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QUESTION NO: 01

ANSWER NO: 01

IJTIHAD AND TAQLID:

The word 'Ijtihad' has been derived from the root JUHD, and literally means "striving with full exertion". Ijtihad is the effort made by Mujtahid in seeking knowledge of the Akham of Shariah through interpretation. In ijthad the person must possess necessary qualifications. Ijtihad is the Islamic legal term, which means "independent reasoning" or "the utmost effort an individual can put forth in an activity." As one of the four sources of Sunni law, it is recognized as the decision making process in Islamic law through personal effort, which is completely independent of any school of jurisprudence. As opposed to Taqlid, it requires a "thorough knowledge of theology, revealed texts and legal theory; an exceptional capacity for legal reasoning; thorough knowledge of Arabic." By using both the Quran and Hadith as resources, the scholar is required to carefully rely on analogical reasoning to find a solution to a legal problem, which considered to be a religious duty for those qualified to conduct it. Thus, a mujtahid is recognized as an Islamic scholar who is competent in interpreting sharia by ijthad. That the persons expending the effort should be a mujtahid. An effort expended by non-mujtahid is of no consequence, because he not qualified to do so. The effort should be directed towards the discovery of rules of the shariah that pertain to conduct all other types of rules are excluded. The method of discovery of the rules should be through interpretation of the texts with the help of the other sources. The activity of faqih, the mufti can't be called ijthad. Ijtihad takes place in cases where no evidence, direct or in direct can be found. Since Ijtihad is primarily a legislative function controlled by the state. An opinion issued by a Mujtahid would have no

significance unless it is accepted by the state and converted into law through legislation.

According to Imam Ghazali (A philosopher of Islamic golden age): Ijtihad means to expand one's capacity in certain manner and use it to the utmost.

According to Sayf al- Din al-Amidi (A jurist of shafi school): Ijtihad as the total expenditure of effort in search of an opinion as to any legal rule in such a manner that an individual senses (within himself).

Taqlid, as generally understood, means following the opinion of the schools of Islamic law in matters of conduct. Thus, a Hanafi follows the opinion of the, Hanafi school, while a Shafi'i follows the opinion Shafi'i school. Taqlid, in Islamic law, the unquestioning acceptance of the legal decisions of another without knowing the basis of those decisions. Taqlid means passive acceptance and following the opinion of another person without questioning the authority for such opinion. Taqlid begins where ijihad ends. The purpose of Taqlid is to discover and apply the law in the light of the already settled law. In Taqlid opinion of a person is followed. It is not necessary for a person to possess some qualification. Taqlid has less scope. It is the secondary source of Islamic jurisprudence. Taqlid is applied only in cases which do not possess the qualification of a jurist. Taqlid according to Holy Quran: "There is no compulsion in religion, if yourself do not know something, then question those who know". Taqlid according to Hadith: "My companions are like a constellation of stars, you will find light no matter which one you follow".

TAQLID IN PAKISTAN LEGAL SYSTEM:

The constitution of Pakistan permits Taqlid in articles 189 & 201. These are articles make the judgment of Supreme Court binding on all courts and the judgment of the High court binding on courts of subordinate to

them. The doctrine of precedent and stare decisis are nothing more than institutionalized forms of Taqlid. When lower courts are follow the opinions of higher courts they are undertaking Taqlid.

QUESTION NO: 02

ANSWER NO: 02

SOURCES OF ISLAMIC JURISPRUDENCE:

Islam is the complete code of life. It gives guidance in every walk of life. Under Islamic law, the term law includes the moral law and legal enactments. According to Islam, ultimate source of any authority is Allah all alone. Different terms used for Islamic law i.e. “Muhammdan law”, “Islamic jurisprudence” and “ Muslim law”. In Islamic law the word used for source is “dalil” which means guide. There are two main sources of Islamic law:

01- PRIMARY SOURCES:

Those sources of Islamic law from which other secondary sources take their validity or authority or guideline or justification are called primary sources.

01. THE QURAN:

Iqra is the first word of the Quran. Iqra means read and the Quran means most read. Both are related to each other. Another meaning of the Quran is “mankind” as the topic of the book is human beings and humanity. The Quran is the first and primary sources of law. The Quran is not a legal code in the modern sense. The legislative part of the Quran is the model illustration for future legislation and does not constitute a legal code by itself. The Quran has vital importance. It lays down a way of life which regulates the relationship of man with man and his relationship with god. The book consist of very (same) words of Allah, who is

the supreme law giver. It was revealed by Allah to our Holy Prophet Muhammad (peace be upon him). There are two kinds of legislation in the Quran:

01) Direct legislation: No interpretation is required in this kind of legislation.

- Constitutional legislation: Surrah Al-Maida has laid great emphasis on the justice to people without any discretion.
- Criminal legislation: Quran declares the punishment for Qatl.
- Civil legislation: It deals with civil rights and duties.

02) Indirect legislation: Legislation derived through Qiyas and Ijma is known as indirect legislation.

02. SUNNAH:

Sunnah is referred to all that is narrated from the prophet (PBUH). His saying whatever is approved and all the reports which describe his physical attributes and character. Sunnah is the second source of Islamic law. The Sunnah is closely linked with the Quran. It comprises:

- All words counsels of the Prophet (PBUH).
- Actions, words and daily practices of the Holy Prophet (PBUH).
- Silence implying a tacit approbation his part of any individual act committed by his disciplines.

02- SECONDARY SOURCES:

Those sources which are depend upon primary sources for their validity or authority are called secondary sources of Islamic law.

03. IJMA:

It is the secondary source of Islamic law. It has to derive its validity from the primary sources. Besides, the Holy Quran and Hadith, there is a third source of Islamic law i.e., Ijma or consensus of opinion of the community. Ijma means to resolve to do something and to agree upon something. Ijma is an agreement of Muslim jurists in a particular age on a question of

the law. Ijma is recognized and valid source of deriving law in Islam. The institution of Khilafat was the result of the consensus of the Ijma of the Muslims soon after the death of the Holy Prophet (PBUH). It has great importance. It helps in interpretation of the laws according to the changing needs of times and new legislation can be made through this process.

04. QIYAS:

Qiyas is based on the Quran, Sunnah and Ijma. Qiyas as a source of law, being subordinate and subsidiary to the Holy Quran, Sunnah and Ijma. It means “Measure and weigh something with another”. Qiyas means “The equation between original and parallel case in respect of the cause derived from the case”. The function of Qiyas is to extend the law of the text to cases not falling within the nature and scope of its terms and to establish a new rule of law. Imam Abu Hanifa introduced the qiyas. Opinions of Muslim jurists are also secondary source of Islamic law.

05. IJTIHAD:

It is one of the dependent sources of Islamic law. The word Ijtihad is derived from Arabic word ‘Jahad’ which means struggle or effort. It is an intellectual effort with a view to form an independent judgement on legal questions. The number of verses in the Quran dealing with the issue are limited, while the legal cases faced by Muslims are unlimited. This means that there has to be some methods of extending the general principles in the Quran and Sunnah to cover all legal issues.

06. ISTIHSAN:

It means to hold something for good. A decision based on absolute reasoning rather than analogical reasoning.

07. ISTIDLAL:

It means inferring from a thing another thing. It is the name of a distinct method of juristic reasoning, not falling within the scope of interpretation or analogy.

08. ISTISLAH:

It means 'thought of public interest' or it means 'bringing the benefit and keeping away evil and bad'. It is the deduction of the law to be based on general consideration for public good. The doctrine of Istislah has been introduced for public interest but full advantages of this concept has never taken because, majority of jurists consider it to be vague and general for making legal deduction

QUESTION NO: 03

ANSWER NO: 03

DISCIPLINE OF THE SCHOOLS OF LAW ARE NOT SECT BUT SYSTEMS OF INTERPRETATION:

Islamic jurisprudence has developed over fourteen centuries. Over that span of time, various schools of jurisprudence have emerged, each with its own interpretation and application of the Sharia. Many schools splintered farther, creating schools following different interpretive approaches and applications. The flourishing abundance of ideas and views attests to the intellectual depth and breadth of Islamic jurisprudence. However, nothing precludes a given state from codifying the Sharia so as to provide for more certainty of the law and clarity and consistency in its application. A variety of opinion within the schools does not represent disunity or weakness, it is, in fact the real strength of the system. A multiplicity of opinion in no way indicates discord or tension within the Muslim Community. On other hand, it indicates an unparalleled richness and variety a system of law that accommodates within its fold a larger distinct races, cultural and geographical regions. The above explanation about the multiplication of opinion in Islamic law doesn't answer the question as to the different schools appeared in the first place. The brief answer to this question is that the schools of

law are not sects. They are system of interpretation based on methodological foundations.