

FINAL TERM

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Qno 1

QIYAS

Qiyas means measuring or ascertaining the length, weight or quality of something. Qiyas also means comparison to establish equality or similarity between two things. In the language of Usul, Qiyas is the extension of a Shari' ah ruling (Hukm) from an original case (Asl) to a new case (Far') because the new case has the same effective cause (Illah) as the original case. Thus, Qiyas has four elements: Asl: original case, Far': new case, Illah: effective cause, and Hukm: ruling. The original case is regulated by a text of the Quran or the Sunnah and Qiyas seeks to extend the original ruling to the new case. The emphasis of Qiyas is identification of a common cause between the original and new case. Jurists do not consider law derived through Qiyas as a new law. However, for all practical purposes, Qiyas leads to new ruling on a different matter.

Qiyas is a methodology developed by jurists through which rulings in new areas are kept close to the Quran and the Sunnah because new rulings are based on the Illah (cause) discovered in the legislation of the Quran and Sunnah. Rulings on new areas could diverge a lot, if Qiyas was not applied. This is a major justification for validity of Qiyas.

Qiyas is a rationalist doctrine (because intellect is largely used to find out the 'Illah), but in Qiyas personal opinion (Ra'y) is kept subservient to divine revelation (in that Illah is discovered from the text of the Quran and the Sunnah). Qiyas does not change any law of the text (Quran or Sunnah) for expediency. Qiyas as a methodology means that the jurists accept that the rules of Shariah follow certain objectives (Maqasid) which are in harmony with reason, Zahiris (a group of literalist scholars) do not accept Qiyas. However, majority is right on this point.

Qiyas does not give rise to certainty. Qiyas is therefore speculative. Law derived through Qiyas can not be of same authority as that of textual ruling (of Quran or Sunnah). There can be difference of opinion on the law derived through Qiyas, as is the case with almost all Ijtihadi law. The essential

requirement of Qiyas are Asl (original case, on which a ruling has been given), Hukm (ruling on the original), Ilah (cause of ruling in the original case) and Far (new case on which ruling is to be given).

ISTIHSAN

CONCEPT

- Integral part of Shari'ah
- .•Istihsan is an important branch of ijtihad, and has played a prominent role in the adaptation of Islamic law to the changing needs of society.
- ISTIHSAN in Islamic Law and EQUITY in Western Law, are both inspired by principle of fairness and conscience. However, equity in Western Law is based on natural law, while ISTIHSAN is based on the Divine Law.

JURISTIC VIEWS ON ISTIHSAN

- HANAFI, MALIKI, and HANBALI jurists have validated Istihsan as a subsidiary source of law
- .•SHAFI'I, ZAHIRI and SHI'I ulema have rejected it altogether and refused to give it any credence in their formulation of the legal theory of usul-al-fiqh.

MEANING OF ISTIHSAN according to HANAFI Jurists

In its literal sense, it means "to consider something good or to "seek the best." In its Juristic sense, some of the definitions formulated by Hanafi jurists are as follows: "Departure from the existing precedent by taking a decision in a certain case different from that on which similar cases have been decided, for a reason stronger than the one that is obtained in those cases". – Abu al-Hasan al-Karkhi (d.340 A.H.) "The precedent that is set aside by Istihsan normally consists of an established Qiyas which may be abandoned by a superior proof, namely the Qur'an, Sunnah, darurah (necessity) and a stronger Qiyas" - Imam Sarakhsi (d.483 A.H) Thus, in the analysis of Imam Sarakhsi, Istihsan consists of two analogies: 1. One of them is patent and weak in effect and is called Qiyas, 2. And the other is latent and stronger in effect and is called Istihsan. "It is moving away from the implications of analogy to an analogy that is stronger than it, or it is the restriction of analogy by an evidence that is stronger than it". – Bazdaw

Qno 2

1. Introduction

“Ijma” is the primary source of law. It means determination or consensus. The society which was established by the Holy Quran and the Sunnah is a living society so the Allah almighty gave sanction to the consensus of the Muslim to meet the arising needs of the time.

2. Meaning and definition of Ijma

(I) Meaning of Ijma

Ijma is the verbal noun of the Arabic word Ajmaa it is used in two senses. (i) Determination and resolution (ii) Agreement upon a matter

(II) Definition of Ijma

“Ijma is defined as agreement of the jurists among the followers of Mohammadan in a particular age on a question of law.”)

Sheikh Muhammad Khazi

“The agreement of jurists from the Ummah upon a matter of human shari”.

Kinds of Ijma

Following are the kinds of Ijma (i) Express Ijma or Ijma Qawli (ii) Tacit Ijma or Ijma Sakuti (iii) Regular (iv) Irregular (v) Al Rukhsah (vi) Al Fail

Who can perform Ijma

Only Muslim Mujtahids or jurists can perform Ijma. He must possess the following qualifications. ☐ Knowledge of Quran ☐ Knowledge of Sunnah ☐ Knowledge of Ijma ☐ Knowledge of Qiyas ☐ Knowledge of Maqasid-al-Shariah ☐ Knowledge of Islamic Jurisprudence ☐ He must be trustworthy ☐ He must be an adult ☐ He should be a Muslim

Ijma as a third source of law and under the circle of Quran and Sunnah’s delegation many issues can be resolved by Ijma. (I) Enforcement of ordains of Quran and Sunnah Ijma as a source of law helps in

discovering the law and enforces the principals laid down in Quran and Sunnah. (II) Interpretation of Sharia Ijma help in interpretation of laws of Sharia, according to the changing needs of times. (III) New legislation can be made To achieve the objects of Quran and Sunnah, new legislation can be made through the process of Ijma. (VI) First Ijma performed by Muslims The election of Hazrat Abu Bakr to the caliphate by the votes of the people was based of Ijma.

. Ijma in modern period

According to the accepted opinion of all four sunni schools, Ijma is not confined to any particular age or country. The underneath principal of Ijma is that if a rule or principal is upheld collectively by the highest legal forum in the land, then such a principle must be followed by those subordinate to this forum. In the earlier stages, this forum was confined to jurist companions then the leading jurists of each school. Today the forum would be the highest court in each Muslim country.

. Conclusion

To conclude, I can say, that Ijma is an essential and characteristic principal of Sunni Jurisprudence, one upon which the Muhammadan Community acted as soon as they were left to their own resources. It may be constituted by decision expressed in words or by practice of the jurists. The number of jurists participating in Ijma need not be large and Ijma of one age

Qno 3

The Qur'an

- The Qur'an was revealed to the Prophet Muhammad in the Arabic language. The Qur'an is the word of God and the final revealed book to mankind. Muhammad would receive the verses of the Qur'an via the Angel Jibreel (Gabriel). Although he was illiterate, the Prophet would relate the verses he heard from the Angel and his scribes would record them. Over fifty scribes contributed to the recording of the Qur'an during the Prophet's lifetime. The Qur'an remains as it was revealed over fourteen centuries ago, unchanged.

The Qur'an

- Although the Qur'an covers details of belief, ethics, lessons from history, guidance etc, it also includes laws that relate to family, criminal laws, state laws and trade/ business laws.
- The basic methodology to interpret the Qur'an relies on the following: Understanding the Qur'an from other passages in the Qur'an; Understanding the Qur'an by way of the Sunnah, or the teachings of the Prophet; Understanding the Qur'an by way of the Companions of the Prophet, and; Delving into the linguistic meanings of the Arabic words.

: The Sunnah

- The Sunnah refers to the teachings or known practices of the Prophet Muhammad which have been recorded in the volumes of Hadith literature. These resources include many things that he said, did, or allowed. During his lifetime, the Prophet's family and companions directly learned from him and observed him and related to others what they had seen and heard. People also asked the Prophet directly for rulings on various matters, and he would pronounce his judgment
- Although the Sunnah compliments the Qur'an and is used to further understand the Qur'an, it is also used as a source for many other rulings not explicitly mentioned in the Qur'an. There are over forty verses in the Qur'an that command believers to obey the Messenger and follow his Sunnah (way). "He who obeys the Messenger has obeyed Allah..." [Qur'an 4:80]. The Sunnah carries the same weight as the Qur'an with regards to legislation.

The Hadith collections were recorded in the early years of Islamic civilization. Initially they were scattered, however many scholars over the years gathered and compiled larger compilations -such as the Muwatta' of Imam Malik ibn Anas, or the Musnad of Imam Ahmad ibn Hanbal- containing thousands of Hadiths. The more popular Hadith compilations organize Hadiths under sub-headings that enable researchers to find easy access to specific sources and rulings. The most well-known Hadith collections include Sahih Bukhari, Sahih Muslim, Jami'Al-Tirmizi, Sunan Abu Dawud, Sunan Ibn Majah, and Sunan An-Nasa'i.

: Qno 4

Schools of Thought Systems

Sunni Schools

The Hanafi School

The Maliki School

The Shafei' School

The Maliki School

The Shia' Schools

The Ithn's al- Ashari School (The Twelvers)

The Zaidiya School

The Ismaeeliyah School

The Hanafi School

Al-Nu'man ibn Thabit al-Taymi Born in Kufa (689 AD or 80 AH – 150 AH)

The Imam's family was of Persian origin as well as descending from Prophet's (P.B.U.H) companion Salman al-Farsi

He is the first of the four Imams and the only Successor among them, having seen the Companions Anas ibn Malik, Abdullah ibn Abi Awf, Sahl ibn Sa'd, Abu al-Tufayl, and Amir ibn Wathila

Abu Hanifa is the first in Islam to organize the writing of Fiqh under sub-headings embracing the whole of the Law, beginning with purity (tahara) followed by prayer (sala), an order which was retained by all subsequent scholars such as Malik, Shafi, Abu Daud, Bukhari, Muslim, Tirmizi, and others.

Al-Shafi rightly said, "People are all the children of Abu Hanifa in Fiqh, of Ibne Ishaq in history, of Malik in hadith, and of Muqatil in tafsir."

The Hanfis spread far-and-wide during the time of Usman's Empire. Today, more than half the Muslims on the earth perform their ibabadat according to the Hanafi School. Followers are found in Pakistan, India, Iraq, Syria, Afghanistan & Turkey mostly

The Great Imam died in Baghdad in 150 AH at the age of 70.

Pupils – Abu Yousaf, Muhammad, Al-Shaybanni & Zufar

Books - Fiqh All-Akbar by Abu Hanifas

The Maliki School

- ABU ABDULLAH, Malik bin Anas - Born in Medina (715 AD - 795 AD) Ancestral home was in Yemen, but his grandfather settled in Medina after embracing Islam.

- Kitab-al-Muwatta - The earliest surviving book of Islamic law and Hadith. It is said that Imam Malik had originally recorded ten thousand Ahadith in this book, but in a revised edition he reduced the number to only one thousands, seven hundred and twenty (1720).

- Malikis are mostly found in Spain, North and West Africa, Tunis, Algeria, Morocco, Libya, Qatar and Bahrain.

- Books – Mawatta by Imam Malik,

: Kitab – al Sunnah

: Kitan - al Manasik

The Shafe'i School

- Abu Abdullah Muhammad Bin Idrees descends from the Hashmi family - born in Gaza, Syria in 767 AD

- At the age of 20, he went to Medina and remained there as a student of Imam Malik till the later's death in 795 AD

Imam Shafi possessed a very sharp memory and knew the whole of Imam Malik's Muwatta by heart.

He allowed greater scope to Ijma and rejected Imam Abu Hanifa's Juristic Equity. .

Imam wrote several books, the most well-known of which is called Kitab-al-Umm, which is a collection of writings and lectures of the Imam

Al - Rsalah – another prominent work on Islamic Law & Jurisprudence by Imam.

- During the time of Sultan Salahuddin, the Shafi doctrine was the most prominent in Egypt and to this day the Imam of the Al-Azhar Mosque is always a Shafi .

Imam died in the year 820 AD in Egypt.

. Followers are found in Egypt, Indonesia, Malaysia, Saudi Arabia, Yeman & Palestine.

The Hanbali' School

- Abu Abdullah Ahmed bin Muhammad Hanbal - Born in Baghdad (780 AD - 855 AD)

- Disciple of Imam Shafi and Abu Yousuf.

- Among the works of Imam ibn Hanbal is the great encyclopedia of Traditions called Musnad, compiled by his son from his lectures and enlarged by supplements containing over twenty eight thousand traditions.

- His other works include Kitab-us-Salaat and Kitab-us-Sunnah.

In the world of Islam, the Hanbalis today represent the smallest group of the four Sunni schools, mostly confined to the Middle East countries. .

In the 18th century, the Hanbali system received a vital support from the Wahhabi movement founded by Muhammad bin Abdul Wahab (1703-1787 AD) who followed the Hanbali school of thought

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