- **STUDENT NAME:- Assadullah unar**
- **REGISTRATION NO:- BA.LLB/M073/3-19**
- **TITLE OF ASSIGNMENT:- Write in detail about secondary sources of islam?**
- **TITLE OF SUBJECT:- Islamic jurisprudence**
- **NAME OF FACULTY MEMBER:- Sir Aijaz Jatoi**
- **SUBMISSION DATE:- 22-12-2020**

QN06:- write in detail about Secondary source of Islam?

Various sources of Sharia are used by Islamic law to elaborate the body of Islamic law. The scriptural sources of traditional Sunni jurisprudence are Qur'an believed by Muslims to be the direct and unaltered word of God and Sunnah consisting of words and actions attributed to Islamic Prophet Muhammad PBUH in the Hadith literature. Shi'ites jurisprudence extends the notion of Sunnah to include traditions of the Imams
Since legally relevant material found in Islamic scriptures did not directly address all the questions pertaining to Sharia that arose in Muslim communities, Islamic jurists developed additional methods for deriving legal rulings.

There are many secondary sources among them one is

- **Ijma**

Meaning of Ijma'

In the literal sense Ijma' means unanimity of opinion,

but in the legal sense it is those principles of law which are accepted unanimously. It is defined as an agreement of the jurists among the followers of the Prophet in a particular age on a question of law. Opinions may take various forms. The individual opinion is called Ijtihad or Rai When this opinion is based on any Qur'anic order or on Tradition, it is called Qiyas, and when an opinion by a jurist differs from Qiyas, it is juristic equity Ijma' is consolidated collective opinion of the jurists. The author of Noor-ul-Anwar one of the standard books on jurisprudence, defined Ijma' as the unanimity of jurists and pious parsons of any period in any matter of opinion or action.

➢ Origin of Ijma

After the end of the first period, when the period of Caliphate began, the only source left in the hands of the people immediately after the 1st Caliph was the Quran and Sunnah through which the community had to seek guidance. Since neither the Qur'an was written nor were the Traditions of the Prophet, the people whenever they were confronted with problems had to rely upon those who knew the Qur'an and Sunnah. Thus this was the time when the community had to depend and rightly so, on the basic sources of Islamic Law. If in any particular matter the learned of the time felt that there was nothing explicitly laid down in the Quran about the question on hand and there was, to their knowledge, not Tradition they had to decide the question on their own. The method thus evolved was that the learned people should assemble in a group and decide the issue in the light of the Qur'an and available Traditions. Such decisions, being unanimous, had the sanctity and the force of law. This is how ljma' developed steadily as a third recognized source of Islamic Law.

➢ Kinds of Ijma'

➢ Absolute Ijma'.

It is the positive kind in which the jurists
express their opinion on any matter. This consensus may be in two way: (a) by words, where the consensus is achieved by spoken (b) by deeds, where consensus 15 established by unanimous practice, for example, the transactions of agricultural partnership. An ljma' belongs to this category i it be in strict conformity with the requirements of law and proved by infallible testimony. It is also called regular ljma'.

- **Irregular Ijma'**.

Where there is no absolute certainty. In this
case if a particular opinion is expressed by some jurists and others do not contradict it within say, three days, or a particular practice is adopted by some and others do not object to it, in both the cases the consent of all the jurists will be presumed.

- **Ijma'-i-Ummah.**

There was a time, especially during the
Caliphate period, when the people used to be unanimous in their opinions about any matter placed before them. This is supposed to be the most superior kind of ljma. The reason how unanimity at such a level was possible was the righteousness of the people who followed the end of the Prophet's period. They were the Companions of the Prophet who could not be unanimous except on truth. The other

reason was the limited scope of thinking and orthodox way of life by the people who were not to0 many in number, neither were there complexities of life nor divergent methods of exploitation. But in a society later full with intricate issues, diversion of life, complex problems, much larger scope for thinking and the great number of the members of the community, unanimity of the whole community became almost an impossibility. It was on account of these reasons, perhaps, that Imam Ghazzali, one of the renowned Sunni Jurists said that unanimity of the general body was impossible.

- **Ijma'-i-Ulama.**

Ijma'-i-Ummah in fact virtually yielded in favour of Ijma-i-Ulama i.e. the consensus of the learned people only. It is the Ijma' not of all the Muslims but only of those Muslims who are well versed in Islamic Law and religion. Thus such an Ijma assumed more sanctity in due course.

Types of Ijma

- There are two types of Ijma
- **Explicit** پر تور واضح Ijma or Ijma qawli. Is one in which the legal opinion of all jurists of one period converge in relation to a legal issue, and each one of them states his opinion explicitly. This may happen when all of them are gathered in one session and an issue presented to them and they collectively express a unanimous اتفاق رائے opinion.

2. Tacit Ijma or Ijma Sukuti. This form of Ijma takes place when some

mujtahids, one or more , issue a verdict on a legal issue and the rest of the mujtahids come to know of it during the same period, but they keep silent; they neither acknowledge it nor refute کرنا تردید it expressly.
The agreement or consensus must have taken place after the death of the Prophet PBUH

➢ Conditions for the validity of IJMA

There are seven condition ,These conditions must be

Meet before Ijma can be said to have taken place.

- The agreement or consensus must take place among (Diligent) Mujtahids, that is those who have attained the status of Ijtihad
- A Mujtahids is someone qualified to exercise Ijtihad, which Literally means striving and technically means juridical endeavor And competence to infer expert legal rulings from foundational Proofs within or without a particular school of law.
- The agreement or consensus must be unanimous, among all Mujtahids.
- All the jurists participating in Ijma be from Ummah of Muhammad PBUH.
- The agreement or consensus must have taken place after the death of the
- Prophet PBUH
- The agreement must be among the mujtahids of single determined period
- The agreement or consensus must be upon a rule of law, the hukam shari.
- That the mujtahid should have relied upon a sanad (certificate) for deriving their opinion.

- The death of those who participated in ijma , either explicitly پر تور واضحor by silence , is not a condition for the validity of ijma
- That Ijma should have been transmitted to the later jurists by way of tawarur.

➢ Qiyas /Analogy:-

Definition:- After Qur'an, traditions and Ijma' the important source of secondary Sharia in Islamic law is Qiyas or analogy. In the literal sense Qiyas means comparing. The root meaning of the word Qiyas is measuring accord and equality.

According to the Maliki's, it is the accord of a deduction with The original text in respect of the Illath or the effective cause of its law.

According to Safi's, it is the accord of a known thing with a

Known thing by reason of equality of one with the other in respect of The effective cause.

AL-Qiyas as defined by Dr. Said Ramzan in his book Islamic Law, its Scope and Equity implies technical rules for the legal Exactitude of individual reasoning.

In short the theme of all these definitions is common that it is A process of deducing a rule of law based on the Qur' an, Tradition or

Ijma in matters which have not been provided by a Qur'anic or Traditionary text.

➢ Elements of Qiyas

The case (set of acts) mentioned in the text with its hukam

- The hukam of the set of facts mentioned in text
- The “illah or the underlying cause that has led to hukam
- The new case of the set of facts for which the has not been explicitly mentioned and which needs a hukam.

Example of Qiyas

The prophet Said that if Hazrat khuzaima testifies for any one it is more than enough for him. Since Tradition is personified it doesn’t lay down a general rule of testimony only by one witness, inasmuch as for a testimony two witnesses are necessary. In the same manner there are verses in the Qur’an with the reference to the Prophet Muhammad PBUH ,and such verses are only confined to the personality with the result that no analogy can be attempted on its basis.

Classification of Qiyas

- Qiyas Jali and Qiyas khafi or manifest and concealed analogy
- Qiyas Jali (واضحmanifest) to mean analogy for which the underlying cause is more or less apparent or can be discovered with relative ease
- Where concealed analogy Qiyas khafi “illah is less apparent and the jurist has to expend consideration effort to discover it. In realty this is not any analogy.
- **Inference**

  process of seeking guidance from the source. Inference allowed the jurists to avoid strict analogy in a case where no clear precedent could be found. In this case, public interest was distinguished as a basis for legislation.

Muslim scholars divided inference into three types. The first is the expression of the connection existing between one proposition and another without any specific effective cause. Next, inference could mean presumption that a state of things, which is not proved to have ceased, still continues. The final type of inference is the authority as to the revealed laws previous to Islam.

- **Pubic Interest**

Malik developed a tertiary source called al-maslahah al-mursalah, which means that which is in the best interests of the general public. According to this source of Islamic law, rulings can be pronounced in accordance with the "underlying meaning of the revealed text in the light of public interest". In this case, the jurist uses his wisdom to pursue public interest. This source is rejected by the Shafi'ites, Hanbalites and Zahirites from Sunni jurisprudence.

- **Local custom**

Urf

The term Urf, meaning "to know", refers to the customs and practices of a given society. Although this was not formally included in Islamic law, Sharia recognizes customs that prevailed at the time of Muhammad but were not abrogated by the Qur'an or the tradition (called "Divine silence"). Practices later innovated are also justified, since Islamic tradition says what the people, in general, consider good is also considered as such by God. According to some sources, Urf holds as much authority as ijma (consensus), and more than Qiyas (analogical deduction). Urf is the Islamic equivalent of "common law".

Local custom was first recognized and it was considered part of the Sunnah, and not as formal source. opposed it, holding that custom cannot prevail over a written text.

According to Sunni jurisprudence, in the application of local custom, custom that is accepted into law should be commonly prevalent in the region, not merely in an isolated locality. If it is in absolute opposition to Islamic texts, custom is disregarded. However, if it is in opposition to analogical reason, custom is given preference. Jurists also tend to, with caution, give precedence to custom over doctoral opinions of highly esteemed scholars. Shi'ite scholars do not consider custom as a source of jurisprudence, nor do the Hanbalite or Zahirite schools of Sunni jurisprudence.