

Q-1.Ⓐ Muslim Law is a Divine Law “Explain .

Muslim Concept of Law.-Under the Islamic system, law is of divine origin. It is a Sacred law. It is a phenomenon different from all other forms of law. Islamic law is the result of a security from a religious angle of legal object matter which was far from uniform, comprising as it did the various components of the laws of Arabic and numerous elements taken over from the people of the conquered territories. Law (Hukum) according to Muhammadan jurists is 'that which is established by a communication (Khitab) from God with reference to men's acts. expressive either of demand or indifference on His part, or being merely declaratory: The first essentials of Islam is Iman or faith, the essential constituent of which is belief in God and acknowledgment (tasdiq) of his authority over our actions. Acknowledgment of Allah's authority follows upon and is inseparable from belief in His existence; in other words recognition of His authority to issue commands to us is also embodied in our Constitution. Under the Muslim concept of law, the authority to enact laws primarily belongs to Allah and he alone has Supreme legislative power in the Islamic system. The process of promulgating laws is continuing from the days of Adam. Allah promulgated laws through his messengers and Prophets. Quran contains direct revelations from Allah to Muhammad, and Hadith are the inspired precepts of Muhammad in matters of law and religion.

Laws have been made for the benefit of the community. The Divine legislature has delegated to it power to lay down laws by the resolution of those men in the community who are competent in that behalf that is, the Mujtahids or jurists. The laws so laid down are presumed to be what God intended and are thus covered by the definition of law as a communication from God. This is known as Ijma. The presumption that such laws are in accord with the principles of the Quran and the Hadith is conclusive and they can be treated as invalid on the ground of repugnancy to the revealed laws. The law enacted by Mujtahids can be repealed by a subsequent resolution of a similar body of men. Muslim law does not permit possibility of further revelation after the death of the Prophet. The principle of Ijma may be regarded as the only authority for legislator.

Under the Muslim Law, laws made by jurists carry the same force as the judge made laws carry in English law. Muslim jurists have deduced their individual as well as collective word. A law deduced by jurists after applying the process of analogy, only

expounds the law and does not establish it. The validity of such a rule of law rests on its consonance with the principles established by the laws based on revelation or on Ijma.

Under the Muslim Law custom and usage have also been recognized as the rules of law. The customs and usage which were prevalent at the time of the revelation of Quran and which were not repealed by Quran are considered to carry full force of law. The Customs which came into existence after Prophet are also considered good source of law. The conception of law as an emanation from Allah is said to hold good in the case of customary laws as well.

The law Controls and guides men's conscious and actions by creating restraint On their freedom. A man must have the capacity to do or not to do an act. He must have will pOwer (Ikhtiar). The scope of law is very wide, it covers the entire field of men's action. The Main aim of law is to promote the welfare of men both individually and socially not the glorification of the law giver.

In Islam, the term 'law' is not confined to mandatory commands, or to commands enforceable by the courts. It includes all expressions of the law-giver's will and wisdom whether laying down what a man must do or must not do, what he may do and what he ought not to do, or merely making a declaration. Under the Muslim Law the aim of the law is twofold-Firstly, the spiritual benefit and secondly, social good, The Muslim Law encourages obedience by offer of reward, and to discourage disobedience by imposition of penalty.

Quranic law is applicable to Muslims only. Non-Muslims are not governed by Quranic law. Muslim law is not based on any political force. It is based on men's Conscience. The community has been given the right to choose a man for administering the laws as well as the affairs of the community. Under the Muslim law the sovereignty resides in God. However, for administering law it has been delegated to the people. It can therefore, be said that next to God the sovereign power resides in the people.

Cassification of Law.-The law relating to human acts can be classified into defining and declaratory laws. The direction to do or not to do certain things may be absolute or not

absolute. The performance of some acts may be obligatory (Fard). On the other hand, the man may be directed to forbear or abstain from doing something. The act to be forborne is said to be forbidden (haram). There are some acts which may not be absolute. A Muslim may or may not do such acts. They are known as commendable (mandus). If the men are directed to be forborne or abstained from it is called condemned or abominable or improper (nmakruh). There are some cases where law-giver is indifferent. The doing or omission of such acts does not create any demand. Such acts are neither obligatory, nor forbidden, nor commended, nor condemned. These are known as Mubah.

The other kind of laws are known as declaratory (wadai). The declaratory law indicates the component elements of a defining law, namely, whether certain facts are the cause, condition or constituents of a command. The main function of a declaratory law is to interpret the law. Under Muslim law, laws with regard to its enforcement can be divided into following three kinds-

(i) Those which concern men in their social and individual existence in this world. Their object being to regulate men's relations to and dealings among one another. Under this category comes laws of contract, transfer of property, succession, domestic relations, wrongs, etc.

(ii) Laws which solely concern the spiritual aspects of individual life, though some of them may relate to worldly transactions. These laws can be enforced by God only by means of spiritual rewards and punishments (e.g. alms, supererogatory prayers and fastings, prohibiting condemned acts such as sale during call to prayers etc.

(iii) Laws which mainly concern the spiritual aspect of individual life but also affect the Muslim communal life in its religious aspect. The State may or may not enforce these laws (e.g. saying the five times prayers, feeding the poors, fasting during ramzan etc.). The laws with regard to its purpose can be divided into religious and secular laws. The laws can also be classified into certain (Yaqini) and presumptive or discretionary (Zanni). All laws are of divine origin, unrevealed laws which are the original authorities or sources the knowledge of law. If a body of jurists have come to the conclusion on any particular point of law, the presumption is conclusive that it is What allah intended.

According to Abdur Raheem law can be divided into strict (azimat) and modified (rukhsat), the two are relative terms. The former class consists of laws in their original theoretical rigour of rules in strict adherence to the letter of the texts, and the latter class consists of rules with their rigour modified and relaxed in the application of the principles to particular circumstances so as to obviate hardships and inconvenience.

A law may be either public or private. They divide rights into rights of Allah and Tighis of men. Rights of Allah correspond to rights of the public and the latter to private rights. The rights of Allah reside in Allah. But since they are meant for the welfare of the common man, they are described as public rights. The private rights reside in individuals.

Fiqh-Usul-ul-fiqh means the roots or principles of fiqh. It means the knowledge or science of those rules which directly or proximately lead to the science of Fiqh. Fiqh is the knowledge of what is for a man's self, and what is against a man's self.

Sadru'sh.-Shariat says that it may mean that the science in question in so far as it is concerned with man's acts, deals with their consequences in the sense of being spiritually profitable or injurious to him, or in other words, that the object of Fiqh is the knowledge of spiritual rewards and punishments. Fiqh is defined as the knowledge of things which are permissible for a man to do and of things that are forbidden to him including both acts of commission and omission. It also means the knowledge of those things which are permissible for a man to do and what he is under an obligation to do.

The present day meaning of Fiqh is the science of the rules of law. Taudih says Fiqh means the knowledge of the laws (ahkam) of the Shariat which are intended to be acted upon, and have been divulged to us by revelation or determined by concurrent decisions of the learned, such knowledge being derived from the sources of the laws with the power of making correct deductions therefrom.

Fiqh is a science which points out the extent and limits of man's liberty, in other words it is the science of rights and obligations. In Muslim countries a body of persons, a corporation in which the principal public officials, vests, is known as Faqih. He is a jurist well versed in law. This is the duty of the Faqih to exercise his mind while deciding any point of law. There is a difference between ilm, knowledge and Faqih. The ingredient of a Faqih is that it requires both intelligence and independent judgment. A Faqih must possess the capacity of independent judgment.

Shariat.-Shariat is the Islamic Code and it covers matters which would not have been known but for the communications made to us by the law-giver. The Shariat is the central core of Islam. Its literary meaning is path to the watering place, but in its religious application means the total way of life as explicitly commanded by Allah. Under Muslim Law the doctrine includes both the belief and practice of the law **Maulana Modudi** says that Sharia is a detailed code of conduct or the canons comprising ways and modes of worship, standard of moral life, laws that allow and prescribe, that judge between right and wrong, Such canon of law has been greatly effected by the change in time. It is true that each Prophet had the same Din, he brought with him a different Shariat that would suit the conditions of his own people and times. The Shariat stipulates the law of God and provides guidance for the regulation of life in the best interest of man. Its objective is to show the best way to man and provide him with the ways and means to fulfil his needs in the most successful and most beneficial way. The Shariat forbids all that is harmful to man, and allows or ordains all that is useful and beneficial to him. Shariat means Allah's commandments, civilization, its social history or its political system, it is necessary to understand the Islamic legal system, the divine directions are known as hukum (ahk The Shariat regulates all actions of human beings. It is an infallible guide to ethics, In Shariat contains certain duties which should be followed by all Muslims. In its paramount importance is given to religion. The Shariat is totalitarian and all human activity is embraced in its sovereign domain.

Under Muslim Law, the law is the gift of Allah, the creator of this universe, The Islamic law is very closely connected with religion. Human beings are not able to differentiate between good, beauty and good, ugliness, i.e. Goodness and Evil. The good should be done and evil should not be done. That is law and nothing can be law. It is not possible for the human being to make differentiation between good and evil. Allah has therefore given us Quran so that we may understand as to what is good and bad. The Quran is the very word of Allah. To aid Quran, there is hadith, i.e. traditions of the Prophet. This is the duty of the Muslims to take full help from the Hadith as and when there is any necessity of the same. However, there may be instances where Quran and Hadith may be silent on any particular point. Under such circumstances a Muslim has to act according to the dictates of secular reason and in accordance with certain definite

principles. This principle is the basis of Shariat.

CONVERT TO ISLAMIC FAITH

Religion is a matter of faith. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry. A person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, he cannot be permitted so as to renounce the previous marriage and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited. The institution of marriage under every personal law is a sacred institution.

In India, all the citizens are at liberty to profess religion according to their conscience. All the religions are treated equally. An individual can easily convert himself into another religion. A non-Muslim may convert himself into Islamic faith and he can also renounce his Muslim faith and can adopt another faith. In some cases, therefore, it becomes very difficult as to whether a man has either accepted Islam or rejected it. So far no hard and fast rule could be laid down. It is the duty of the court to decide whether a person is or is not a Muslim, and this depends upon the facts of each case. Tyabji' says that circumcision may be an important test whether a person considers himself and desires to be recognized as a Muslim. The test of circumcision is not the final test. The question of religion of any person depends on tenets, beliefs and customs of the particular school to which he professes to belong. In *Abdul Razzak v. Aga Mohammad*,¹ it was said that no court can test or gauge the sincerity of religious belief.

In *Skinner v. Orde*,² the parties were Christians. Their marriage was performed according to the Christian religion. After sometime the husband died. The wife of the deceased husband cohabited with 'another Christian gentleman. The gentleman was

already married. Under Christian law monogamy is prevalent. The parties were afraid that a case of bigamy may be started against them and they, therefore, converted themselves into Islamic faith. The main question was whether the marriage may be treated as valid or not. The Privy Council refused to accept the contention of the parties and the marriage was declared as void.

There is no problem if the child was born out of a marriage performed according to Muslim Law. Ameer ali says that according to the Shariat if one of the parents is a Muslim, the child is to be treated as Muslim. However, in India some modifications have been made by the Courts. In *Skinner v. Orde*, it was said that a child is presumed to belong to the religion of the father.

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(b) Discuss the salient features of the Muslim personal Law (shariat) Application Act. 1937.

In India Muslims are governed by their own personal law. This provision is not absolute, in some matters they are given the absolute right to be governed by their personal law. In some matters they are governed, along with their fellow citizens, with common law. There are certain legislative enactments which direct civil courts to apply Hindu law to Hindus and Muslim law to Muslims. It is further provided that the policy of Hindu law to Hindus and Muslim law to Muslims shall be applied only if such law has not been altered or abolished by the legislative enactments.

As regards the civil jurisdiction of the High Courts the same is guaranteed under the Indian Constitution. Article 225 of the Indian Constitution provides that the High Courts will administer the same laws as it existed at the commencement of the Constitution. The existing jurisdictions of the High Courts are governed by the Letters Patent and Central and State Acts; in particular their civil jurisdictions are primarily governed by the Code of Civil Procedure. It is therefore clear that Muslim Law as applicable in the higher courts of India in cases where the lower courts were directed, continues to be in the High Courts.

(C) Matters where personal law is applicable to Muslims

Muslim law is applicable to Muslims only in the first two categories. In the matter of law of crimes and law of evidence, Muslims are not governed by their traditional law. In *Anisur Rahman v. Jalilur Rahman*, the problem was whether the plaintiff Amina Khatun was governed on 26th February, 1978, which was the date of her death, by the Muslim law of inheritance or by the Dayabhaga school of Hindu Law. The following contentions were made:

(i) that laws which immediately before January 1, 1951, the date on which that Act came into force, did not extend to, or were not in force in Cooch-Bihar should as from that day, extend to, or, as the case may be, come into force in Cooch-Bihar and all laws which immediately before that day were in force in Cooch-Bihar but not in the rest of West Bengal, should on that day cease to be in force, except as respects things done or omitted to be done on that date.

(ii) that if the statute is stopped there the obvious result would have been that the said Mohammedan Inheritance Act would stop applying to Muslim subjects of Cooch-Bihar from January 1, 1951 and instead the Muslim Personal Law (Shariat) Application Act, 1937 would have applied to Muslim subjects of

Cooch-Bihar.

(iii) that on the date of death of Amina Khatoon i.e. on 26th February, 1978, Muslim Law would have applied and the question of substitution should have been determined according to such law.

(iv) that when by reason of the provisions of Section 3 (2) of the Cooch-Bihar Act, 1950, all laws which were in force in the State of West Bengal, and as from January 1, 1951 extend to, come into force in Cooch-Bihar, the Bengal, Agra and Assam Civil Courts Act, 1887 should have applied to Cooch-Bihar from January 1, 1951, and under Section 37 thereof the Muslim Law in cases where parties are Muslims should form the rule of decision.

The Calcutta High Court held before the merger of Cooch-Bihar into districts of West Bengal the Muslim subjects of Cooch-Bihar were governed by the Hindu Law in matters of inheritance. Any person who wanted to be governed by Muslim Law was required to make an application to this effect. If there was no such declaration, a Muslim of Cooch-Bihar was not governed by Muslim Law of Inheritance.

Q-2 Descibe the Different schools of Muslims Law.

Quran has been believed and received by all the Muslims as the words of Allah. However, discrepant interpretations of many of the material parts of the Quran was given by different scholars of Islamic jurisprudence. The inconsistent interpretation by Muslim scholars, the admission of particular Ahadis and the rejection of the same by others, also the difference in the acknowledgment of a particular person or persons as being the Imam or Imams created different sects of doctrines. The followers of each such sects constituted a particular sect or denomination. The scholars of Islamic jurisprudence have mentioned seventy three sects. Out of these seventy three sects, ten were mentioned in the Ghuriyat-ul-Talibian, as prominent sects.

- (i) Sunni
- (ii) Khariji;
- (ii) Shiah;
- (iv) Muatizli;
- (v) Murjyah;
- (vi) Mushabbiah;
- (vii) Juhimiyah;
- (Viii)- Zararlyah;
- (ix) Najariyah; and
- (x) Kitabiyah

Sunnis constitute one general sect. The Kharijis are sub-divided into fifteen classes, the Muatizilis into six, the Murjiyahs into twelve. There are thirty two sects of Shias besides, Sunni and Shia sects, there are several sects into existence. The people who belong to that tribe of Bohra are of the Ismaili sect. They are generally living in Bombay. The Imam of this sect is named Aga Khan. The people of Muscat with their King belong to the Khariji sect. The people belonging to the Zaidiyah and other sects live in the Arabian Coasts. Among the thirty two classes of the Shias, two are principal, namely, the Shiah and Rafizi classes. The latter are divided into three sects denominated into Ghaliah, Zaidiah, and Rafiziah. Rafiziah sect can be sub-divided into twelve amongst whom the chief are the

Imamiyah and Ismialiyah. The above mentioned sects can be divided into two heads-(1) Ahle Sunnat or Sunnis (traditionalists) and (2) Ahle-Hawa (free thinkers)

SECTS AND SUB-SECTS OF SUNNIES AND SHIAS

SUNNIES.-Sunnies have faith in the traditions. They believe in the unity of Allah and the Prophecy of Hazrat Mohammad. Hazrat Mohammad is the messenger of Allah. To this Shias have added that -and Ali, the companion of Mohammad is the vicar of God. Shias have placed temporal and religious importance to Ali. They do not accept the succession of the first three Caliphs. The elevation of Ali to an almost co-equal position with the apostle of God himself, may be stated as the great destructive tenet of the Shias. According to Hedaya Abu Hanifa was the disciple of Imam Abu Jafir. Abu Jafir was a Shia jurist. He distinguished himself by seceding from his master Abu Jafir, and teaching Civil law or principles repugnant to those inculcated by that doctor. Shias maintain that on account of Abu Jafir's eminent piety, learning, and authority of manners his followers were considerably increased. The increase of his reputation alarmed the reigning Khalifah. They wanted to destroy his reputation. The rulers requested Abu Hanifa to support them. They promised to provide all possible help to him. Abu Hanifa accepted the offer, quitted his preceptor, and instituted a school in opposition to him. The discussion which took place between these two eminent lawyers is considered as the origin and of the different tenets of the Shias and Sunnis in jurisprudence."

SHIAS.-Persons who are pure from the blood of those members of the family of Ali who early fell victims to the hostility of the Sunni Umayyads are known as Shias. Hazrat Mohammad left this world without appointing a Caliph or his successor. Thee successor was to succeed him in the capacity of Amir-ul-Momemin or commander of the true believer and Imam-al-Moslemin or spiritual chief of the devout. Shias believe that Hazrat Ali was the first disciple. He was the beloved companion of the messenger of Allah. He was also the husband of his only surviving daughter Fatima. Therefore, he was having the first claim to be appointed Caliph. But instead of appointing Ali as the first Caliph, Abu Bakr was appointed as the first Caliph. Abu Bakr was succeeded by Hazrat Umar; and to him Hazrat Usman. On the death of Hazrat Usman, Ali was appointed as Caliph. Ali was slain in the mosque of Cufa. The assassination of Ali caused a profound sensation in the

Muslim world. Ali was having two children-Hasan and Hussain. Hasan was elder. He was a saint.

Ithna Asharis can again be divided into two sub-sects, namely, Akhbari and Usuli. The main difference between Shiites arose after the fourth Imam, Zaynul Abidin. Zaynul Abidin was having two sons Zayd (died in A.H. 122) and Muhammad al-Baqir (died in A.H. 113). Muhammad-al-Baqir was having only one son, his name was Jafar-as-Sadig (d. 148). Most of the Shiites follow Muhammad al-Baqir and after him his son Jafar, Jafar-as-Sadiq was having two sons. Their names were Ismail and Musa-al-Kazim (d 83). After the death of Imam Jafar, there again arose a difference of opinion. The majority of Shiites followed Imam-Musa-Kazim. The genealogical table of Imam Musa-al-Kazim is as under.

Ismailis.-Ismailis believe that Imam Ismail was the seventh in descent from Ali. They also maintain that until the final manifestation of Ali who is to come before the end of all things to judge the world-the musnud of the Imamate is rightfully held by an hereditary succession of unrevealed Imams, the lineal descendants of Ali through Ismail. Ismailies believe in seven revealed Imams. They are Ali, Hasan, Hossein, Zeinabdeen, Muhammad Baker, Jaffir Seeduk, Ismail (who died before his father, and is called from his father's name, Ismail-bin-Jaffer Seeduk). Ismailies believe in practice of Takiah i.e. Concealment of religious opinion; secondly, their method of seeking to make converts by assuming to a great extent the religious standpoint of the person whom they desire to convert, modestly hinting a few doubts and difficulties and then, by degrees suggesting as the only possible solution of these the peculiar tenets of their own system.

Ismailises can be divided into following two categories-

- (I) Eastern Ismailies-Khojas; and
- (II) Western Ismailies.

Western Ismailies. -The Western Ismailies are known as Bohoras. The word Bohora means merchant. Bohoras does not relate to any particular school of Muslim law. Bohoras can be divided into following two groups:

Each sect-to be governed by its own laws.-Under the Muslim Law each sect or sub-sect is governed by his own law. The law peculiar to each sub-sect will apply to persons belonging to that sub-sect. A Muslim of either sect can change his/her sect. A Hanafi Muslim can easily accept the Shafii sect. Similarly, a Shafii Muslim can adopt Maliki sect." A Muslim lady, even after marriage will be governed by the Sunni law and not by the Shia Law, if she was a Sunni lady at the time of marriage. Memons. Memons are also Muslims. The words means a "believer' . The Memons can be divided into following two classes-

1. Cutchi Memons
2. Halai Memons

No caste distinction. -Muslims are divided into various sects and sub-sects but they are not having any caste distinction between them. Muslim Law does not classify Muslims on the basis of caste. Islam is a soCialistic and democratic religion. At least in theory all Muslims are brothers. They may be having difference of opinion but this difference of opinion does not give them to form separate sects. This is true that Islam does not believe in cast system. However, Indian Muslims can be divided into four castes, viz., the Shaykh, Sayyid, Mughal and Pathan. The above classification is not based on any authority of Muslim Law.

Ahmadiyas.-During the last century two important sects in Islam have come into existence. Babism which as the Bahai faith has formally gone outside Islam, and the Ahmadiya. This sect was founded by Mirza Ghulam Ahmad. Initially he wrote books against Christian missionaries in defence of Islam. In 1879 he claimed that he was the promised Mahdi and the Messiah. Mirza Sahib claimed that Jesus after escaping from

crucification, went to Kashmir and died in Srinagar. He also claimed to be a manifestation (buruz) of Prophet Mohammad and for the Hindus, an incarnation of Krishna.

Moplas.-Moplas (or Mapillas) are mainly living in western part of Kerala and Nadu. They are also Muslims. They believe in the unity of God and prophecy of Muhammad. Moplas belong to Shafi school of Muslim law.

Molesalem Girasias.- Molesalem Girasias are also Muslims they have been domiciled in Broach. It has been said that previously they were Hindus. They had retained the Hindu custom of succession. In *Fatesangji v. Harisanghiji*, it was said that Molesalem Girasias had retained their pre-conversion custom of succession and were to be governed by those custom. The Shariat Act, 1937 is applicable to all Muslims including Molesalem Girasias.

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Q-3 What are the various Sources of muslim Law? Discuss the importance of Isma of source of Law.

(1) Quran.-The primary and classical source of Muslim law is revelation. Revelation can be of two kinds-Manifest and internal, manifest revelation means the communications which were made by the angel Gabriel, under the direction of God, to Prophet. The following were the modes of revelation :

- (1) in the very words of Allah; or
- (2) by hints; and
- (3) of such knowledge as occurred in the mind of the Prophet through the Inspiration (ilham) of Allah.

Quran is having only those manifestations which were made in the very words of Allah. Matters which formed the subject of manifest revelation by hints from angel Gabriel, or by inspiration, or of internal revelation, are known as ahaditha, i.e.. precepts of traditions. According to Muslims, Quran is a holy book. It was revealed to Prophet by Allah through angel Gabriel. Quran has been divided into one hundred and fourteen chapters or suras each of which bears a name referring to some part of its content, and contains a varying number of verses (ayat, miraculous signs). Most of the verses, which embody rules of law were revealed to settle questions that actually arose for decision. Some revelations were made in order to repeal objectionable custom, like infanticide, gambling, usury and unlimited polygamy. Some revelations were made for effecting social reforms such as by raising the legal status of women, settling the question of succession and inheritance on an equitable basis. Some revelations were made for laying down the principles of punishment for the purpose of securing peace and order.

(2) Sunnat or traditions of Prophet (Hadith).The Sunna or tradition is the second source of Muslim Law. It is also known as Sunnatun-nabi. The main difference between the Quran and the traditions is that Quran contains the very word of Allah, while traditions were delivered in the Prophet's own language. The words of the Quran have a spiritual value. Again, there is a difference between Sunna and Hadith. Hadith (Hadis) means the rule of law deducted from it. The Quran and Sunna are the fundamental documents of

Muslim Law. Sunna is the mirror of Prophet's life. Each Sunna is connected with the Prophet or one of his companions by a narrative chain. The traditions, which constitute the history of Islam for its earliest period and which is the mother of Muslim historiography. is under attack by certain modern reformist Muslim groups.

(3) Ijma.-Ijma is the collective opinion of commentators. It is defined as agreement of the jurists among the followers of Prophet in a particular age on a question of law. It is composed of the decisions and determinations of the Prophet's companions, their disciples, the pupils of the latter, and other learned men. The conclusion arrived at by way of Ijma is argument obtained by exercise of reason and hence not absolute. It means doors are still open for re-assessment and

(4) Shias. Shias are not unanimous on the question of Ijma. Shia scholars maintain that Shariat cannot be authoritatively determined by mere consensus of opinion. There is a section of Shia Scholars who accept the authority of Ijma. But they maintain that when the Mujahids agree to a certain view, they voice the opinion of the invisible Imam.

Ijma of one age may be reversed by subsequent Ijma of the same age, in which case the first resolution ceases to have any force. Similarly, Ijma of one age may be repealed by Ijma of a subsequent age with one exception, namely an Ijma arrived at by the companions of the Prophet is incapable of being repealed afterwards. It is not necessary that Ijma must be expressed in words. The practice of jurists may constitute a valid Ijma.

(5) Qiyas.-In the absence of Quranic provisions, traditions and consensus of opinion the law may be deduced from Qiyas. Qiyas means analogy. It is derived from a comparison of the Quran, the traditions and the Ijma when they do not apply either collectively or individually to any particular case is also allowed, with a greater or less extension of limit, by the different schools of the Sunnees. Some, however, have refused its authority. The plain meaning of Qiyas is the opinion of one individual only. It means measuring according to 'equality'. According to Hanafi school the word Qiyas' means as an extension of law from the original text to which the process is applied to a particular case by means of a common will or effective cause, which cannot be ascertained merely by interpretation of the language of the text. Maliki school maintains that Qiyas is the accord of a deduction

with the original text in respect of the "Ilat" or effective cause of its law. The following conditions must be fulfilled for a valid analogical deduction.

MATERIAL SOURCES OF MUSLIM LAW

Under the Muslim Law custom has not been recognized as a source of law. However, it cannot be denied that custom has always been given a place under Muslim Law, if it is in conformity with Muslim Law. For example, Prophet never abrogated the whole of the pre-Islamic customary law of Arabia. Macdonald[#] said that Prophet did not draw up any Twelve Tables or Ten Commandments or Codes or digests-the conception of an exhaustive Code being foreign to his thought.

The concept of Sunnat-ul-taqeer bears testimony to the fact that the Prophet left intact many reasonable customs prevalent in his time. Hedaya" says that the law of partnership was accepted by Prophet because the Prophet found the people practising it

and confirmed it therein. Schacht maintains that the Prophet had accepted a major portion of the commercial customs of Mecca and the customary agricultural law of Madina. As regards succession, the new rules were only superimposed upon the prevailing customary rules. Caliphs also recognised the validity of reasonable custom. Sometimes the custom of neighbouring countries was accepted.

Custom was recognised by the Maliki School. Fitzgerald" says that Imam Malik included custom among the various bases of his doctrine of public interest. Shafii and Hanbali school did not recognize in theory any legal value of custom. But Imam Ghazali, a jurist of Shalii school, recognized the importance of customary law.

Traditional collections.-The traditional collections on Islam are entitled "Muatta" and were written by Malik, the Masnad and Sunnah by Shafii, and Masnad by Hanbal. The main book of traditions of Sunnis is known as Sihahi Settah or six Shahis. These are said to be the six collections of correct or authentic traditions. The first **Sahih** is known as Sahih-UI-Bukhari. The author of this book is **Abu Abdullah Muhammad Bin Ismail al Bukhari**. The second book was compiled by **Abu-ul-Hussain Muslim Bin al Hujaj, Bin**

Muslim al Quresh. The name of the book written by him is known as Sahi-ul-Muslim. He is considered as almost an equal authority with **Bukhari**. The third book was compiled by **Abu Isa Muhammad Bin Isa al-Tirmizi**.

Digests.-The founders of different schools were having no unanimous opinion on Muslim Law. They gave their own interpretation. Different digests of law were written by different doctors. **Haji Khalifah** wrote mainly on four principal sects of the Sunnis. The *IanZ-ud-Dakaik* was written by **An Nasafi**. It is also a work of great reputation.

Fatwa.-The literal meaning of Fatwa is decisions. A Fatwa contains the rules of Law as well as legal decisions. There are many Fatwas written by different authors.

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