



ISMA'ILISM XI. ISMA'ILI JURISPRUDENCE

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A distinct Isma'ili system of jurisprudence was founded after the establishment of the Fatimid dynasty in North Africa. The pre-Fatimid Isma'ilis, as a secret revolutionary organization, were preoccupied in various parts of the 'Abbasid empire with missionary activities, promising the advent of the expected messianic figure called Mahdi and Qā'em who would restore justice and equity. Toward this goal, they developed a highly sophisticated gnostic system of thought, wherein the *bāṭeni* (esoteric) sciences were more emphasized than the *zāheri* (exoteric) sciences (see [BĀṬENIYA](#)). Law not only belonged to the latter category. but also had very little practical use as long as the Isma'ilis had not obtained political power. Hence, it was not a priority at that stage. This, however, does not mean that they completely neglected law. The early Is-ma'ilis shared a common heritage with other Shi'ites, especially the Imamis up to the death of the Imam Ja'far al-Şādeq in 148/765. Thus, they shared with the Zaydis as well as the Imamis certain rituals and practices that had evolved until then. Recent scholarship has demonstrated that Imam Moḥammad al-Bāqer (q.v.) played a major role in the shaping of Shi'ite jurisprudence (Lalani, pp. 114-26), which became crystallized during the time of his son Imam Ja'far al-Şādeq and was known as *madḥab Ahl al-Bayt* (rite of



jurisprudence from the family of the Prophet; see AHL-E BAYT). It should be also noted that both the Isma'ilis and the Imamis consider Imam Moḥammad al-Bāqer and his son Imam Ja'far al-Şādeq as the founders of their respective systems of law, because most of the traditions in Qāzi No'mān's *Da'ā'em al-Eslām* and Abu Ja'far Moḥammad Kolayni's *Ketāb al-kāfi* are traced back to these Imams. This school of jurisprudence was not in favor of *ra'y* (personal opinion) or *qiās* (analogical deduction), both of which prevailed in the contemporary circles of the Sunni jurisconsults (*faqih*). The Isma'ilis share certain ritualistic features with other Shi'ites, such as the wiping of the feet in ablution, saying *basmala* (i.e., the formula *be'sm Allāh al-raḥmān al-raḥim*) aloud in recitation of the Qur'an and during obligatory prayers, and addition of the formula *ḥayya 'alā ḵayr al-'amal* (come to the best of work) in the call to prayer (*adān*; Lalani, pp. 120-24).

Soon after his triumphant entry into Qayrawān in 296/909, Abu 'Abd Allāh Ši'i, the founder of the Fatimid dynasty, appointed Moḥammad b. 'Omar Marvazi, a local Shi'ite figure, as judge (*qāzi*). Marvazi imposed strict adherence to the above Shi'ite rituals and legal practices. Moreover, he ordered the omission of *al-ṣalāt kayr men al-nawm* (prayer is better than sleep) from the morning call to prayer and prohibited the *tarāwiḥ* prayers led by an imam during the month of Ramaẓān. In the Friday sermon (*koṭba*) he added the blessings (*ṣalāt*) on Imam 'Ali, Fāṭema, Imam Ḥasan, and Imam Ḥosayn immediately after the blessings on the Prophet. He also issued an order forbidding jurists to give legal opinions except according to the Shi'ite *maḏhab* (school); declared *ṭalāq al-batta* (irrevocable divorce) invalid, and upheld the right of a daughter to inherit the whole of her father's estate, to the exclusion of *'aṣāba* (agnates), in the absence of a son (Ebn al-Hayṭam, pp. 64-67; Māleki, II, pp. 41, 55-56, 60-62; Ebn 'Ezāri, I, pp. 151, 159, 173).

Unfortunately, we have no information about legal compositions of Marvazi or his immediate successors in the office of *qazā' Efriqiya*. One can only surmise that some of those judges might have written law manuals hoping that their works would be recognized officially. Even if they did, their works were overshadowed by that those of Qāzi No'mān and soon fell into disuse and were lost.

Qāzi No'mān, an Isma'ili Shi'ite from Qayrawān, entered the service of the Fatimid dynasty at an early age and served the first four caliphs consecutively for over half a century, from 312/924 until his death in 363/974, in various capacities. He was commissioned by the fourth caliph al-Mo'ezz le-Din-Allāh (r.



341-65/953-75) to compose the *Da'ā'em al-Eslām*, his magnum opus, which was officially promulgated as the Fatimid code. He is, therefore, rightly regarded by the Isma'ilis as the one who propounded their law. Qāzi No'mān had also composed several legal works based on the *madhhab* of the Ahl al-Bayt. In his first and voluminous *Ketāb al-izāh*, which has reached us in abridged versions, his efforts were directed to the collection and classification of a vast number of legal traditions transmitted from the family of the Prophet. He compiled this work from all the available sources. This early and massive work consisting of 3,000 folios could be seen as an attempt by Qāzi No'mān to lay the foundation on which Isma'ili law could then be built. Consequently, he made several abridgments of the *Ketāb al-izāh*, namely *Ketāb al-aḳbār* (or *al-eḳbār*), *Moḳtaṣar al-izāh*, *al-Orjuza al-montaḳaba*, *Ketāb al-eqteṣār*, and *Ketāb al-eḳteṣār* (or *Moḳtaṣar al-āṭār*, or *Eḳteṣār al-āṭār*). In addition to those legal texts he also wrote refutations of the Sunni schools of jurisprudence and their founders, such as Mālek b. Anas, Abu Ḥanifa, and Šāfe'i (for the chronology of these works and the development of No'mān's thought, see Poonawala, 1996, pp. 119-24). In his *Eḳtelāf oṣul al-maḍāheb* (p. 22), Qāzi No'mān cites the decree of al-Mo'ezz le-Din-Allāh, wherein he is instructed by the latter about the roots of jurisprudence. It states that, in issuing his legal decisions, Qāzi No'mān should first follow the Qur'ān, next, the tradition (*sonna*) of the Prophet, and for what is not found in either of them he should turn to the *madhhab* of the Imams from the family of the Prophet. If something still remains doubtful and difficult to resolve, he should refer the matter to the Imam. In his *Ketāb al-eqteṣār* (p. 167) and *Ketāb al-eḳteṣār*, Qāzi No'mān proposes the same principles for issuing legal decisions and rejects *ra'y* and *qiās*.

The *Da'ā'em*, according to 'Emād-al-Din Edris (d. 872/1468), a Mosta'li-Ṭayyebi *dā'i* and a historian, was closely supervised by the Caliph-Imam al-Mo'ezz himself (Edris, p. 44). The work follows the general pattern of law manuals and is divided into two volumes. The first deals with the acts of devotion and religious observances (*'ebādāt*) while the second with laws pertaining to human intercourse (*mo'āmalāt*). Qāzi No'mān states on the authority of Imam Ja'far al-Šādeq that Islam was founded on seven pillars, that is, *walāya* (devotion to the imam), *ṭahāra* (ritual purity), *ṣalāt* (prayers), *zakāt* (welfare tax), *ṣawm* (fasting in the month of Ramaḳān), *ḥajj* (pilgrimage to Mecca), and *jehād* (holy war). *Walāya*, the corner-stone of Isma'ili faith, embodies the doctrine of the imamate that lies at the basis of Shi'ism, and Qāzi No'mān transformed it into a dynamic principle after the establishment of the Fatimid caliphate. It is considered the highest and the noblest of the seven pillars,



without which no human acts of devotion and worship are acceptable to God. It should be noted that, unlike with the Is-ma'ilis, *walāya* did not become part of the Imami legal works. The *Da'ā'em* was therefore the first juristic text to give *walāya* a legal status in Islamic law. For the Is-ma'ilis and the newly founded Fatimid dynasty, it was not merely a religious belief but was the very basis of their claim to the political leadership of the Muslim community. In the chapter on *jehād*, Qāzi No'mān included the *'ahd* (a command document) ascribed to Imam 'Ali b. Abi Ṭāleb (*Da'ā'em*, tr., I, pp. 436-56), which deals with the ruler's conduct with his subjects. This document, according to Wadād al-Qāzi (p. 104), represents the Is-ma'ili theory of the state. *Ṭahāra*, which implies physical and spiritual purification and is a necessary requirement for the valid performance of prayers, was raised by Qāzi No'mān to the status of an independent pillar (*de'āma*, pl. *da'ā'em*).

The *Da'ā'em*, as a law manual, addresses matters of substantive law, hence, Qāzi No'mān restricted the authorities to Imam Ja'far al-Ṣādeq and his predecessors. In this work he does not deal with the day-to-day running of the state, where the ultimate authority was the ruling imam. The sources of law, according to Qāzi No'mān, are the Qur'ān, the tradition (*sonna*) of the Prophet, and the teachings or rulings of the Imams. The major differences with Imami (Twelver Shi'ites) law are that Qāzi No'mān admitted the prohibition of temporary marriage (*mot'a*), and the introduction of a fixed calendar rather than sighting the new moon for the beginning and end of Ramaẓān (*Da'ā'em*, tr., I, p. 339, II, p. 214). The *Da'ā'em* is considered by the Mosta'li-Ṭayyebi Isma'ilis as the greatest authority on their law and has remained until today a source of supreme authority in legal matters.

Ebn Kelles (d. 380/991), vizier of the caliph al-'Aziz, is credited to have composed a legal work based on the pronouncements of al-Mo'ezz and al-'Aziz (r. 365-86/975-96), but the work did not survive. After Qāzi No'mān, there was no significant development in Isma'ili law either during the remainder of the Fatimid rule in Egypt or in Yemen, where the Mosta'li-Ṭayyebi community survived for the next four centuries after the fall of the Fatimids in Egypt (567/1171) and the Ṣulayhids in Yemen (532/1138). It was in India that the works of Qāzi No'mān were glossed. Aminji b. Jalāl (d. 1010/1602), an eminent jurist, deserves special mention in this respect. His *Ketāb al-so'āl wa'l-jawāb* (Majdu', pp. 37-38) is an interesting collection of legal questions and their answers. Another noteworthy work is the anonymous *Ketāb al-so'āl wa'l-jawāb le-mašā'eḳ al-Hend ma' al-ḥawāši men kotob al-Qāzi al-No'mān* (Majdu', p. 37),



which consists of questions put to the contemporary *dā'īs* and other *da'wa* dignitaries and the answers given by them. In addition, it contains extensive excerpts from the works of Qāzi No'mān that have not survived, especially *Ketāb al-izāḥ* and *Moḵtaṣar al-izāḥ*. Another anonymous work worth mentioning is *Taqwim* (or *Taqāwim*) *al-aḥkām* (Majdu', pp. 36-37), wherein various topics in law concerning what is permitted and what is forbidden are arranged in a novel way. All the latter three works reiterate that *ra'y* and *qiās* are not permitted. Hence, they give answers to the questions posed in the form of a ruling, however, without going into the details of methodology as to how the authorities arrived at those answers.

One can thus conclude that Isma'ili jurisprudence began with Qāzi No'mān and ended with him. Before him, there was no distinct Isma'ili jurisprudence, and after him there was no significant development except glosses, repetition, and restatement.

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