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**Final Term Examination**  
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**Q1: Explain the Qiyas (Analogical deduction) and Istihsan (Jurists equity).**

**THE QIYAS:**

The fourth important source of Muhammad law is the Qiyas, i.e., a collection of rules or principles by the methods of analogy and interpretation from the first three sources. All the three sources the Quran, The Sunnah, and Ijma could not suffice the growing needs of a community which had their ideas expended by the great territorial strides that Islam had made in the course of the century.

In the Arabic language, Qiyas means "measurement". In other words, it means measuring or comparing a thing in relation to a standard, or to establish an analogy. If there was any problem before the society on which the texts (Quran, Sunnah, and Ijma) were silent then Qiyas was applied to get the law. It was a method of comparing the problem of society with a similar problem for which solution was given in the texts.

The general principle behind the process of Qiyas is based on the understanding that every legal injunction guarantees a beneficial and welfare satisfying objective. Thus, if the cause of an injunction can be deduced from the primary sources, then the analogical deduction can be applied to cases with similar causes. For example, wine is prohibited in

Islam because of its intoxicating property. Thus Qiyas leads to the conclusion that all intoxicants are forbidden. It is to be noted that in the method new principles were not formulated. The law was simply discovered from the spirit or the implied meaning of the text.

### **OBTAINING A LAW THROUGH QIYAS:**

According to this method, the ruling of the Quran and Sunnah may be extended to a new problem provided that the precedent (asl) and the new problem (far) share the same objective or effective cause (illat). The Illat is the specific set of circumstances that trigger a certain law into action, For example, the operative cause for the prohibition against alcohol is that it intoxicates the mind. Therefore, anything that intoxicates the mind such as narcotics is also prohibited by the use of analogy.

Thus, a similarity was established between the new problem (for which the law was required) and an identical problem given in the text. For establishing similarity, “reason” or the sense behind the text was taken into account rather than the meaning of its apparent words. In this manner, the “common cause” (Illat) of the two problems was found and the analogy was established between the given problem and the similar problem available in the text.

After establishing the analogy, the solution to the problem given in text was applied to the new problem. Thus, the required law was directly deduced from the texts of the Quran or the Sunnah or the Ijma.

### **THE CONDITIONS FOR QIYAS:**

- **ASL:**  
It is the basic case on which analogy is being constructed. ASL is “the original” thing which can be said to be the basis of Islam. Example, the Quran, the Sunnah, the Ijma.
- **HUKUM ( Hukum-ul-asl):**  
It means “text of original” and “set of facts” explained by the “Asl”  
Hukum is extended for the purpose of the solution of any problem.

Hukum should be from Quran and Sunnah. It should not conceal original, and it should not have any exemption.

- **FAR:**

The “procedure” or distance to find out a new order for a case is called “far” a new rule can only be established by computing the distance.

- **ILLAH:**

“Illah” is the “underlying cause” it is also called a case, for which a new order is to be established.

## **ISTIHSAN:**

Abu Hanifa developed a new source called Istihsan, or juristic preference, as a form of Qiyas (analogical deduction) Istihsan is defined as :(i) to seek ease and convenience, (ii) To adopt tolerance and moderation, and (iii) To over-rule Qiyas, if necessary. Istihsan is a conclusion of law based upon the jurist’s own sense of justice without reference to any text. Qiyas on the other hand, is a conclusion of law based on a definite text of the Quran, the Sunnah or Ijma. This doctrine was useful in the Islamic world outside the Middle East where the Muslims encountered environments and challenges they had been unfamiliar with in Arabia.

One example of Istihsan is cited as follows: If a well is contaminated it may not be used for ritual purification. Istihsan suggests that withdrawing a certain number of buckets of water from the well will remove the impurities. Qiyas (Analogical deduction), however, says that despite removing some of the water, a small concentration of contaminants will always remain in the well (or the well walls) rendering the well impure. The application of Qiyas means the public may not use the well, and therefore causes hardship. Thus the principle of Istihsan is applied, and the public may use the well for ritual purification.

**Q2: Ijma is an important secondary source of usul-e-fiqah, discuss briefly.**

## **IJMA:**

Ijma means agreement of the whole Muslim community, the Muslim Ummah, therefore it has very much important as the third source of Islamic law. This can help to create unity among the Muslim ummah, if agreement reaches on critical issues. With the passage of time, the need for Ijma has gained more importance, as, new questions keep on arising, whose answers are not exactly found in the Quran and the Sunnah, though they provide basis to conduct Ijma. Ijma is always done under the lights of the Quran and the Sunnah, therefore, it is binding for Muslims and leaves no room for controversy.

Its validity can be seen in the Sunnah of the Holy Prophet (P.B.U.H)

**“My community will never agree upon an error, therefore, if you see divergences you must follow the greater mass or larger group.”**

**Q3: What are the different sources of Islamic Law? Discuss in details.**

### **“SOURCES OF ISLAMIC LAW”**

#### **PRIMARY SOURCES OF ISLAMIC LAW:**

The sources directly related to the problem are the main and the primary sources. Their originality may differ in degree. For instance, studying Quran while working on “the Quranic view of state” is primary importance then consulting books on the problem.

There are two Primary Sources of Islamic Law.

1. The Quran
2. The Sunnah

#### **1. THE QURAN:**

Quran is the primary or first and most important source of Islamic law. It includes many commandments, rules and principle for the behavior and relations of individuals in the society. Most of its principles are general in nature though some of them are well defined. The words of Quran are final and no one can change its text.

Holy Prophet (P.B.U.H) says,

**And hold firmly to the Rope of Allah all together and do not divided.**

## **2. THE SUNNAH:**

The Sunnah is the primary or second most important source of Islamic law. After the Quran the Islamic law drawn from the Sunnah. The details of Quran are found in the Sunnah of Prophet (P.B.U.H).

Allah says in Quran:

**“Obey Allah and obey Prophet (P.B.U.H)”.**

Holy Prophet (P.B.U.H) says:

**“I leave with you two things if you hold fast by them both, you will never to misguide. The book of “ALLAH (QURAN) and MY SUNNAH”.**

## **SECONDARY SOURCES OF ISLAMIC LAW:**

### **1. THE IJMA:**

The Ijma is secondary or third source of Islamic law. Ijma is Arabic word which means “consensus of opinion”. Unanimous agreement of Jurists, Sahaba or scholars is called Ijma.

Holy Prophet (P.B.U.H) says:

**“My community will never agree upon an error, therefore, if you see divergences you must follow the greater mass or larger group.”**

### **2. THE QIYAS:**

The Qiyas is the secondary or fourth source of Islamic law is Qiyas. Qiyas is an Arabic word means “measurement”. In other words, it means measuring or comparing a thing in relation to a standard, or to establish an analogy. If there was any problem before the society on which the texts (Quran, Sunnah, and Ijma) were silent then Qiyas was applied to get the law. It was a method of comparing the problem of society with a similar problem for which solution was given in the texts.

### **3. THE IJTEHAD:**

The Ijtehad is the secondary or fifth source of Islamic law. The Ijtehad can be defined as a “process of legal reasoning and hermeneutics through which the jurist Mujtahid derives or rationalizes basis of the Quran and the Sunnah”.

#### 4. **THE URF:**

The Urf is the secondary or sixth source of Islamic law. It's meant to “to consider something good”. Muslim scholars may use it to express their preference for particular judgments in Islamic law over other possibilities.

**Q4: Discuss the role of different Muslim schools of thought in codification and compilation of Islamic Law.**

### **MUSLIM SCHOOLS OF THOUGHTS:**

Islamic law and what it means to be a practicing Muslim has changed and developed over centuries of thinking. Following the death of the prophet Muhammad (P.B.U.H), there have always been differences of opinion in how best to understand the message of God.

Different interpretations on what Islamic law should be, is reflected in the diverse range of schools of thought or ways of studying and practicing Islam.

The common factor among the different groups is the Quran and the recorded sayings and actions of the Prophet (P.B.U.H). Sunnah as sources of information and guidance. Within Sunni and Shi'a Islam there are six main schools of Islamic law-Fiqh.

### **SUNNI SCHOOLS:**

#### **THE HANBALI SCHOOLS:**

The Hanbali School is named after Ahmad Ibn Hanbal (d.855). The Hanbali School was developed in Baghdad although today the followers of the schools are concentrated mainly in Saudi Arabia and the United Arab Emirates.

The founder of the School, Imam Ahmad Ibn Hanbal, was taught by Muhammad Ibn Idris al-Shafi, the founder of the Shafi School. There is therefore a direct link between the Shafi and the Hanbali School.

The Hanbali School derives its rulings almost solely from the Quran and Sunnah, which proves to be popular with groups of people wishing to return a “purer” Islam (the Wahabi movement, for instance, emerged out from the Hanbali school). Other influential figures in the school were al-Kiraqi (d.946), Ibn Qudama (d.1223), Ibn Taymiyya (d.1328) and al-Qayyim al Jawziyya(d.1350).

### **MAILKI SCHOOL:**

The Mailki School of law was founded by Imam Malik bin Anas. He was born in Medina. Imam Malik was a judge. He wrote a book name Al-Muwata (the leveled path). The pupils of Imam Malik include Imam Muhammad and Imam Shafi. Though, Medina was the birth place of Mailki School and from there spread out Hijaz, North Africa and Spain. It is still predominant in Morocco, Algeria, Tunisia, and Tripolitania, the Sudan, Bahrain, and Kuwait.

### **THE HANAFI SCHOOL:**

The Hanafi School is the oldest surviving school of Islamic law, and the one with the largest following.

It originated in Kufa, present day Iraq, but its influence spread to both the Mughal and Ottoman empires and can now be found from Turkey to Central Asia, the Balkans, Iraq, Afghanistan, Pakistan, India, Bangladesh, and as far as Western Europe and North America.

The schools founder Abu Hanifa was a trader as a young man. However, it seems he was not well suited to this career. He once demanded to pay five times the asking price from a woman selling silk at the market.

In 786CE he was imprisoned for refusing to collaborate with a judiciary he considered corrupt. He died in prison four years later.

As well as using the Quran and the Prophet (P.B.U.H) life as sources of guidance, this group also relied heavily on using logical argument to find answers to social problem that also fitted in with their understanding of Islam.

### **THE SHAFI'I SCHOOL:**

The Shafi'i School also has a wide influence in Egypt, Indonesia, the Philippines, Brunei, Singapore, Thailand, Sri Lanka and Maldives.

The School of thought is named after Muhammad Ibn Idris AL-Shafi'i a precocious student, who is described by historians as the master architect of Islamic law.

Perhaps his greatest achievements, with the aid of his peers, was to lay down the roots of a common framework of all schools of Islamic thought to follow when producing legal judgments on issues of faith and how it should be practiced.

### **SHI'A SCHOOLS**

#### **ITHNA-ASHARIS:**

These schools are based on the following of Ithna-Ashari laws. The followers of these schools mostly founded in Iraq and Iran. In India also there is the majority of the Shi'a Muslims who follows the principles of the Ithna-Asharis School. They are considered political quietists This school is considered as the most dominant school of the Shi'a Muslims. The Ja'fari fiqh of the Shia in most cases indistinguishable from one or more of the four Sunni madhahib, except mutah is considered as the lawful marriage. The people who follow the Ithna-Asharis Schools believe that the last of the Imams disappeared and to be returning as Mehdi(Messiah).

#### **THE ISMAILIS:**

According to Ismailis School, in India there are two groups, The Kojas or Western Ismailis represent the followers of the present Aga Khan, who they considered as the 49<sup>th</sup> Imam in the line of Prophet (P.B.U.H) ,and the Bohoras i.e. the Western Ismailis are divided into Daudis and Sulaymanis.

The Bohoras and Khojas of Mumbai are considered as the followers of this school. It is considered that the followers of the school of these schools have special knowledge of religious doctrine.

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**ZAIDY:**

The followers of this school are not found in India but are maximum in number in South Arabia. This section of the Shi'a School is the most dominant among all in Yemen. The followers of these schools are considered as political activism.

They often reject the Ithna-Asharis Shi'a school philosophies.

**THE END**

**THANK YOU...**