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Islamic Jurisprudence -II

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Assignment Topic or Question

1. Fully Discuss the Aims and objects of Islamic Justice System and discuss the Had Punishments and explain how Islam deal with civil wrongs?
2. Fully Discuss the Schools of Islamic Jurisprudence including fifth and strange Islamic Schools?

Q1. Fully Discuss the Aims and objects of Islamic Justice System and discuss the Had Punishments and explain how Islam deal with civil wrongs?

Aim and object of islamic justice system :

The Quran's concept of justice begins with the creation of the world; "and He has set up the balance (of Justice)" (55:7). The idea of balance, indeed, is woven within the entire Islamic code of life, wherein Muslims are required to live, worship and act in a balanced way. Similarly, justice is one of God's qualities: the Quran says God "is never unjust in the least degree" (4:40). The Prophet (PBUH) quoted God as saying: "O My Servants, I have forbidden injustice upon myself and have made it forbidden amongst you, so do not commit injustice" (Sahih Muslim 2577).

Islam deal with civil wrong :

Muslims believe in the sanctity of life and therefore they do not think anybody has the right to disrespect human life. Justice is an important teaching in Islam. The Qur'an teaches Muslims to: "Stand out firmly for justice, as witnesses to God, even as against yourselves or your parents, or your kin, and whether it be against rich or poor. "

Muslims believe in justice and therefore believe that criminals should be treated justly and be given the chance to reform. One of the Five Pillars of Islam is zakah, which requires all Muslims to give away a percentage of their wealth to help the poor, to ensure a level of justice and equality. This principle should be applied to the treatment of criminals.

However, some very harsh punishments are given in the Qur'an and Hadith, and some Muslims believe that appropriate retaliation should be carried out against those whose guilt is proven. Traditional Shari'ah Law, for example, suggests that those who steal should have a hand cut off, although such a harsh penalty would only be justified for the most serious crimes and only after trial in a Shari'ah court.

Had punishments:

The Islamic Penal system describes three types of punishments: prescribed punishments (hudud) retribution (Qisas) and discretionary punishments (tazir).

- **Prescribed punishments (Hadud):**

Prescribed punishments or hadud are crimes where the punishment is ascribed by Allah and is thus unchangeable. Hadud crime consists of unlawful sexual intercourse, false allegation of sexual intercourse, drinking intoxicants, theft, robbery, apostasy, and rebellion. Punishment for the crime committed shall be imposed only when the evidence is established beyond all reasonable doubt. This is based on the hadith of the Prophet (SAW) “set aside hudud punishments in cases of doubt”. Prescribed punishments or hudud are fixed punishments and neither can be increased, nor decreased. Judges, any political authority or the family of victim cannot waive these punishments.

- **Retribution (Qisas):**

In retribution, same injury is caused to the offender of the crime as punishment that he inflicted upon the victim. Intentional murder by a person requires the killing of the offender and if he severed the limb of the victim, or caused him hurt, then his own limb is to be cut off or injured. Allah says in the Holy Quran: “O! You who believe, retribution is prescribed for you in the case of murder; the free for the free, the slave for the slave, the woman for the woman.” At another place, retribution has been explained as: “Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal”. Islam, actually, discourages bloodshed in any form. As soon as blood flows, Islam punishes such crime in a different way. Retribution provides one of the most important elements of peace, protection and security in the society. “Retribution is life for you”. However, the underlying principal is equal and exact. “The punishment for an injury is an injury equal to it”.

- **Discretionary punishment (tazir):**

In Islamic Law, refers to punishment for offenses at the discretion of the judge or ruler of the state. It is one of three major types of punishments or sanctions under Sharia Islamic law. The discretionary punishments are flexible enough to take into account the needs of individual And society and also to realize the maximum general benefit to society and the reformation possibilities of the criminal. Starting from exhortations and reprimands to flogging, to fines, and to imprisonment, Islamic Law has defined different types of discretionary punishments. Legal authorities enjoy discretionary powers, within the general framework of Islamic Law.

Q2. Fully Discuss the Schools of Islamic Jurisprudence including fifth and strange Islamic Schools?

School of Islamic jurisprudence:

Islamic Law According to Five Schools of Jurisprudence: Maliki, Hanafi, Hanbali, Shafi`I, and Ja`fari madhhabs.

Hanfi school :

The Hanafi School is one of the four major schools of Sunni Islamic legal reasoning and repositories of positive law. It was built upon the teachings of Abu Hanifa (d. 767), a merchant who studied and taught in Kufa, Iraq, and who is reported to have left behind one major work, Al-Fiqh al-Akbar.

While the Hanafi madhab, along with other Sunni schools, utilizes qiyas (analogical reasoning) as a method of legal reasoning, Abu Hanifa himself relied extensively on ra'y (personal opinion). He also favored the use of istihsan, commonly known as juristic preference, which, in some circumstances, can operate to ameliorate harsh consequences that might otherwise flow from strict legal reasoning, and which is believed by some to be based on principles of equity as interpreted by the jurist.

Hanbali school :

Hanbali school is the strict traditionalist school of jurisprudence in Sunni Islam. It is found primarily in the countries of Saudi Arabia and Qatar, where it is the official fiqh. Hanbali followers are the demographic majority in four emirates of UAE (Sharjah, Umm al-Quwain, Ras al-Khaimah and Ajman). Large minorities of Hanbali followers are also found in Bahrain, Syria, Oman and Yemen and among Iraqi and Jordanian bedouins.

The Hanbali school experienced a reformation in the Wahhabi-Salafist movement. Historically the school was small; during the 18th to early-20th century Muhammad ibn Abd al-Wahhab and Al Saud greatly aided its propagation around the world by way of their interpretation of the school's teachings. As a result of this, the school's name has become a controversial one in certain quarters of the Islamic world due to the influence he is believed by some to have had upon these teachings.

Maliki school :

The Maliki madhhab is one of the largest groups of Sunni Muslims, comparable to the Shafi'i madhhab in adherents, but smaller than the Hanafi madhhab. Sharia based on Maliki doctrine is predominantly found in North Africa (excluding northern and eastern Egypt), West Africa, Chad, Sudan, Kuwait, Bahrain, the Emirate of Dubai (UAE), and in northeastern parts of Saudi Arabia. In the medieval era, the Maliki school was also found in parts of Europe under Islamic rule, particularly Islamic Spain and the Emirate of Sicily. A major historical center of Maliki teaching, from the 9th to 11th centuries, was in the Mosque of Uqba of Tunisia.

Shafi'i school :

Like the other schools of fiqh, Shafi'i relies predominantly on the Quran and the hadiths for Sharia. Where passages of Quran and hadiths are ambiguous, the school first seeks religious law guidance from ijma the consensus of Islamic scholars (according to Syafiq Hasyim). If there was no consensus, the Shafi'i school relies on qiyās (analogical reasoning) next as a source. The Shafi'i school was widely followed in the early history of Islam, but the Ottoman Empire favored the Hanafi school when it became the dominant Sunni Muslim power. One of the many differences between the Shafi'i and Hanafi schools is that the Shafi'i school does not consider istihsan (judicial discretion by suitably qualified legal scholars) as an acceptable source of religious law because it amounts to "human legislation" of Islamic law.

Jaffari school :

One of the well-known Muslim schools of thought, also known as the 12er Shia school of thought, is the Jafari school of thought. The word 'Jafar' in 'Jafari' refers to the sixth blessed Imam of the Prophet's family (AhlulBayt), peace be upon all of them. The martyrdom of Imam Jafar as-Sadiq (peace be upon him) will be commemorated in the upcoming days.

Imam Jafar as-Sadiq was born on 17 Rabiee Awwal, 83 AH, in Medina, present-day Saudi Arabia, to the fifth Imam, Imam Muhammad Al Baqir, and Um Farwah. The Imam lived in a time when the Umayyad Dynasty was losing control of power to the Abbasid Dynasty. During this period, the power gap allowed for the Imam to spread the knowledge of Ahlul Bayt and teach the true teachings of Prophet Muhammad (peace be upon him and his family).