..." (Qur'an 60:4). Ibn al-Arabi commented, "This is a clear text supporting the emulation of Ibrahim (peace be upon him) in his actions. This validates that the Shariah of those who came before us is a Shariah for us in what Allah or His Messenger has informed us about them."

As for the Sunnah, they cited the Prophet's statement: "Whoever forgets a prayer should perform it when he remembers it," along with the verse, "Establish the prayer for My remembrance." The Prophet (peace be upon him) used this as evidence to show that the obligation upon us is related to

this verse, although it was initially addressed to Musa (peace be upon him). The evidence from the Sunnah is considered the strongest argument cited by the majority regarding this principle.

### **The Second School of Thought and Its Evidence:**

The second viewpoint is held by al-Shafi'i, the majority of his followers, and it is one of the two reported opinions from Ahmad. Some Hanafi scholars, Malikis, and many Ash'arite and Mu'tazilite theologians also subscribe to the belief that we are not obliged to follow the Shariah of those who came before us. Furthermore, there is a division among the adherents of this viewpoint; some argue against the obligation of following the Shariah of those before us on rational grounds, while others claim it is prohibited from a legal perspective. The majority of theologians subscribe to the first argument based on the concepts of good and evil, while the others adhere to the second argument, a position supported by al-Amidi.

The proponents of this school have also cited evidence from the Qur'an, the Sunnah, and consensus.

Regarding the Qur'an, they reference the verse: "To each of you We have prescribed a law and a clear way..." (Qur'an 5:48), which implies that each messenger has a unique law that is not shared with others.

An objection to this interpretation is that it does not preclude the possibility that this statement describes the generality of what each messenger practices. Additionally, each messenger has a method associated with him, whether that method aligns with or contradicts what was previously established.

### **As for the Sunnah, they refer to several Hadiths, including:**

1. It was narrated that when Umar ibn al-Khattab brought the Prophet (peace be upon him) a letter he had received from one of the People of the Book and read it to him, the Prophet became angry and said, "By the One in Whose Hand is my soul, I have brought you [the truth] in a clear and pure form. By the One in Whose Hand is my soul, if Moses were among you and alive, he would have no choice but to follow me."

2. Another narration states that when the Prophet (peace be upon him) sent Mu'adh ibn Jabal to Yemen, he asked him, "By what will you judge?" Mu'adh replied, "By the Book of Allah." The Prophet then asked, "And if you do not find [an answer] in it?" Mu'adh responded, "Then by the Sunnah of the Messenger of Allah." The Prophet continued, "And if you do not find [an answer] in that?" Mu'adh said, "I will exert my opinion." The Prophet (peace be upon him) said, "Praise be to Allah who has guided the Messenger of Allah to what pleases Allah and His Messenger."

The basis for citing this Hadith is that Mu'adh did not mention consulting the Shariah of those before us in his answers, and the Prophet approved his response and praised him. If the Shariah of those who came before us were a legitimate source for legal rulings, it would be treated with the same importance as the Book and the Sunnah, and one could only rely on personal opinion after thoroughly searching for and failing to find those sources.

An objection to this is that Mu'adh did not mention the Torah or the Gospel, assuming the Quranic verses indicate their adherence.

The response to this objection is that the Quran's indication of following these previous scriptures does not suffice in lieu of mentioning them explicitly, just as the evidence from the Quran regarding the authority of the Sunnah and analogical reasoning does not negate the need to mention them.

Regarding consensus, they argue that "the consensus of Muslims is that the Shariah of the Prophet (peace be upon him) abrogates the Shariah of those who preceded him. If we were to be obligated to follow the Shariah of those before us, it would imply its validation and recognition rather than abrogation, which is impossible."

An objection to this claim is that the Prophet's Shariah abrogates only those rulings that contradict it. Thus, it is inappropriate to characterize his Shariah as abrogating all that was legislated before him, such as the obligation to believe in God, the prohibition of disbelief, fornication, murder, theft, and other similar matters where our legislation is consistent with the previous Shariah.

### **The Third School of Thought: Suspension (Waqf)**

I have not found any attribution of this viewpoint to a specific individual in the literature I have reviewed.

After discussing the various scholarly opinions on this principle and the evidence presented by those who uphold its validity as well as those who deny it, the pressing question remains: Is the disagreement among these scholars merely verbal or substantive?

Some contemporary scholars and researchers argue that the difference regarding the Shariah of those who came before us is verbal. This is based on the observation that the branches of law derived from its validity are often supported by other established evidence from our own Shariah. Conversely, those who deny its validity frequently reference texts that mention rulings found in the Shariah of those who preceded us, even though these texts do not constitute the basis for their legal arguments.

On the other hand, some scholars assert that the disagreement regarding the Shariah of those before us is substantive, having practical implications in jurisprudential matters. They allow for its use as a basis for legal reasoning without the need for additional supporting evidence.

This latter viewpoint has been favored by Muhammad Amin al-Shanqiti in his work *Adhwa' al-Bayan*, where he elaborates on this issue, stating: "Scholars have always derived rulings from the narratives of past nations. Among these, the Malikis and others have stated that a strong presumption can serve in place of conclusive evidence. They support this with the story of Joseph, where the tearing of his shirt from the back served as evidence of his truthfulness and the woman's falsehood, as mentioned in the verse: {And a witness from her family testified: If his shirt is torn from the front, then she has told the truth and he is among the liars. But if his shirt is torn from the back, then she has lied and he is among the truthful.} (Qur'an 12:26-27). The mention of this narrative by Allah confirms its permissibility for legal application. Thus, Malik imposed the legal punishment for alcohol consumption on someone who smells its scent, as the smell itself serves as evidence of consumption..."

Al-Shanqiti continues to provide examples of how different schools of thought have drawn upon the stories of previous prophets for legal rulings. For instance, the Malikis draw upon the verse concerning the story of Joseph and his brothers: {And for him who brings it [the lost item] is a camel's load, and I am responsible for it.} (Qur'an 12:72). Some Shafi'is derive the legal responsibility of a guarantor from the verse: {I will not send him with you until you give me a solemn pledge before Allah that you will bring him back to me.} (Qur'an 12:66). The Malikis also base their ruling on the allowance of the judge to reprimand litigants for three days after deadlines, as inferred from the verse regarding Salih: {Enjoy yourselves in your homes for three days. This is a promise that will not be denied.} (Qur'an 11:65). They also derive the obligation to give a warning to the adversary about a judgment based on the verse concerning Solomon and the hoopoe: {I will surely punish him with a severe punishment or slaughter him or he will bring me a clear excuse.} (Qur'an 27:21). The Hanbalis derive the permissibility of a long rental period from the story of Moses and his father-in-law Shu'ayb: {I wish to marry one of these two daughters to you on the condition that you hire me for eight years. And if you complete ten, it will be from yourself. And I do not wish to make it difficult for you.} (Qur'an 28:27). There are many similar examples.

Wahbah al-Zuhaili has noted, "Many contemporary usul al-fiqh scholars have favored the view that the Shariah of those who came before us is indeed a Shariah for us, provided its authenticity is established, as it is divine legislation. Its mention in the Qur'an without any denial or abrogation indicates its legislation and acceptance in relation to us. Furthermore, the Qur'an affirms what is found in the Torah and the Gospel."

### **The Last Opinion is Likely Correct**

This last opinion is perhaps the correct one, based on the jurisprudential issues we will outline, in which scholars rely on the Shariah of those who came before us. This will be the focus of the third section.

## **Section Three: Issues of the Shariah of Those Who Came Before Us in Islamic Jurisprudence**

Jurists have invoked this principle in support of various jurisprudential issues, including:

### **1. The Issue of Working with Conclusive Evidence and Indicators:**

#### **A. Definition of Evidence and Indicators Linguistically and Terminologically:**

- Evidence (Qareena): In language, "qareena" is a noun on the pattern of "fa'ila" meaning "something that is affected," derived from the root meaning "to be connected." It can also be interpreted as derived from "mufaa'la," which denotes mutuality, taken from the concept of comparison. It is said that something is "qareen" when it is connected or associated with another thing. An example of this is found in the Qur'an: {And when they are thrown into a narrow place therein, chained, they will call there for destruction.} (Qur'an 25:13), meaning they are "bound and chained to one another."

- The term "to compare" means to be associated or accompanied with something. For example, a man's "qareena" is his wife, which reflects the notion of companionship. The phrase "qareena al-kalam" refers to accompanying evidence that indicates the intended meaning.



- The term "qarin" means a companion, and a "shaitan" that is associated with a person is one that does not leave them, as indicated in the hadith: "There is no one among you but has been assigned a companion from the jinn." This means a constant companion among angels and devils. Allah says: {And whoever turns away from the remembrance of the Most Merciful, We appoint for him a devil, and he becomes his companion.} (Qur'an 43:36), meaning one that is "attached and accompanying."

- Terminological Definition of Evidence: There are differing opinions among early and later juristic theorists regarding the definition of "evidence." Some definitions from earlier scholars include:

- Definition by Abu al-Khattab al-Kalwadhani: Evidence is "an explanation of what is intended by a word according to custom and religious law."

- Definition by al-Jurjani: In terminology, evidence is "an indication of what is required."

- Some definitions from contemporary scholars are:

- Definition by Mustafa al-Zarqa: Evidence is "any apparent indicator that accompanies something hidden and points to it."

- Definition by Dr. Wahbah al-Zuhaili: Evidence is "what the speaker mentions to specify the intended meaning or to indicate that the literal meaning is not intended." The first type is called "specifying evidence" and applies to both literal and figurative language, while the second type is termed "preventing evidence," which is specific to figurative language.

- Indicator (Amarah): Linguistically, an indicator means a sign or mark. Terminologically, it refers to something that leads one to presume the existence of the implied meaning. For instance, clouds serve as indicators for rain, as they lead one to suspect that rain will occur.

## **B. Working with Conclusive Evidence and Indicators**

There is no disagreement among scholars regarding basing rulings on conclusive evidence and indicators. This is emphasized by Muhammad Amin al-Shanqiti and al-Qurtubi in their interpretations. Al-Shanqiti states, "Scholars have always derived rulings from the stories of past nations, as we have shown in the evidence."

For instance, the Malikis and others argue that a conclusive indicator may serve as a substitute for clear evidence. They cite the case of Prophet Joseph, where the tearing of his shirt from the back served as evidence of his truthfulness and the woman's falsehood, as mentioned in the verse:

{And a witness from her family testified, 'If his shirt is torn from the front, then she has spoken the truth, and he is among the liars. But if his shirt is torn from the back, then she has lied, and he is among the truthful.' So when he saw his shirt torn from the back, he said, 'Indeed, it is from your plan; indeed, your plan is great.' (Qur'an 12:25-28).

Al-Qurtubi, commenting on the verse {And they brought upon his shirt false blood. He said, 'Rather, your souls have enticed you to something, so patience is most fitting. And Allah is the one sought for help against that which you describe.' (Qur'an 12:18), mentions: "The jurists have used this verse to argue for the application of indicators in various jurisprudential matters, such as oaths (qassamah), and they unanimously agreed that Jacob (peace be upon him) inferred their dishonesty based on the condition of the shirt. Thus, one must consider the indicators and signs when they conflict, and the stronger of them prevails, representing the force of suspicion, and there is no disagreement about relying on them."

## 2. The Permissibility of Ja'alalah and Hamalah (Guarantee):

The majority of scholars support the permissibility of ja'alalah (a contractual incentive) and hamalah (a guarantee) based on the Shariah of those who came before us, referencing the story of Prophet Joseph. Allah states: {They said, 'We will lose the king's cup, and whoever brings it will have a camel's load [as a reward], and I will guarantee it.' (Qur'an 12:72)}.

Al-Qurtubi explains: "Some scholars argue that this verse contains two pieces of evidence: the first is the permissibility of ja'alalah, which has been allowed due to necessity. In this case, it is permissible for one side to be known and the other to be unknown out of necessity, unlike leasing. The person offering the ja'alalah cannot rescind it once the person undertaking the task has begun working. Furthermore, the presence of the contracting parties is not required in ja'alalah contracts, as indicated by the verse: {And whoever brings it will have a camel's load, and I will guarantee it.} According to all of this, the view of al-Shafi'i aligns."

"The second piece of evidence is the permissibility of guarantees, as the guarantor is not Joseph (peace be upon him). Our scholars state that if a person says, 'I guarantee' or 'I undertake' or 'I am a guarantor for you,' it constitutes a binding hamalah. However, there is a difference of opinion among jurists regarding the obligation of the guarantor if he guarantees the person or the property. The Kufi scholars argue that if someone guarantees a person, he is not liable for the debt owed by the required party if he dies, which is one of the opinions attributed to al-Shafi'i. Meanwhile, Malik, al-Layth, and al-Awza'i argue that if someone guarantees another's person and there is a debt owed, he must pay the debt if he fails to deliver it, and he can seek recourse from the required party. If he conditionally guarantees only the person or face, saying, 'I do not guarantee the property,' then he is not liable for the debt."

Some scholars have also argued for the permissibility of guarantee (hamalah) based on the same previous verse, stating: "The term 'guardian' refers to a guarantor. This verse establishes guardianship, which is a form of financial guarantee. Allah says in the same chapter: {He said, 'I will not send him with you until you give me a guarantee from Allah that you will bring him back to me, unless you are surrounded.' So when they gave him their guarantee, he said, 'Allah is the Guardian over what we say.' (Qur'an 12:66). This is a form of hamalah concerning a person's obligation, which is one category of hamalah. Although the term 'hamalah' is not explicitly mentioned, its meaning is inherent in the verse. This falls under the view of those jurists who assert that we are addressed by the Shariah of those who came before us unless there is a subsequent law in our Shariah that abrogates it. Since there is nothing in our Shariah that abrogates the permissibility of hamalah, provisions affirming its permissibility exist instead."

## 3. The Issue of Working by Custom and Tradition

One of the evidences cited by the Maliki scholars for the permissibility of adhering to custom and tradition is found in the verse related to the story of Prophet Joseph, where Allah states: {And a witness from her family testified, 'If his shirt is torn from the front, then she has spoken the truth, and he is among the liars. But if his shirt is torn from the back, then she has lied, and he is among the truthful.' (Qur'an 12:25). Ibn al-Arabi stated: "Our scholars argue that this is evidence for the validity of adhering to custom and tradition, as seen in the examination of the shirt being torn from either the front or the back, which indicates her claim and Joseph's truthfulness. This principle is uniquely upheld by the Maliki school."

#### 4. The Permissibility of Marrying Off a Virgin Without Her Consent

Maliki scholars and many others have cited the permissibility of marrying off a virgin without seeking her explicit consent, asserting that her silence is considered consent. This is based on the verse where Prophet Salih addresses Moses: {He said, 'I intend to marry you to one of these two daughters, on the condition that you hire me for eight years.' (Qur'an 28:27). Ibn al-Arabi explains: "This serves as evidence that a father can marry off his virgin daughter without obtaining her explicit consent. Al-Malik and others have relied on this verse, which presents a strong argument in this matter. Al-Shafi'i and many other scholars have also adopted this view."

#### 5. The Permissibility of Making a Benefit a Dowry

The Hanbali scholars have argued for the permissibility of making a benefit (manfa'ah) a dowry in marriage based on the verse: {He said, 'I intend to marry you to one of these two daughters, on the condition that you hire me for eight years.' (Qur'an 28:27). The Shafi'i scholars have also referenced this verse, drawing on it to support their stance by analogy to leasing (ijarah).

#### 6. The Permissibility of Agency (Wakalah)

The majority of scholars have cited the permissibility of agency based on the verse: {So send one of you with this silver to the city. (Qur'an 18:19). Ibn al-Arabi stated: "This indicates the validity of agency, which is a contract of representation that Allah has permitted due to the necessity for it and the benefit it brings. Every individual is incapable of managing their affairs without assistance from others, or they may choose to delegate to ease their burden... This is the strongest verse supporting the concept." Al-Qurtubi, commenting on the aforementioned verse, noted that the act of sending the silver provides evidence for the validity of agency, mentioning that Ali ibn Abi Talib appointed his brother Aqil during the caliphate of Uthman, and there is no disagreement regarding this in general. Agency was well-known both in the pre-Islamic era and in Islam.

#### 7. The Obligation of Payment for Measurement to the Seller

The Maliki scholars have stipulated the seller's obligation to pay for the measurement, as it is necessary for fulfilling the obligation of delivery. They support this with the verse from Surah Yusuf: {So give us a full measure. (Qur'an 12:88). Imam al-Qarafi elaborated on the evidence from the verse, stating: "This indicates that the measurement is the responsibility of the seller, as the legislation from those who came before us is also applicable to us until there is evidence of its abrogation."

#### 8. Liability for Damage Caused by Livestock to Crops and Fences at Night

The Maliki scholars and some Shafi'i scholars hold that owners of livestock are liable for damages caused to farms and fences at night, while they are not liable for damages caused during the day. They base their argument on the verse: {And David and Solomon, when they judged concerning the field when the sheep of the people had pastured therein, and We were witnesses to their judgment. (Qur'an 38: 27). The key point of reference in this verse is that "pasturing" in Arabic is understood to occur only at night. Those who argue that the law of previous nations does not apply to us do not hold the owners liable.

## Conclusion

In conclusion, it can be said that the disagreement among scholars regarding this principle stems from differing views on whether the Prophet Muhammad (peace be upon him) adhered to the laws of previous nations before his prophethood. This matter is of limited benefit to jurists, and it does not require their attention, nor does it hold significance in the field of legal theory. Furthermore, the differences also relate to whether he and his community continued to follow those laws after the prophethood. Some scholars believe this disagreement is merely semantic and does not produce any practical implications in legal rulings, as those who reference it based on its validity often support their arguments with other established evidence from our own law. Conversely, those who do not consider it as evidence frequently refer to texts that mention rulings derived from previous legislation, even if these texts do not serve as primary sources for them in the matter.

Others, particularly proficient legal theorists, believe that the legislation of previous nations is valid for us as long as it has not been abrogated in our law. We have provided several legal issues where scholars relied on previous legislation, especially in the Holy Qur'an. Additionally, the prophetic tradition is not excluded from this, which implies that the disagreement on this principle is substantial and has implications for legal rulings, contrary to the views of some scholars who deem it merely verbal.

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