

Concept Of Islamic Law – Part 1

اصول فقہ



Article (مقالہ)

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Note:For more detail, please refer our book "Naqsh-e-Qadam-e-Rasul" part III (Biography of Scholars of Jurisprudence and Science & Art of Islamic Law) at

www.lateefacademy.com

1 - Foreword

I seek refuge unto Allah from Satan, the outcast.

In the name of Allah, the most Beneficent, the Merciful.

Peace be upon Muhammad ﷺ, the glorious Prophet of Islam, his Companions and his followers.

Q1 (A) – Enlighten briefly on the basics of Islamic Shariah (concept of Islamic Law)?

كَمَا أَرْسَلْنَا فِيكُمْ رَسُولًا مِنْكُمْ يَتْلُو عَلَيْكُمْ آيَاتِنَا وَيُزَكِّيكُمْ وَيُعَلِّمُكُمُ الْكِتَابَ وَالْحِكْمَةَ وَيُعَلِّمُكُم مَّا لَمْ تَكُونُوا تَعْلَمُونَ

[Likewise, We have sent to you (Our) Messenger from among yourselves who recites to you Our Revelations and purifies and sanctifies (your hearts and ill-commanding selves) and teaches you the Book and inculcates in you logic and wisdom and enlightens you (on the mysteries of spiritual gnosis and divine truth) which you did not know.]--- (151-Al Baqarah)

Dear brothers and sisters of Islam, It is quite clear from the above cited verse of Qur'an, that Allah ﷻ has sent the Holy Prophet ﷺ as our teacher and guardian. The Holy Prophet ﷺ recites the Qur'an for us and we become "Quari". He elucidates Quranic verses and we become "Mufassir-e-Qur'an". He imparts on us the Hikmat (wisdom) and we turn out to be "Mujtahid (Jurist), Mutakalim (Theologian) and Sufi. Beside, our beloved Prophet ﷺ purifies & purges our heart and soul by bountiful inspiration of his holy company and brings us up under his cherished guidance, so that we may be purged of the filth of corporal desires.

He teaches us the knowledge of monotheism & Gnosis, thus developing devotion & love towards Allah ﷻ and His Rasool ﷺ which we were not aware of before. Therefore, there is absolutely no way that we be misguided or attracted by those few groups of folks who do not follow the footsteps of the Holy Prophet ﷺ.

As regard to Islamic Law, this law is superior to other forms of law because its sense is divinely determined. There are the four basic ingredients of law in Islam. Thus law in Shariah is a legal value established directly or indirectly from divine communiqué which can be proved either through the text of the Quran or Sunnah or definite Ijma (consensus of Islamic Jurists) pertaining to the act, rights and obligations of mankind. These divine commandments from which the Shariah value or legal rules is driven are primarily addressed only to those persons who fulfil the requirements of legal capacity. This divine value, as far as the nature of its contents is concerned, can be religious as well as secular.

Thus all those state laws which are not directly and strictly derived from the text of the Quran and Sunnah but are formulated by the Islamic States for carrying out Islamic plans and the improvement of human society also fall within the category of law in Islam. Their legal relevance is supported and justified by the authority of *اولى الامر منكم* (obey the men of authority among you), the specific provision of Shariah in the light of expressed or implied authority by Shariah are compatible with the objectives of Islam.

Today most of our youth are negatively involved and misguided by some groups of people who do not understand the real sense of Islamic Teaching and concept of Islamic Law (Elim-

Shriah). It was therefore felt necessary to give a brief account on **Concepts of Islamic Law (Usool-e- Fiqua)**, a proper orientation of Islamic way of Life based on Qur'an & Sunnah of Prophet (ﷺ).

For this purpose, a few relevant books written on the same subject by great authors, have been referred for the benefit of our esteemed readers, especially students/youth of our community.

1-*Bahrul Uloom* Hazrat Mohammed Abdul Qadeer Siddiqui (Ra)

Former head of dept of theology Osmania University

2-*Shaykh-ul-Islam* Hazrat Dr Muhammad Tahir-ul-Qadri

I pray & believe that by the blessing of Allah (ﷻ) and His beloved Rasool (ﷺ), the readers will be benefitted in the right direction as shown by The Qur'an & Sunnah of the Prophet (ﷺ), Ameen.

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2-PREFACE

Q 1(B) - Enlighten briefly the Islam, Iman and Ehsan?

Ans:-In the Holy Qur'an it is stated,

“ قَالَتِ الْأَعْرَابُ آمَنَّا قُلْ لَمْ تُؤْمِنُوا وَلَكِنْ قُولُوا أَسْلَمْنَا وَلَمَّا يَدْخُلِ الْإِيمَانُ فِي قُلُوبِكُمْ ”

[The Bedouins say: 'We have believed.' Say: 'You have not believed. Yes, rather say: We have accepted Islam. And the belief has not yet gone into your hearts.] (14-Al Hujraat)

"When people from villages come and they state "Aamanna", Allah (ﷻ) said," you don't say Aamanna, say Aslamna, i.e. "you only say, we have embrace Islam and became a Muslim, because the Iman has not yet entered into your hearts,

If the obedience (Ita`at) اطاعت and submission (Iman) إيمان controls the body, our outer self (zاهر) ظاهر or outer world life, then this is "Islam". And if our heart, soul (Nufs) نفس and spirit (Rooh) روح are controlled by obedience and submission to Almighty Allah and enters into heart and changes inward (Batin) باطن condition of our body, then this is "Iman".

Hence Islam is included in "Iman". That is why, every *Momin* is Muslim but every Muslim is not a *Momin*. This is the reason, we never say, we embrace "Iman", because embracing is the first act of beginning where we start to submit apparently, to declare from your tongue, this submission is outward, it is known as "Islam". When the submission becomes the state of your heart, your soul and spirit, it is deepened in our personality from outward into inward, only then, we become Momin.

So, the *Muslim* is the beginner, *Momin* is traveler of *Sirat-e-Mustaqueern*. Therefore, when you become *Momin* then Islam achieves its perfection in *Iman*. Similarly, *Iman* also needs its perfection. The station where the *Iman* achieves perfection is "*Ehsan*". That is to say, when you entered into valley of "*Ehsan*", the *Iman* is perfected in the same way as the *Islam* is perfected, when it enters into the valley of *Iman*. From this discussion, the condition of *Ehsan* in a *Momin* on the basis of "*Islam*" is prerequisite of *Iman*.

Q2-What *Shari'ah* or *Deen-e-Islam* is all about?

Ans:-*Iman* and *Islam* together with *Ehsan* is called *Deen-e-Islam*. The subjects which deliberate details or various stages of *Ehsan* are:

- 1-Elim-e-Tasawuf
- 2-Elim -e-Tareekhat
- 3-Elim-e-Aqueeda
- 4-Elim-e-Haqueequat based on *Iman*
- 5-Elim-e-Fiqh.

Elim-e-Fiqh, is based on Article (Fundamentals) of Islam, in the same way as Elim -e-Tasawuf is based on Tenets (principles) of *Ehsan*. Therefore "*Shari'ah*" is a totality that includes *Elim-e-Aqueeda*, *Elim-e-Tasawuf*, *Elim-e-Shari'ah*. The whole some of teaching of Islam is known as *Deen-e-Islam*.

As a result *Deen-e-Islam* is a most moderate, balanced and perfect way of life, for the whole mankind with large scope of flexibility, adaptability for all time. It provides kindness, betterment to individual and society at large. It does not allow any kind of **extremism or terrorist behavior**.

Q3-What do you understand by the term *Usool-e-Fiqh*, *Hukum* and *Khanoon* ?

Ans:

- ***Usool-e-Fiqh*** is the science which deals with fundamentals and principles of Fiqh which means ***Islamic Jurisprudence***.
- ***Hukum*** (legal value or Law); "*Hukum*" حکم is the subject of "*Fiqua*" فقه and it is defined as the body of rules of human conduct which can be mandatory (waajib), Obligatory (Farz) or declaratory (waza'ee) in its nature. It is established through revealed communication, based upon Qur'an and Sunnah of Holy Prophet ﷺ. It is not the words of verses or "*Vahee*" but this is the value based on divine communication (Vahee) وحی either expressed or implied by Qur'an and Sunnah.
- ***Qanoon***:-All those *Qanoons* قانون which are not based on Qur'an and Sunnah but are based on legislation, parliament, courts or through customs, public opinions etc. All those

legislations which are formulated other than Qur'an and Sunnah, they are known as **Qanoon** according to Islamic Shari'ah. Qanoon is Greek word used by Rulers to draw lines.

Q4-Illustrate the differences between Islamic Law and Western Law?

Ans:- Difference between Islamic Law and Western Law:

Islamic Law: It is defined as the legal value or Hukum. It is very clear in Islamic Shari'ah. There is no contradiction what so ever, whether it is Ḥanafī حنفي, Mālikī مالكي, Al-Shafi'i شافعي and Hambali حنبلي views throughout the history. There has been consensus of opinion in defining of Islamic Law, **the Hukum**.

Western concept of Law; is totally different, The Law in Western has been always under discussion right from 3rd centenary when it was first stated by Robinson W.A, up till the definition of Law stated by John Hasten. There are many ambiguities in its clarity. One after other every saint has drawn up a different definition of Law. Finally the definition given by "Solemn" is read as "*The body of principles recognized by the body of state to exercise justice*".

There are lot many questions that arise after every definition given by the western jurists, like: What is the origin of Law, what would be its credibility and criteria of Law? What would be standard of its acceptability or discarding? They don't have an answer to any of these questions. On other hand, the western jurists say" it is difficult or rather harder to define Law". The reason is, they have been doing on trial and error basis their efforts in defining the Law, and none of them have the totality of knowledge of human nature. Hence some of their definitions go towards positive views and some go towards negative views and some of them towards idealistic view. It keeps on changing according to demands.

Whereas, In case of Islamic Law for the last fourteen centuries, there is no difference of opinion nor dispute. This has been unanimous definition of Islamic Law throughout the centuries. The **Islamic Law** is a rule of human conduct which is established through a divine communication. Its origin is divine communication which is primarily the right of Allah ﷻ, whether defined explicitly by the word of Qur'an or implicitly informed by Sunnah of Holy Prophet ﷺ. In both the cases, it is based and established through divine communication.

Hence Islamic Law does not need sanction of its validity, whether the parliament accept it or not. It exists in any case whether it is imposed or not. It deals with conduct of human being in the following three forms:

- 1) It possesses either in the form of **Demand** طلب to be committed or to be omitted.
- 2) There should be **positive demand** امر or **negative demand** نهى or **demand through a discretion** اباحة given to mankind.

3) The 3rd form is **declaratory** **وضعی** in which conditions and reasons are mentioned in this Law.

Q5-What are the ingredients' of Islamic Law and the nature of scope to serve and develop excellent conduct of mankind?

Ans:-In the Islamic Law, there are four ingredients:

1-Law itself (حکم)

2-Law giver (حاکم)

3-Objectives of Law (محکوم بہ)

4-Subjects of Law (محکوم علیہ) .

The details of each ingredients of Islamic Law are given separately.

Scope of Islamic Law: The nature of scope in Islamic Law is vast. It is religious in its scope and it is also secular in its scope.

Islamic Law deals with matters of

Worship (ibadaat) عبادات, Panel matters (aqubaat) عقوبات,

Family and matrimonial matters (munakihaat), مناکحات,

It covers civil matters (moa'milat) معاملات,

State matters (ahkaam-e-saltanat) احکام سلطنت

It also covers municipal Law, Personal Law, Judicial Law (shahaadaat) شہادات, Moral and Social Law, Administration Law, Military Law, Private and International Law which relates to *Muslims*, Financial Law, Fiscal Law, Constitutional Law (دستوریہ) etc.,

All aspects of human life from individual Private personal life up to international sphere, each and every aspect of human life is covered by Islamic Law. It provides a straight, balanced, and moderate way of life.

Islamic Law abides its followers to lead peaceful life and spread peace and security to one and all, *Muslims* or *non-Muslims*, all creatures around themselves and around the world. It is strictly against all kinds of **extremism** and **violence**.

CONCEPT OF ISLAMIC LAW

Law giver (Haakim)

- i. **Ultimate Sovereignty (Haakim-e-Haqiqi)**
- ii. **Manifestative Sovereignty (Hakim-e- Niabati)**
- iii. **Vicegerency (khilafat\Amaarat\Ululamer)**

3- Law giver (Haakim) حاكم in Islamic Law:

Q6:-On whom the Law giving authority rest, according to Islamic Law? Explain clearly and illustratively?

Ans:-In is mentioned in Quran;

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ

[O believers, obey Allah, obey Holy Prophet ﷺ and obey men in authority (ullul amar) and if any dispute arises amongst you then refer it to Allah and Holy Prophet ﷺ for final verdict and adjudication]. (59-Al Nisa)

In the light of this Qur'anic verse the obedience of Allah means:

- 1) **Ultimate Sovereignty** (Al-hakim-e-Haqiqi)
- 2) **Manifestative Sovereignty** (Al-hakim-e-Niyabati)
- 3) **Vicegerency** (Khilafat\Amarat\Ululamer)

1) Ultimate Sovereignty. (حقيقي حاكم): The Law giving authority really and primarily exists in Law giver the Almighty Allah, but at the same time manifestatively, it exists in Holy Prophet ﷺ. Hence Almighty Allah ﷻ is **Ultimate sovereignty** and that the Law giving authority in real sense rests in Allah ﷻ.

2) Manifestative Sovereignty :(نبا بتي حاكم):

Since Almighty Allah's Will, command and His communication is delivered and communicated to the mankind through Holy Prophet ﷺ, the messenger. This is Allah's ﷻ Sunnah that the Prophet is raised to the man kind and the messenger becomes a spoke person of Allah ﷻ. The Prophet becomes direct recipient from Allah ﷻ, as people cannot receive communication directly from Allah ﷻ. Thus, the manifestative authority rest in the personality of Holy Prophet Mohammed ﷺ. He is **sovereign** in his manifestative capacity, in His

representative capacity. It is stated; whatever was communicated by the Holy Prophet (ﷺ) in the form of Sunnah is also a revelation of Holy Quran is implicit revelation (وحي جلي) and the Sunnah is explicit revelation (وحي خفي).

Holy Prophet (ﷺ) stated, (الا اوتيت القرآن ومثله معه) "I have been given Qur'an and its similar the Sunnah, both are revealed on me".

Whereas, the legislative authority of Rasool ﷺ is clearly and explicitly mentioned in Quran, It is stated;

فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمَكَ فِي مَا شَجَرَبَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيَسْأَلُوكَ لِیَمَّا

["But No, by your Lord (Allah), they cannot be believer unless they accept and make you (the Rasool) final authority in all disputes among them and find in their heart no resistance against your decision and submit before you in full submission"]. (65-Al Nisa)

In another verse -7 Sūrah Al-Hashr الحشر it is mentioned;

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمُ عَنْهُ فَانْتَهُوا

[Whatever the prophet ﷺ gives you, take it and what so ever forbids, you abstain from that].

In these verses, it is clearly mentioned that the legislative authority, Law giving authority and station of manifestative Sovereignty rest in Holy Prophet ﷺ.

3-Vicegerency: (خلافه/امارت)

In Sūrah Al-Nisa verse 59 in the Holy Quran it is stated that;

"Obey Almighty Allah, Obey Holy Prophet ﷺ, Obey the men in authority (اولوالامر) amongst you, and if dispute arises among you then refer it to Allah and Rasool ﷺ for final verdict and adjudication".

In the above mentioned verse, three kinds of obedience, or authorities are mentioned, obedience to Allah ﷻ, obedience to Holy Prophet ﷺ and obedience to men in authority. It is also clear from the same verse that obedience to Rasool ﷺ is permanent and unconditional, unchallengeable, perpetual as obedience to Allah ﷻ is permanent.

Whereas the obedience to men in authority is not permanent, as it is mentioned in the same verse that if the dispute arises then, they should refer it to Allah ﷻ and Rasool ﷺ.

Therefore, no one can say that I accept Quran and I don't accept Sunnah and Hadith of Rasool ﷺ. The movement that says this, he would become Kafer (disbeliever).

It is also indicated in the verse that this obedience to men in authority means obedience to *Aimma* (ائمة) and *Fuqaha* (فقهها), which is conditional and related to obedience of the Prophet ﷺ.

- We find there are twenty two (22) verses of Holy Qur'an which contain commandments of joint obedience of Allah ﷻ and obedience of Holy Prophet ﷺ. There are another twenty (20) verses which contain commandments of only one obedience i.e. just obedience of Prophet ﷺ, there is no mentioning of Allah ﷻ.

As already discussed, there are verses in Holy Qur'an where the legislative and law giving authority of Holy Prophet ﷺ is clearly and explicitly mentioned. So whatever is said by Holy Prophet ﷺ, whatever is directed by him, whatever is commanded by him, whatever is prepared by him, whatever is recommended by him, each and every act of the Prophet ﷺ is in fact act of Allah ﷻ, there is no acceptability of any duality between station of these two act.

Therefore we say "in Islam Allah ﷻ is **ultimate Sovereign**, the Holy Prophet ﷺ is **manifestative sovereign**, in representative sense. The classical Imams and authorities had unanimous agreement and consensus on Law giving authority of the Holy Prophet ﷺ. **Imam Taimia** also says, "Allah has appointed Holy Prophet ﷺ in His place, in His representative authority in case of command of commission (amer) امر, in case of command of omission (nahi), in case of discovery of fact and in case of interpretation of Laws. In these matters Holy Prophet ﷺ enjoys same status as almighty Allah ﷻ (by His blessing).

The Hadith and Sunnah of Holy Prophet ﷺ has always been declared as 'wahee' the "revelation". The difference is, the Quran is divine revelation in words and meaning, the Hadith is divine revelation in meaning only, the words of Hadith are of Holy Prophet ﷺ and meaning is divinely revealed by Allah ﷻ as said In Sūrah Al-Najam verse 1-2;

وَالنَّجْمِ إِذَا هَوَىٰ ۖ مَلَاةَ لِقَّةٍ مَّاجِبِكُمْ وَمَا غَوَىٰ ۚ

[The Holy Prophet ﷺ does not speak on his own. Whatever he utters by his mouth, is the revelation (vahee), revealed on him.] (1&2-Al Najam)

- As for as binding authority is concerned, both have binding authorities, but the difference is in grade and rank. The Quran possesses the higher rank and the Sunnah after Quran 2nd rank. Thus "Vajooob" وجوب is established by Qur'anic-text and as well as Hadith-e-Mutawati حديث متواتر. This is the capacity of Law giving in Islamic concept of Law.
- In Sūrah Al-Nisa-16, it is stated " when dispute arises between you, then in order to get final adjudication, you should refer your matter to Allah and Rasūl ﷺ.
- **For example;** there was a dispute between companions (sahaba), then where the companion would go? How can they physically refer the matter to Almighty Allah? Practically speaking, they used to go to Rasūl (ﷺ). Referring the matter to Holy Prophet ﷺ is taken to as referring to **Allah**, because, Rasūl ﷺ is representative and demonstrative authority of Almighty Allah on earth. You will see the openhanded do not deny the authority of Allah, they just deny the authority of Rasūl ﷺ or Sunnah or Hadith.
- Those who refuse to accept the authority of Holy Prophet ﷺ, is declared as *Munāfiq* منافق in Sūrah Al-Erab verse- 36. Remember! More than hundred (100) verses of Qur'an express the Law giving authority of Holy Prophet ﷺ.

4- Manifest Sovereignty : (نبا بتى حاكم):

Q7-Elucidate briefly and clearly the categories of Law giving authority of Holy Prophet ﷺ?

Ans:-The Law giving authority of the Holy Prophet ﷺ is of two categories:

I-Interpretative Authority (Tashri`hi Haakamiyet) تشریحی حاکمیت

II-Original Authority (Tashri`ee Haakamiyet) تشریحی حاکمیت

I-Interpretative Authority. (تشریحی حاکمیت)

This authority of Holy Prophet ﷺ is referred to elucidate, and make clear meaning of Quranic verses. It is stated in Holy Quran;

بِالْبَيِّنَاتِ وَالزُّبُرِ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَّقُونَ

[And to thee (the prophet) also have we sent a scripture (the Qur'an), that you must bring afresh (the message and the commandments) to people minds that had already been sent down to them, so that they should reflect over it]. (44- Al-Nahl)

i-Interpretative Authority has following various forms:

- i- Specification of general (Taqsisul Aam)**
- ii- Qualification of absolute (Taqeedul Mutluq)**
- iii -Explanation of Implicit (Bayanul Mujmil)**
- iv- Exemption (Istesna)**
- v- Addition (Azziyada)**
- vi- Explanation of Ambiguous (Ta`ozihul Mushkil)**

i- Specification of General (عام) :- There are some Quranic commandments which were revealed in the form of **General**, These were specified by the Hadith of Holy Prophet ﷺ. This legislation which was done by Hadith is known as "Specification of General".

E.g. The Holy Qur'an said that, "They have to do testament or Will (Vasiyat)." It was general way of commandment of Quran. But Rasoolullah ﷺ has specified it up to 33.3% "Vasiya" or testament and said, "you cannot make a "Vasiya" more than 33.3 % of property. This 33.3% or 1/3rd limitation was never mentioned in Holy Qur'an. The whole Umma accepted this limitation on the authority of Rasool ﷺ.

ii- Qualification of Absolute (مطلق):- There are commandments in Quran which are known as **Absolute**. Holy Prophet ﷺ qualified this **Absolute** through his Order.

E.g. Punishment of theft is mentioned in Qur'an, but there was no mentioning, what should be the amount of theft, this was "Absolute command" of Qur'an, which was qualified by the authority of Rasool ﷺ.

iii- Explanation of Implicit (بيان مجمل):- In the same way some commandments in Quran are implicit. The Holy Prophet ﷺ explained the Implicit of Qur'an.

E.g. The establishment of Prayer صلاة is mentioned in Quran, but there was no mentioning about, how many "Rakat" of Fajr etc. If there was no Legislative authority of Holy Prophet ﷺ and there was no "explanation of Implicit", "qualification of Absolute", "specification of General", you would not be able to pray a single prayer. Similarly, for all details of Prayers, Zakat, Haj and Fasting, you cannot get single detail in order to practice Deen-e-Islam,

If you do not accept the authority of Sunnah of Rasool ﷺ, none of demands of Qur'an become practicable and workable, the whole Deen will not be possible to be practiced, exercised, to be applied in our life, to be executed on the earth without accepting the authority of Rasool ﷺ. Hence, it is the Sunnah of Holy Prophet ﷺ which made the Deen-e-Islam and commands of Quran applicable and acceptable in the full sense.

iv-Exemption: (استثنى) Quran declared every dead body is Haram and prohibited to be eaten, but Holy Prophet ﷺ exempted it in case of dead Fish and made it Halaal, permitted, and facilitated for Ummah .

V-Addition (الزياده):- They are some commands which were added with the commandment of Qur'an. **E.g.** With the panel, punishment of Adultery (زنا), an addition of one year imprisonment or to exile is made.

VI-Explanation of Ambiguous (توضيح المثل):- There are some words of commands in the Quran, the meaning of which are not possible merely by the Dictionary etc. Holy Prophet ﷺ explained number of ambiguous words.

e.g.:- Quran declared Biazul-Nahar (بياض النهار) and sawdul-Lail (سود الليل) as time of beginning of Fast. It was ambiguous, Rasool ﷺ explained this ambiguous command of Qur'an as time of Fajr, the day break (dawn).

There are various forms of prophetic Legislation, in order to interpret what was narrated in Qur'an.

II- Original Authority: (تشريعى حاكميت)

Q8:- What do you understand by original Legislative authority of Holy Prophet ﷺ Explain it clearly?

Ans:-Some of the Laws which were not mentioned in the Holy Qur'an were originally given by the Holy Prophet ﷺ through his Sunnah. Thus not only the interpretative authority rests in the Rasool ﷺ but also original Law giving authority rests in him.

1. The verse where in the legislative authority is clearly and explicitly mentioned in Holy Qur'an is Surah Al-Nisa verse - 65. It is stated, " But no, by your Lord, they can never be believer unless they accept and make you) Rasool (ﷺ) final authority in all disputes among them and find in their heart no resistance against your decision and submit before you in full submission".

2. In Surah Al Hasher verse -7, it is stated," whatever the messenger (Holy Prophet ﷺ) gives you take it and whatever he forbids you, abstain from that".

These verses clearly mention the original Legislative authority of Holy Prophet ﷺ which has various forms namely:

- i. Punitive Legislation**
- ii. Conditioning Legislation**
- iii. Expiated Legislation**
- iv. Commanding Legislation**
- v. Prohibitory Legislation**
- vi. Evidential and procedural Legislation**
- vii. Exceptional Legislation.**

I-Punitive Legislation (تشریعی جنائی): This relate to some Penal Laws given by Holy Prophet ﷺ. For some of the Laws which are not mentioned in Qur'an, original Laws were given by the Holy Prophet ﷺ through his Sunnah.

E.g. Punishment for drinking (wine etc) was never mentioned in Qur'an. It has been mentioned by the Rasool ﷺ.

li- Conditioning Legislation : (تشریعی سبب) this is a kind of Penal Law conditioning which is not mentioned in Holy Qur'an.

E.g.:-Holy Prophet ﷺ said, "If anybody murdered someone and he was a legal heir, the murderer will not get a single Penny as legal heir. He will be deprived of succession". This Law was never mentioned in Qur'an.

lii- Expiated Legislation (تشریعی كفاره) this is regarding expiated Laws given by the Holy Prophet ﷺ, which were not mentioned in Qur'an.

The poorest people of the city Madina, where should they feed sixty persons in expiation (kaffarah) of breaking fast.

E.g. For one such person, Holy Prophet ﷺ said, "Wait". Someone brought some Dates (k'hjoor), Holy Prophet ﷺ said, "Where is that person who broke fast. The person replied, "I am here", Prophet ﷺ said, "Take these Dates and distribute among poor of Medina". He stood up and said", 'O' Holy Prophet ﷺ there is no family or house who is poorer than me and us, and we are the poorest". Holy Prophet ﷺ, smiled and said," Take these Dates, you should go back and eat with your family and it would be expiated".

This way Prophet ﷺ creates Law of expiation. He exempts oo wherever he wanted from this Law.

Iv- Commanding legist (تشریعی امر) relates to some original command, given by the Holy Prophet ﷺ, which were never mentioned in Qur'an.

e.g Miswak, cleaning of teeth with Miswak stick.

v- Prohibitory Legislation (تشریعی نہی)

This relates to some prohibitory Laws, given by the Prophet ﷺ through his Sunnah which were never mentioned in Qur'an.

E.g. The Prophet ﷺ declared that the Silk wear and Gold wear are prohibited and forbidden for men. This was never mentioned in Holy Qur'an. He exempts to wherever he wanted from this Law.

E.g. A companion came and asked, " 'O' Holy Prophet ﷺ I have some skin disease, if I don't wear silky dress, it will increase my illness" Holy Prophet ﷺ allowed him and said, "You can wear silky shirt".

Thus, this is the Legislative authority of Holy Prophet ﷺ. He creates the Law, he can formulate the Law. He can exempt from the Law whom he wants. Almighty Allah has vested absolute Legislative authority in his person.

Vi- Evidential and Procedural Legislation: (تشریعی ثہادت)

All Laws of evidence, all Laws of Shahada are given by Holy Prophet ﷺ, through his Hadith and Sunnah, which are not in Quran. In the same way, the exemption Laws were given by Rasool ﷺ not by the Qur'an.

Vii- Exceptional Legislation. (Istesna) (استثنی)

e.g. The Prophet ﷺ declared that the Silk wear and Gold wear are prohibited and forbidden for men. This was never mentioned in Holy Quran. He exempts to wherever he wanted from this Law.

e.g. A companion came and asked, " 'O' Holy Prophet ﷺ I have some skin disease, if I don't wear silky dress, it will increase my illness". Holy Prophet ﷺ allowed him and said, "You can wear silky shirt".

So, this is the Legislative authority of Holy Prophet ﷺ .He creates the Law, he can formulate the Law. He can exempt from the Law whom he wants. Allah ﷻ has vested absolute Legislative authority in his person.

5-Summary: (خلاصہ)

Q9- Give a brief account of Law giving capacity in Islamic Law?

Ans:- According to Islamic Shari'ah the Law giver is Almighty Allah in the real sense, but this is exercised, representatively and manifestatively always by Prophet Mohammed ﷺ. That is why the Hadith and Quran have been declared to be **Vahee**, the revelation of Allah ﷻ. The only difference is, the **Quran** is divine revelation in words and meaning, and the **Hadith** is divine revelation in meaning only, the words of Hadith are of Holy Prophet ﷺ and meaning is divinely revealed by Allah ﷻ. As far as binding authority is concerned, both have binding authority but the difference is in grade and rank. **Quran** possesses higher grade and rank and the **Sunnah/Hadith** is after Quran second rank.

wajooob (Fard and Wajib) is established by the categorical (unambiguous) Quranic text نص (Nus) as well as by Hadith-e-Mutawatir. This is the capacity of Law giving in Islamic Shariah (Law).

All companions including Four Caliphs, accepted both Hadith (Sunnah) and Holy Quran and make no difference as far as legal legislative authority is concerned while following the Shariah.

We find, 22 verses of *Holy Quran* which contain combined commandments to obey Almighty Allah and Holy Prophet ﷺ. There are other 20 verses which contain commandments of only one obedience i.e., just obedience of Holy Prophet ﷺ and there is no mentioning of obedience of Almighty Allah ﷻ.

There are verses of Quran wherein the legislative and Law giving authority of Holy Prophet ﷺ is clearly and explicitly mentioned, for example verse-65 of Sūrah Al-Nisa. So whatever is directed, done, commanded, preferred and recommended by the Holy Prophet ﷺ each and every act of him is in fact from Allah ﷻ. There is no permissibility of any duality between stations of these two acts. That is why we say in Islam, Almighty Allah is Law giver in real sense (الحاكم الحقيقي) and Holy Prophet ﷺ is Law giver in representative sense (احکم نیابتی).

Hence all classical A'imma and authorities had a unanimous agreement and consensus on Law giving authority of Holy Prophet ﷺ.

6-Sources of Islamic Law

(مصادر فقه اسلام)

Q10:-Explain in brief the categories of sources of Islamic Law (Fiqua)?

Ans:-The sources through which the Islamic Law (Fiquh) is established, formulated and developed are of three categories:

1-Primary Sources 2-Secondary Sources 3-Subsidiary Sources.

1- Primary Sources:

The Primary Source is Quran and then next to Quran is the Sunnah of Holy Prophet ﷺ. It is said that Law Giver in real sense is Allah ﷻ and his Law giving authority rests in Holy Quran. When we say the Holy Prophet ﷺ also enjoys the status of Law Giver in his representative and manifestative capacity, his legislative capacity and authority rest in his Sunnah, Hadith, his speech, his acts & deeds and his tacit (silent) approval (سكوت). Now consider the prophetic declaration in his Hadith as follows:

1. In a Hadith transmitted by Hadrat Hudaifa, reported by Imam Bukhari & Muslim, it stated that the Holy Prophet ﷺ said, "The Allah's divine's revelation was communicated to the people (Sahaba) and it went up to the depths of their hearts".

Here in this Hadith, he mentioned revelation only. Then he divided this revelation into two realities, "the Quran and Sunnah". It means, he himself is explaining, that the Quran and Sunnah both are divine revelations, communicated by Allah ﷻ, first in the form of words, letters and spirit and the other in the form of spirit (meaning).

2. In a Hadith transmitted by Hadrat Abuhurera, reported by Imam Bukhari it stated that Holy Prophet ﷺ said, "Everybody will go to Jannah (Heaven) among the believers except those who disobey me". The companions asked, "Ya Rasūlullah ﷺ who are those who disobey you". He said, "Those who don't accept my Sunnah, my commandments and authority. They are the disbelievers and they would not go to Jannah"

2-Secondary Sources:

The secondary sources of Islamic Law are 1. *Ijtima* (consensus of opinion of Jurist) and 2- *Quiyas*. (Analogy). Both these sources originate from *Ijtehad* (Interpretation of Islamic jurisprudence based on Quran and Sunnah).

Ijtehad is the Juristic mode of Legislation and the process through which it comes, is Analogy (*Quiyas*).

3-Subsidiary Sources:

There are Six subsidiary sources of Islamic Law, namely 1) **Precedents**, 2) **customs and usages** and (3-4) four **ordinances** given by four absolute jurist in the form of **strategic principles**.

NOTE: Out of ten sources of Islamic Law, only **two primary sources** i.e. Quran & Sunnah are definite, permanent and unalterable being primary sources. Other eight (8) sources i.e. **two secondary plus six subsidiary sources** are variable and adoptable to suit the needs of people from time to time and place to place. This is how the Islamic Law is perfectly structured, formulated and legislated. So, it is wrong to say that the Islamic Law has a precedent. In fact, no system of Law in this earth is ever emerged having such a great scope of juristic interpretation as **Islamic Law**, the Fiqh.

7- The Qur'an (القرآن)

Q11:-Enlighten the significance of the Holy Quran as the primary source of Islamic Law (Fiqh)?

Ans:-The **Holy Quran** is the **first, primary source** and origin of Islamic Law (Fiqua). There is unambiguous text in Holy Qur'an in an implicit form. For example, commandments for prayer (Salah) are given but details are not mentioned for practicing the prayer. It is explained by the Holy Prophet ﷺ through his Sunnah. In the same way, Hajj, Zakat, Fasting, contract, trading for business, prohibition of usury etc are mentioned in Holy Qur'an. The details for their implementation were relied upon the Legislative and interpretative authority of Holy Prophet ﷺ bestowed by Almighty Allah, through his Sunnah.

Remember that both the Holy Quran and the Sunnah of Holy Prophet ﷺ are divine revelations (*Vahi*). The only difference is that the Qur'an is revelation in words and meaning and the Sunnah (hadith) is revelation in meaning. The words of Hadith Sunnah are of Holy Prophet ﷺ, as it is stated in Qur'an "Rasool ﷺ does not utter a single word from himself. Whatever he utters is the divine revelation revealed on him". (*Al-Najam-2, 3*).

The unambiguous text of Qur'an in an implicit (**مجمل**) form are most significant in formulating the Islamic Sharia (Law) for building up excellent Socio-Economic Society, day to day dealing, behavior and political management etc.

Therefore, the foundational principles are drawn from commanding text of Holy Qur'an, from which the detailed Islamic Law (*Sharia/Fiqua*) is unfolded and reflected as way of life to the humanity. The Islamic Law fulfils the current & forthcoming need and demand of human life till the last day of the existence of this world.

Here, one should keep in mind that despite the significance of Quranic text, we can never be unconcerned and indifferent to the Sunnah of Holy Prophet ﷺ. Unless we accept and obey the Legislative authority of Holy Prophet ﷺ and his Sunnah, implementation of Quranic commandment in particular and practicing Islamic Law as a whole is impracticable. The reason being, Allah ﷻ himself made us bound to Sunnah as said in Quran;

وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمُ عَنْهُ فَانْتَهُوا

"Whatever the Holy Prophet ﷺ gives you, take it and whatever he forbids you, abstain from it, (Sūrah Al-Hasher-7) In this verse of Quran, the interpretative, manifestative and legislative authority of Holy Prophet ﷺ is clearly and explicitly mentioned.

A Hadith transmitted by Abu Huraira and reported by Imam Malik, the Holy Prophet ﷺ stated, "I have left two great things for you to believe in, to adopt and to practice in your life. If you stick to these two great things, for you will never be misguided, one is Quran and the other is my Sunnah".

8-The Sunnah or Hadith (سنت)

Q12- Enlighten the significance of Sunnah as primary source of Islamic Law next to the Qur'an?

Ans:-The Sunnah of Holy Prophet ﷺ being **next in rank and status to Holy Quran** is 2nd primary source of Islamic Law (Shari'ah) as the details of Quranic fundamentals are explained through the Sunnah of the Holy Prophet ﷺ.

Like Quran, the Sunnah is also permanent, unqualified, unchangeable and perpetual legislative source of Islamic Law (Fiqh). There are many original commands of Holy Prophet ﷺ, given through his Sunnah. They were never mentioned in Qur'an. In fact these are deduced in one or the other way from Quran itself through imperative and authoritative wisdom of Holy Prophet ﷺ implied upon revelation (Sunnah). Though the common man's intelligence does not reach to that level of prophethood and will not be able to understand.

Since the direct seeking from Holy Prophet ﷺ and his companions is not possible now, transmission of Hadith 'Rivayah' (روایت) is the only source to know and learn the Sunnah.

*The Holy Prophet ﷺ said, "There will be seventy three (73) sects formed in my Umma, all of them will be **Naari** (نوزخی) and go to Hell except one which is **Naaji** (جنّتی), will get salvation and go to Heaven". People (Sahaba) asked, "Who is that one sect"? He said, "Those who follow and obey me and my companions". (Tirmizi, Abu Dawood, Mishkat)

This is the reason, the *Tabayeen* preserved the traditions of Holy Prophet ﷺ, and narratives of companions and, protected them from falling into the hands of those **Naari Sects**. Initially, the authentications of Hadith were never asked. But later when mischievous people started indulging and fabricating with Hadith (*Rivayah*), then the authentication (*Sanad*) of Narrators of Hadith became inevitable and gradually a foolproof art of science of *Rivayah* and art of *Rejal* (اصول روایت) had been developed by classical scholars, researchers (*Muhaddiseen*) during the period of *Tabayeen & Taba Tabayeen* and seven authentic books of Hadiths called **seha-sitta** (صحاح سنته) were compiled and edited. Thus efforts made by Muslims to preserve and protect Hadiths were peerless and unique.

Revayah (روایت) and Darayah (درایت):- If the words of Hadith are transmitted, this is **Revayah** and if the meaning of Hadith is learnt and understood, this is **Darayah**. The people of **Revayah** and transmission of Hadith are known as "**Muhaddiseen**" (محدثین), the people of **Darayah** and interpretation are called **Fuqaha** (فقہا), the **jurists**.

There are many prophetic declarations in Hadith which declares the Sunnah of Holy Prophet ﷺ as the binding authority in Islam. The Sunnah is also the foundational source of Islamic Law next in rank to Qur'an.

The Holy prophet ﷺ also said, "My Sunnah and the Sunnah of my Caliphs is compulsarily binding upon you".

9- Scholarly Consensus and Analogy

(اجماع اور قیاس)

Q13:-Enlighten the importance and legal value of *Ijma*(اجماع) and *Qiyas*(قیاس) as secondary sources of Islamic Law?

Ans:-The third and fourth sources of Islamic Law are binding capacity of *Ijma* and *Qiyas* (consensus of opinion and Analogy).

***Hadith of Holy Prophet ﷺ;** in the 1st part of a Hadith, it is mentioned that, "There would be two groups. One group in my *Umma* will be the group of **Muhaddiseen** (Scholars of Hadith), they will receive the Hadith and transmit to people. The other group is **Fuqaha** or **Mujtahideen** Jurists they will understand and go into depth of Hadith so that they may be able to formulate body of it and thereby Law the "*Islamic Shariah*".

In this way, **Muhaddiseen** have been performing the transmission of Hadith and the **Mujtahideen** have been performing the function of formulating the Law of *Shari'ah* after due consideration and going into depth of meaning of Hadith to know the "will" (مراد) of **Shari'ah** (Quran and Hadith).

In the next part of the Hadith*, the Holy Prophet ﷺ said, "There are three people in my *Umma* and their hearts would never be dishonest:

1. Whose acts and deeds are based on pure sincerely for Allah ﷻ and their hearts would never be dishonest.
2. Those people who always wish for betterment of *umma* and those who pray for their betterment, because of generosity of their hearts. Allah ﷻ will protect their heart for their honesty.
3. Those who stick to *Jamath* (Al-*Ijma*), the 3rd source of Islamic Law, the consensus of opinions.

Look! In this Hadith the qualities that are needed to be *Fuqaha* or *Mujtahideen* are mentioned. That is why the *Fuqaha* are less in number when compare to *Muhaddiseen*. A *Fuquhi* needs to be *Muhaddis* where as *Muhaddis* need not be *Faquhi*.

1. In a Hadith, transmitted by *Hazrat Abu Huraira* ﷺ and reported by Imam Bukhari, stated that Holy Prophet ﷺ said, "*whenever I give you a commandment or I give you an order or I give you any injunction and I give you instructions, you could accept them and present it in your life. If I prohibit you and forbid you, abstain from it*".

Look! Here in this Hadith, lies the binding capacity of Holy Prophet ﷺ, as source of Islamic Shariah.

2. In another *Hadith-e-Sahih* transmitted by *Hazrat Abu Rafiqu*, who stated that Holy Prophet ﷺ said, "*I see, there would be a person in my Umma. He will be sitting on his seat, giving lecture, teaching Islam to people and a Hadith will be quoted to him. When he hears the Hadith or come to access a Hadith of mine, he would say, we don't accept the authority of Hadith and Sunnah. We don't look at Hadith, Look at Quran whatever has been mentioned in the Quran, we are bound to accept and practice it*". This is ***Fitna* (فتنه) and *Delala*** (heresy).

The Holy prophet ﷺ then rebutting this ***Fitna***, said, "*You should know 'o' my Umma, whatever is forbidden by Rasool ﷺ, it possesses the same capacity and status as it has been forbidden by Allah ﷻ*".

This foretelling (Hadith) is a miracle of Holy Prophet ﷺ that he mentioned this 14 centuries before. Today there are some people who are rebutting and denying the authoritativeness of Holy Prophet ﷺ and his Sunnah. This is *a Fitna*.

We should know that the First and Second sources of Islamic Law are Quran and the Sunnah. The 3rd and 4th sources are *Ijrma* and *Quiyas* (consensus and analogy). In fact both these sources i.e. "*Ijrma*" and "*Quiyas*" are two forms of manifestation of "*Ijtehad*" اجتهاد (interpretation of Islamic Law). It is done through process of Analogy (*Quiyas*).

Ijrma (consensus of opinion):- *Ijrma* is the consensus of opinion, collective agreement of opinion of Jurists of time on a particular Juristic issue.

Ijtehad:-It is the Juristic mode of legislations and the process through which it comes, is Analogy (*Quiyas*- قياس).

If this ***analogy*** is just opinion of one jurist (Imam) of a competent jurisprudential authority and remains as single opinion, then this is considered as "***Quiyas***" (Analogy). If that opinion achieves the consensus of opinion or collective agreement of Jurists of that time or collective agreement of *Ulma* of *Umma*, the same analogy or ***Ijtehad*** becomes ***Ijrma***.

So, the primary sources include, firstly, the Quran and next to it is the Sunnah of Prophet ﷺ. In the secondary sources 3rd is *Ijma* and 4th is *Quiyas* and both originate from *Ijtehad*.

Q14:-Do we have evidence of Quran on "Ijma" as source of Islamic Law. How will you answer to objections on Ijma?

Ans :- There are people:

- One group of them unfortunately say, that they don't believe the authoritativeness of Hadith and Sunnah, and then they will be explaining their view point and interpolating their opinion. They will make many excuses for the denial of authoritativeness of Sunnah.
- There is another group of people in *Umma*, they would say, "*we just believe in Quran and the Sunnah both authorities, we don't deny neither the authoritativeness of Quran nor authoritativeness of Sunnah, but we don't accept any further source of Islamic Law, i.e. Ijma and Qaiyas which are the sources of Fiquah of Islam.*"
- There are some group of people, who would say "*we don't accept Ijma and Quiyas which formulate "Fiquah" of Islam, We just stick to Quran and Sunnah*". They think as if *Ijma* and *Quiyas* (Consensus of opinion and Analogy) have no basis in "*Islamic Shariah*" as evidence, rather they have no evidence in Quran and Hadith. They think these have been concocted or fabricated by the Jurists, *Fuquaha* and *Aimma-e-Fiquah*. Rather they inculcate that these were introduced in later period as innovation, and they have no roots in Quran and Sunnah. This is another kind of thought, which is again absolutely wrong and baseless.
- In fact *Ijma* and *Quiyas* are secondary sources of Islamic Law (*Fiquah*) and they have direct evidence of Quran and Hadith (the primary sources). They are based on Quranic evidence and Hadith evidence mentioned as follows!:
- Basically *Ijma* is the source of Law. This word has a root in Holy Quran. In Sūrah Yunus, verse-71, it is stated the word "Ijma" (اجماع) اَجْمَعُوا اَمْرَكُمْ Hence has come from Quran not from any external source. This verse has authority on "*Ijma*". It means consensus, agreement, and collective agreement of Jurists.
- -Further, Allah ﷻ ordained in Sūrah Al-Nisa verse-115;

وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَىٰ وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ نُوَلِّهِ مَا تَوَلَّىٰ وَ نُصَلِّهِ جَهَنَّمَ ۗ وَسَاءَتْ مَصِيرًا

["If anybody opposes the Messenger (Rasool ﷺ) after the guidance is revealed to him and follows the path which was not the path of "Momineen" of Umma and deviated from consensus of Momineen of Umma of the Holy Prophet ﷺ"] This has been declared to be "*Dalalah*" گمراهی, being astray and misguided.

It means following the path of *Momineen* is *Hidayah* (هدايت). In the verse -115 of Sūrah Al-Nisa of Quran, it is declared that the *Ijma* of Momineen and following the path of Sunnah of Prophet ﷺ, are reciprocally related and independently reciprocal and are conditional to each other and are inseparable. Therefore it is evident that Sunnah of Holy Prophet ﷺ and the *Ijma of Umma*, they are indispensable and inevitable. Sunnah of the Holy Prophet ﷺ is the fundamental guide line and its formulation and practical demonstration is "*Ijma*" of *Umma* of the Holy Prophet ﷺ. That is why Imam *Al-Shafi'i*, Imam *Malik*, Imam *Abu Hanifa*, all Aimmahs say that ***no Ijma is against Sunnah of Holy Prophet ﷺ***. The reason is, sometimes you can be unaware of the existence of particular Sunnah on a particular issue. It was not transmitted to you or not properly understood by certain people or certain group of people and it remains hidden, there is a possibility. But it cannot remain hidden from all the imams of Fuqaha. So whenever imams of *Umma* have consensus on particular issue, you should believe that they have found the Sunnah of the Holy Prophet ﷺ on that issue and hence the consensus or *Ijma* is acceptable as source of Islamic Law.

Q15. Describe briefly the kinds of Ijma (Consensus) and its authoritativeness?

Ans: - "Ijma" has basically of two forms:

1. **Ijma-e-Azimat** اجماع عزيمت (Decisive Judgment)
2. **Ijma-e-Rukhsat** اجماع رخصت (exemptive permission)

1-Ijma-e-Azimat is further divided into two kinds:-

- i- **Ijma-ba-qowl** (Consensus by speech)
- ii- **Ijma-ba-fail** (consensus by Action)

2-Ijma-e-Rukhsat: - consensus of opinion is expressed by some people while remaining approved it by silence.

Qualification of Ijma:-Jurists that form consensus of an opinion should be competent authorities, should not be heretics or hypocrites منافق and innovators بدعتی.

Categories of Ijma:-Ijma can be definite قطعی and it can be probable ظنی. Accordingly, there are four categories of Ijma.

1. **Definite consensus consequent to "Kufr" كفر**: - For example consensus of opinion of companions (Sahaba) to elect Hadrat Abubakar Siddique رضي الله عنه as first caliphate. Refusal of such Ijma is nearer to "Kufr"
2. **-Definite consensus not consequent to "Kufr"**:- It is a consensus of opinion by expression (speech) by some companions while silently approved by remaining companions.
3. Such **Ijma though** it is definite **but** not consequent (**موجب**) to "Kurf".
4. Confident **consensus (اجماع طمانيت)**:- It is a consensus of opinion made after the period of companions. Such Ijma is consequent to confidence provided there had been no dispute on it among companions during their time. Refusal of such Ijma does not cause *either* Kufr or *sin*.

Conditions of Ijma

- a. The period in which the jurist of that time has collective agreement on a juristic issue is called the "**Period of Ijma**".
- b. There is no condition for fixed number or strength of jurists for establishing Ijma.
- c. Once the authority of Ijma is established, further seeking from jurist is not justified.

Reporting (نقل) of Ijma:-There are three ways of reporting (Revayah) of Ijma.

1. By repeated (*Mutawatir متواتر*):-This is called '*Ijma-e qataae*,"**definite consensus**", It is imperative to believe and act up on "definite consensus".
- 2- By well known (*Mashhoor مشهور*):- This is nearer to *Mutawatir* (definite) Ijma.
- 3- By single narrator (*Ehad احاد*):-It is not imperative but still one can act up on *it*.

[**Note: Ijma has to be based on Quran and Sunnah of Holy Prophet ﷺ through Analogy (Ijtehad اجتهاد)**].

Legality حكم of Ijma: - A probable evidence becomes definite and absolute, binding by Ijma.

10-Analogy (Quiyas) قياس

Q16:-Elaborate the authoritativeness of Analogy (Qiyas) as secondary source of Islamic Law?

Ans:-Analogy (Qiyas) is the fourth source of Islamic Law. It is just opinion of one jurist of competent jurisprudential authority and if it remains a single opinion it is considered as **Qiyas** or **Analogy**.

Some commandments in Quran and Hadith are not explicit, the proof and evidence have to be resolved on juristic issue by deep consideration to find out the intention of Shariah (Allah &

Rasūl ﷺ). This kept the door of Analogy open all the time for a jurist of competent jurisprudence to take the appropriate decision on particular juristic issue.

- ✓ **Analogy (Qiyas) based on Quran and Sunnah is only appropriate and adoptable otherwise it is incorrect and rejected.**
- ✓ Remember, the primary source of Islamic Law is Quran and Sunnah, while the secondary source are Ijma and Qiyas (Analogy and consensus of opinion)
- With the help of Analogy (Qiyas) and inference (*Istembat*), subsidiary commands (Law) are formulated. They will become as precedent in creating Law for some fresh issues. In this way an unprecedented process of Analogy may continue.
- In many cases (Issues), their evidence are reserved and whenever the same evidence is found for any new juristic issue, the Law is legislated by the process of Analogy. This is called interpretation (*Ijtehad*). However it is very difficult to determine the proper evidence. This is the responsibility of **Mujtahid, Fuquaha** or **jurist** of competent jurisprudence (School of thought)
- People who are against (Qiyas) Analogy, they say the First who made Qiyas is Devil (Iblees). Imam Abuhanifa clarifies them saying “Iblees did reject the commandment of Allah ﷻ in view of his own Analogy (Qiyas) and was declared “Kafer” (Lanati).
- Whereas our **Qiyas** is always based on Quran and Sunnah and injunction made by companions of Holy Prophet ﷺ to know the intention (*Murad*) of Allah ﷻ and Rasool ﷺ (Shariah). With this the obedience of Allah & Rasool ﷺ is always our objective.
- With jurists of Hanafi jurisprudence, the main principle of Fiqah (Islamic Law) is that they would try and compare Quran and Hadith. In case they found inconsistency between them (Qur’an and Hadith), they possibly remove it. If they can achieve this, it is good, otherwise they have to reject the Hadith-e-Ahad against the Quranic verse.
- **-Imam Abu Hanifa** ؒ is the first **Taba`ee** who is responsible for great and magnificent task in identifying various juristic issues and formulation of the principle of fiqah (Islamic Shari’ah). For this, he constituted a Legislative Committee consisting of 40 immanent scholars and a special council of 10 members out of them, led by himself. All members were highly efficient jurists in rank. This legislative process of Islamic Law (Fiqah) started in year 120 Hijri and continued even after demise of Imam Abuhanifa ؒ. In all 83.000 juristic issue 38000 religious Laws along with other subsidiary issues were formulated. They are readily accepted by jurists of the time and jurist later, as a basis for Islamic Law. This valuable work of **Imam Abuhanifa** is compiled in his famous Book called **“Kutub-e-Fiqua Abi Hanifa”**

11-Subsidiary sources of Islamic Law:

Q17- Give a brief account of subsidiary sources of Islamic Law?

Ans:- There are six subsidiary sources of Islamic Law (Shari'ah).

- i. Precedents** (Al-Ishtebah-o-naza`ir)
- ii. Customs and usages** (Al-Marroof-o-A`ada)
- iii. Four Ordinances** (Qawa`ed-e-Ra`e aama), given one each by four jurists of Islamic Jurisprudence

i. Precedent:

There are precedent of four Caliphs of the Reshideen periods, Precedents of Govt. of Bannu Umayya, Precedents of Bannu Abbas time, Osmania Empire's time, Precedent of Supreme Court of earlier time. All the Precedents are accepted as subsidiary sources of Islamic Law. You see, Today the Western law is also based on two types of mode of Legislation.

1. Written – Constitution (American Constitution).

2. Unwritten - Constitution (British Constitution).

It is based on tradition long before customs, usages, precedents and judgments of Supreme Court.

ii. Customs and usages

1. Traditional unwritten mode of legislation;

e.g. Nikah (Marriage); There were ten kinds of Nikah before Islam, one of them is Nikah-al-maaruf (mostly accepted) .Holy Prophet(ﷺ) retained this Nikah and prohibited nine others.

2. Traditional written mode of legislation;

e.g. Holy Prophet ﷺ established a state in Medina. He retained, local customs of Jews tribes, Christian tribes and, the Non-Muslim tribes. Further their usages, tradition and their local customs of land were protected by the Holy Prophet ﷺ. This way Islam respected the customs, laws of Jews, Christians and Non-Muslims tribes. They were allowed to practice their customs and their usages. This was the **first written Constitution of Medina**.

Note: If the earlier customs are not contrary and if it is not contrary to the provision of Quran and Sunnah, they will also be accepted as subsidiary source of law of Islam.

iii. Four Ordinances: These are given by four absolute jurists of ummah in the form of strategic principles by Imam Abu Hanifaؒ, Imam Shafaaiؒ, Imam Ahmad bin Hambal and Imam Malikؒ.

e.g. **Accordance** given by Imam Shafai[ؒ], **Reasoning and Argument** given by Imam Ahmed bin Hambal[ؒ]. These strategic principles which deal with the principle of law relating to rights of state (Govt), public welfare and general Agreements, contracts, public affairs, alliances etc. at national and international level.

Note: that the agreement or alliances which are against prudential consideration of public welfare and social reforms are not accepted. They would be treated against Islamic Law.

This is how Islamic Law is structured, formulated and legislated. It is wrong to say the Islamic Law is static law or it is not workable for present time.

12-Islamic Law a Multinational Need

Q18- Discuss various aspects of Islamic Law which makes Islam able to take care of all kinds of situations of Multinational needs?

Ans: It is also important to be aware that there are some scholars and religious preachers that claim to have an authority on Islam but they are not ready to give any respect to the present Customs/Law and Juristic usages of society. They have some reluctance in their minds.

We should know that there are two things which only are unchangeable.

1-Law based on the text (nus) of **Qur'an**

2-Law based on the text (nus) of **Sunnah**.

No authority on earth has the authority to change these two, the Quran and the Sunnah based Law (Shariah). However, out of twelve (12) sources of Islamic Law already discussed, remaining ten (10) sources are changeable from time to time.

e.g. **Ijma** (Consensus of collective agreement of scholar): Jurists of today according to situation of present time and political, social, economic requirements of society, especially when society of the present day is internationalized. People living in one corner are being affected with people living at the other corner. Under these changing circumstances, there can be many **Ijma** of new situations. So, Ijma can vary from time to time. It may remain a functional authority of Islamic Law.

In the same way **Ijtihad** and **Analogy** may vary, if the juristic requirement is properly fulfilled, it continues as reconstructive Islamic Law. This is how Islamic Law is workable at all times. This makes it acceptable for today. It is also adaptable for every society in the light of Ijma (consensus) and **Qiyas**, **Maslaha** (reforms), **Maslaha Istedlal** (reasonable argument), **Urf-e-Aam** (customs and usages), ten (10) sources of Islamic Law.

Therefore, the two primary, two secondary and six subsidiary sources (**Masadirs**) of Islamic Law, give the authority of **Ijtihad**, the jurist interpretation and this authority places you on the basis of flexibility.

It is therefore evident that **Islam** can take the situation of British society, American society, and the situation of Muslims living in Non-Muslim societies as minorities, even in Islamic society as majorities. It will vary from time to time and place to place, except what is declared by Qur'an and Sunnah. There is large scope of flexibility based on these sources.

Therefore, you will find the scope of Islamic Law is unprecedented. No system of Law on this earth has ever emerged having such a great scope of juristic interpretation as Islamic Law. Especially in the Arabic language, every single word has various interpretative meaning. No language can provide any parallel and precedent of Islamic Law.

Q19- Summarize the advantage of vast scope of juristic interpretation of sentences and words in Arabic Language in respect of flexibility and Adoptability?

And: - In Arabic language, there are various ways of juristic interpretation of sentences, words of Quran and Hadith.

E.g. There is a **sentence** in Quran and Hadith, we are required to interpret it. Sometimes interpretation is based on

- (1).Text (*Ibaaratun Nus*), sometimes it is based on
- (2).Index (*Ishretun Nus*), and sometimes it is based on meaning of words. The meaning is explicit (*Mufassil*) or implicit (*Mujmil*). They are hidden. It is the duty of Jurist to find out the hidden meaning of the words. Sometimes the Jurist's interpretation is based on
- (3) *Dalalat-ul-Nus*, the argument which is carried by word of verse. Sometimes it is based on
- (4) *Iqteda-an-Nus*, the internal demand of the verse (mode) of Hadith.

Accordingly, these are the four (4) different modes, with which the Sentences in Quran and Hadith are juristically interpretive.

When looking at 'words', no Law in this world comes will provide you an example of vast scope of interpretation which Islamic Law has provided.

E.g. We find in Quran and Hadith certain words are known as **general** (*Aam*) in Meaning and certain words are **specific** (*Khas*). There is no concept of Aam and Khas in the western legal language.

There are some words which are **Absolute** (*Mutlaq*), and they are to be **Qualified** (*Taqeed*). So there are different implications of both these words. Similarly there are certain words which are **Particular**, some words are **Obvious**, certain are **Nus** (categorical), certain are **Spiritual**, certain words are not **understandable** (*Mushkil*), certain are known Hidden, certain are ambiguous, certain are unexplained, certain words are of Figurative sense. We have to take **Figurative** (*Zahery*) meaning and not the **real** (*Haqiqi-O-Baatini*) meaning, sometimes we have

to take real meaning and not figurative meaning. As far as figurativeness is concerned, there are many types of figurative meanings.

According to further categories and classifications of words, some are **Evident** (*Haqiqi*), some are **Metaphoric** (*Majaazi*). It has further kinds.

Therefore, the whole arrangement of sentences and words expands the scope of interpretation of Islamic Law and provides flexibility. That is why, **Imam Abu Hanifa** ؒ provides a different interpretation. Imam Shafa'i ؒ presents a different interpretation. Similarly **Imam Malik** ؒ provides us different interpretation and **Imam Ahmed-bin-Hambal** ؒ provides us different interpretation. There is no contradiction among their interpretations. On the other hand, various authentic options based on Quran and Sunnah are applied.

This is the mercy of Holy Prophet ﷺ on the *Ummah*. If one option is workable and acceptable, then adapt it. If it is difficult, you can adopt the other option.

In fact, this is the healthy provision of multi-various options, multi-various interpretations, multi various applications in different situations. This is the vastness in scope of Islamic Law which is unprecedented in History of Law in this world. This is the great blessing and mercy of our beloved Holy Prophet Muhammad ﷺ on the whole Humanity in general and on the Muslims of the *Ummah* in particular to live a life with harmony, peace and security.

13-LEGAL VALUE (Al-Hukum)

1. Primary Law (*Hukum-e-Taklifi*)

2. Declaratory Law (*Hukum-e-Vazai*)

Q20:-What do you understand by Legal Value? Explain briefly about Primary Law?

Ans: - Legal Value is a **Hukum** (Law) based on divine revelations (Quran and Sunnah) in the form of value. It is of two kinds.

1- **Primary Law** (*Hukum-e-Taklifi*) 2- **Declarative Law** (*Hukm-e-Vadaa'yi*)

13.1-Primary Law (*Hukum-e-Taklifi*):

It is based on certain Demand from the Law-giver Shari'ah, demanded from people to perform a certain act or not to perform a certain act.

Demand: It is demand from Shari'ah that you are supposed to perform or supposed to abstain from it. You are directed to act upon it or not to act upon it. There are two types of demands in Primary Law. It is either based on positive demand (commission or **Amar**) or based on negative demand (Omission or **Nahi**).

Effect of Demand:-

It would be an act of commission or an act of omission i.e. an act of commission is permissible and the act of omission is forbidden.

Another act of Primary Law:-

Mubah: Primary Law can be based on indifference or discretion. This is possible in Primary Law that there can be no demand either for positive act or for negative act .i.e., this act is neither act of commission nor an act of omission. It is based on no demand (indifference or discretion). Shariah is silent on that particular issue or Law that it has been left to your discretion, free consent and free act. It is called **Mubah**, the Discretion. It has vastest area of act. Many matters related to social, cultural aspects etc. comes under Mubah. So, initially there are two ranks based on demand of act i.e., one is Commission (Amar) for Positive demand and the other is Omission (Nahi) for Negative demand. Also, there is a third and common rank called **Mubah** (discretion or indifference) or act of no demand. Finally they are further divided into various levels or categories in Islamic Shari'ah.

Q21:-How are the various levels of Primary Law decided in Islamic Law?

Ans: - There are principles for each and every aspect of Islamic Law. Such an outstanding explanation of jurisprudence that Islamic Law has given is not found in any other Law of this earth.

The following are Shariah evidences on which the determination of various **Ranks** are based and decided. They are primarily four in number:

1. Definite in proof and definite in its meaning and application (Qata'i-ul-Suboot-o-Qata'i-ud-Dalalah).
2. Definite in proof and probable in meaning and application (Qata'i-il-Suboot-o-Zanni-ud-Dalalah).
3. Probable in proof and definite in meaning and application (Zanni-us-Suboot-o-Qata'i-ud-Dalalah).
4. Probable in proof and probable in meaning and application (Zanni-us-Suboot-o-Zanni-ud-Dalalah).

Levels of Demand: The Demands are of three levels:

- 1 - *Obligatory demand (Fard)*
- 2 - *Strong demand (Wajib)*
- 3 – *Recommended demand (Sunnat).*

These four kinds of evidences and three levels of Demands, based on which, every Legal Value of Primary Law is decided in the following manner:

Now consider, there are three levels of Demand and four kinds of Evidences

So, three multiplied by four (3x4=12) becomes twelve 12 laws based on positive side, commission (امر) and twelve (12) laws based on negative side, omission (نهى). This way total twenty four (24) ranks or categories of Laws are possible in Islamic Law, which ensures vast scope of application, adaptability and ease of Islamic Law, Deen-e-Islam for whole humanity.

Q22:-Finally, how many possible Ranks or Levels are established in Primary Law of Islam?

Ans: - The following eleven (11) Ranks are established on different modes and accepted by scholars of Fiqh, i.e., five on Positive Demand, five on Negative Demand and one common for both.

Positive Demand.

1. Obligatory (*Fard*)
2. Imperative (*Wajib*)
3. Mandatory (*Sunnat-e-Moakkida*)
4. Directory (*Sunnat-e-Ghair- Moakkida*)
5. Commendable (*Mustahib*)

Negative Demand

1. Forbidden (*Haram*)
2. Condemned (*Mukru-e-Tehrimi*)
3. Disapproved (*Asahat*)
4. Improper (*Mukru-e-Tanzihi*)
5. Uncommendable (*Khilaf-e-Aula*)

No demand (Common)

Mubah (*Discretion or Indifference*)

Each and every level of Law mentioned above is established through many modes and words of Quran and Hadith basing on meaning and application and on Proof and Dalala.

One may see that there are five grades on positive side of demand and five grades on negative side of demand, in total ten (10) levels. The eleventh level is **Mubah** (*discretion and indifference*), which is common to either side

It should be clear that no system of Jurisprudence of this world can be comparable to the Jurisprudence given by Islam.

13.2- Declarative Law (*Hukm-e-Waza'i*)

Q23- Define Declaration Law (*حكم وضعى*)?

Ans: - It is defined as: "Declaratory Law is the law which declares anything to be the reason or condition or hindrance of any particular act."

It is further clarified that the declaratory Law neither provides any demand (talab) nor discretion relating to the commission (amr) or omission (nahi) of an act. It simply mentions the relation between two things and further explains the nature of this relationship.

The nature of the relationship between two acts declared by *Hukm-e-waza'i* is reducible to four categories:

- a) Reason (sabab-سبب),
- b) Condition (sharth-شرط),
- c) Hindrance or intercepting factor (maan'a-مانع)
- d) Essential element (rukun-رکن)

Q24- Elucidate the concept of *Hukm-e-Waz'ai* by illustrations?

Ans:- Look at the following instances that clarify the concept of *Hukm-e-Waza'i*:

- All punishments awarded for violating Primary Laws are Declaratory Laws. For instance, the punishment of stripes (kodey-کوڑے) or stoning (Rijim-رجم) to death is Declaratory Law because it is awarded only when adultery is actually committed, as per the provision of punishment for act of adultery of primary Law.
- The punishment of the amputation of hands (haath kaat deynaa) ہاتھ کاٹ دینا is given if the act of theft is committed. Since this order of punishment is based on the reason of commission of the theft, it falls within the scope of the declaratory law
- Debt (qurz-قرض) is an intercepting factor in making 'Zakat' imperative. It is therefore, a Declaratory Law because a person does not acquire the status of sahib-e-Nisaab (صاحب نساب) when in crippling debt.

Q25-Describe the further two categories of Declaratory Law by examples?

Ans:- Islamic legal science further divides the declaratory Law into following two categories:

1) **Azimat** (عزمت, Purpose/Resolution):- It is ideal, original and strict Law.

2) **Rukhsat** (رخصت, Permission/Exemption):- It is the concessional substitutionary or modified Law.

For example: wet ablution (وضو) is the original law and in the absence of water or in case of serious disease dry ablution (تیمم) is the substitutionary law.

14-Islam: a Religion of Universal Peace and Security

Q26:- Elucidate that Islam is a religion of universal peace & security for mankind?

Ans:- In Islamic law, when all demands (farz, Sunnah, wajib etc) are over, one common matter on no-demand is given and the matter is left to one's discretion, known as **Mubah**. Mubah provides vast scope in Islamic Law i.e. when there is no opposition or no commendation on your act, it means no Reward, no Punishment on Individual act of **Mubah**.

This question of *Mubah* has been established because Islam is a religion (Deen) of ease and convenience. It is not a religion of hardship nor one which puts mankind in difficulty. As it is stated in Qur'an:

"Almighty Allah has made no hardship on you in Deen-e-Islam". There is no narrowness in this Deen (Islam). Islam is for openness, for providing capability for kindness, softness, and for betterment of mankind. It is also mentioned in Quran, (*Sūrah-Al-Baqara*), "Allah does not want to put liability on soul which is unreasonable for it". Further, in a Hadith, Holy Prophet ﷺ said, "I have been raised with an easy religion for everybody".

In another Hadith, it is mentioned that "the best of Deen is the easiest Deen, the easiest teaching of Islam is best Deen ". In another Hadith, "Holy Prophet ﷺ said, "my Deen of Islam has ease and facility and if anyone goes towards the extremes, then this Deen will crush him. Deen of Islam does not approve any act of extremism".

Therefore, people who are trying to teach narrowness in the education of Islam, people who have an extremist approach, who have terroristic tendencies, those who are presenting Islam in a wrong way through their own narrowness in their minds, have extremist interpretation of Islam. They should try to understand that the religion proposed by the Holy Prophet ﷺ and promulgated by **Deen-e-Islam** and established through **Quran and Sunnah** is not the religion of extremity. It is the religion of moderation, kindness, softness and facilities.

In a Hadith, reported by Imam Bukhari[ؒ] the Holy Prophet ﷺ said, "You have to present Islam in a very easy way so that people may think it easy to practice Islam".

So, you should preach Islam in a very easy and attractive way not to make "people run away from Islam, do not create hatred in the minds of people about Islam and let not people think that Islam is a very narrow religion. Demonstrate it to be the religion of openness".

One should keep in mind the basic concept of Islam as mentioned in *Sūrah Al-Anaam* verse 119, that;

وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ

[And Allah spelled out to you the detailed (all) those things which He forbidden to you]. (Al-'Anaam-119)

Quran does not give the list of all permissible things, whatever does not fall in the list of forbidden things, it is permissible to *Ummah*. It is also mentioned in Quran,

"Whatever has been created in this world, it is for your use and benefit, and everything originally has been made useful for the mankind".

Hence, the basic concept of Islam is that everything present in this world is permissible unless its prohibition has been mentioned.

Here everything is permissible (Halal) but through the Holy Prophet ﷺ, certain things were declared to be prohibited. Whatever has been left by the silence of Shari'ah, is permissible for us. Nobody can change its permissibility.

The Holy Prophet ﷺ said, "If I remain silent, you should remain silent and get benefited from my silence. This is the spirit of Shariah (law). If I am silent on some law, it means it is not compulsory".

Therefore, Deen-e-Islam is about peace, tolerance, dialogue, openness, accommodation, trust and mutual respect. Islam has nothing to do with any act of terrorism & extremism in any form. Some of the youth of the Muslim *Ummah*, who are unfortunately misguided by the "so called Muslims" have been given a totally wrong perception and conception of Islamic teaching and they have been explained a totally false meaning of Jihad (Which actually means struggle towards righteousness/goodness), consider that fighting against noncombatant Non-Muslims (even Muslims in some cases!) is their duty. This is completely wrong and against Islamic teachings of the Quran and Sunnah of Holy Prophet ﷺ and as has been already explained. They need to come back to the normal, secure and peaceful Islamic way of life.

Remember! That the Islam is the religion of positive values. It expects its adherents to lead normal lives like other human beings and to actively engage themselves in the basic affairs of the world. It has not enjoined upon its followers to reject worldly transactions altogether and devote their entire time to the contemplation and meditation of Allah ﷻ. Islam does not accept any view of righteousness or any philosophy of life which excludes the practical life of man from its area of application. Islamic conception of right mode of submission and righteousness includes the following attributes:

- 1-Strength of Conviction 2-Love of Allah ﷻ 3-Financial sacrifice
- 4-Strength of Action 5-Fulfillment of Promise 6-Patience and Steadiness
- 7-Struggle in way of Allah against nufs/Satan during the period of peace termed as Jihad-e-Akbar/Greater Jihad by the Prophet ﷺ and striving hard against the enemies of Islam during the time of war termed as Jihad-e-Asgar/Lesser Jihad by the Prophet ﷺ.
- 8-Highest form of Moral Excellence in attainment of Allah's Pleasure.

بجاء اشرف الانبياء والمرسلين سيدنا محمد الرؤف الامين صلى الله عليه وعلى اله الطاهرين واصحابه الراشدين والحمد لله رب
العلمين