Chapter :8 Islamic Law

Justice is one of the central values in islam, and any system not based on justice is unacceptable. Justice, moreover, is so central in Quranic ethics that Allah’s name is Adil and the Quran says, “Do justice, it is closest to piety” (5:8).

**1)**      The **Holy Quran** is undoubtedly the basic and primary source of law. Most of the Quranic injunctions and admonitions can be correctly understood only when they are viewed in the light of what the prophet said or what he did in the situation to which the injunction or admonition pertains.

The Holy Quran is a source of the following Laws:

**1)**      **Criminal Law:**

Injunctions regarding mudud have been laid down in the Holy Quran:

a)      Zina

b)      Saraqah(Theft)

c)       Harabah (Highway Ducati)

d)      Qadhf

e)      Irtidad (Apostasus)

f)       Wine Drinking

g)      Rebellion.

It has been in the Holy Quran:

“The women & the men guilt of adultery or fornication.

Flog each of them with a hundred stripes.” (Surah Al-Nur:2)

The Holy Quran Says:

“O ye who believe! Intoxicants & gambling, sacrificing to stones, and (divination by) arrows, are an abomination, - of satan’s handiwork: Eschew such (abomination), That yet may prosper.” (Surah Al-Madina:90)

                                                The Holy Quran also gives Law Tazirat.

**2)**      **Family Law:**

Law of marriage, dower, legitimacy, guardianship, maintenance, hiba(Gift), will, waqf, talaq, and inheritance have been given in detail in the Holy Quran.

**3)**      **Law of Evidence:**

Law of evidence has also been crystallized in the Holy Quran. Adducing evidence has been made obligatory by the holy Quran. Evidence of women is also admissible.

**4)**      **Law of contract:**

The Quran is the main source of Islamic law of contract. Detailed rules concerning buying & selling, Riba, Amanah, Wadiah, Shirkah & Madarabah, Qard-e-hasna etc. have been given in the Holy Quran.

**5)**      **Law of Torts:**

The Quran contains detailed laws concerning torts against property e.g ghasb, privacy, nuisance, homicide, qisas, equality, injuries to human bodies, negligence, defamation, fraud, torts,against women, racial discrimination, liability of head of state, self-defense etc. Law of privacy has also been discussed in the Holy Quran.

**6)**      **Administrative Law:**

Law concerning  judiciary, executive & legislature, head of an Islamic state, rule of law, natural justice, freedom of persons, fundamental Human rights, bureaucracy, armed forces, media, central religious institutions like the mosque as a place of worship & place of learning tabligh (preaching) etc. have been given in the Quran.

**7)**      **Constitutional Law:**

The concept of a state, the office of imam or head of an Islamic state, fundamental human rights, principles of policy and other laws relating to constitutional law have been ordained in the holy Quran. The holy Quran envisages a welfare state. it is thus an ideological state.

**8)**      **Fiscal Law:**

Law regarding sources of revenue spoils of war, zakat, Al-Jiziyah, Al-Khiraj, Al-Fay, the Khums, Al-usher interalia have been laid down in the Holy Quran. Thus the institution of waqf was also established because of the Quranic teachings.

**9)**      **Private and Public International Law:**

Law concerning private international law e.g matrimonial laws, foreign marriages, and enclusion of foreign Laws on account of public policy have been given in the Holu Quran. Islamic public international law deals with the concept of nationality or ummah, international treaties, war (Jehaad), immunity of diplomats & prisoners or war.

**10)**   **Law of Blasphemy:**

Penalty for blasphemy in death. Blasphemy is Kalma-tul-Kufr. According to the Holy Quran:   
Surah Al-Taubah: 74

**11)**   **Commercial Law:**

The Holy Quran contains detailed commercial Laws. The holy Prophet P.B.U.H had firsthand knowledge of commercial laws. The Meccans were traders in pre-Islamic Arabia. The Holy Quran thus provides complete guidance to the Arabs after the advent of Islamic commercial matters. It is a source of guidance for the mankind.  
          The Quran had a deeper significance as the primary source of law.

**2)**      Next in order of importance are the **tradions** of the Prophet P.B.U.H. The Prophet also provided guidance to the people in all such cases where the Quran was silent.   
                **Traditions of the Holy Prophet constitutes:**

1)      The sayings of the prophet called sunnatu’l Qual.

2)      Deeds: all the action, method of performance & conduct of daily life comes under this kind called sunnatu’l fi’l.

3)      Conduct: On implied acceptance to certain things which come to the knowledge of the prophet & he did not oppose them. This is called sunnat-e-Taqrir.

The Holy Quran has reminded dozens of time the juridical importance of the hadith.

                “We sent not a messenger, but to be obeyed, in accordance with the leave of Allah. If they had only, when they were unjust to themselves, come into thee and asked Allah’s forgiveness, And the messenger had asked forgiveness for them, they would have found Allah indeed oft-Returning most merciful.” (Surah Al-Nisa: 64)

                “Nor does he say of (his own) desire. It is no less then inspiration sent down to him” (Surah Al-Nisa:3-4)

                “Verify in the messenger of Allah ye have a good example for him who looked into Allah and the last day, and remembered Allah much”(Surah Al-Nisa:21)

It is said that the holy prophet did not ask the people to write down the precepts because the compilation simultaneously of the Quran and traditions would create confusion. Hazrat Umer R.A also was of the same view. Individual efforts had already witnessed some compilations which are discussed below:   
                The narrations of Ibn-Abbas were compiled in various collections. Marwan bin Makkan dictated the traditions narrated by Zaid bin Thebit. Narrations of abu Moosa were collected by his son. Human bin munabbih who was a disciple of Abu Huraira had collected various traditions. Basheer bin nahyeek & sajid bin Jiyar & many others had compiled the traditions from various narrators.

                In the third period (during Abbassia Caliphate) the need for scientific study of the traditions was felt more & more. During the third century of hijra, the following six books were collected: i) Sahih Bukhari ii) Sahih Muslim iii) Sunan Ibn Majah iv) Sunnah Abu Dawood v) Collection of Tirmizi vi) Collection of Nisai.

                As-sihahu’s-Sittah, also called al-kutubu s-sittah.

“The six correct (books)”, the title given to the six most trustworthy collections of traditions received by sunni muslims.  
                Al-Bukhari and Muslim are held in highest reputation, are called as –Shaihen or the two authentic.

**Importance of the Hadith:**

                The importance of the Hadith is increased for the muslim by the fact that the prophet Mohammad not only taught, but also took the opportunity of putting his teachings into practice in all the important affairs of life. He lived for twenty-three years after his appointment as the messenger of Allah. He endowed his community with a religion, which he scrupulously practiced himself. He founded a state, which he administrated as supreme head, maintaining internal peace & order, heading armies for external defense, judging and deciding the legislating in all walks of life. He married & left a model of family life. Another important fact is that he did not declare himself to be above the ordinary law, which he imposed on others. His practice was, therefore, not more private conduct, but a detailed interpretation & application of his teachings.

**3)**      The third source of Islamic law is **Ijma**, which means consensus of opinions of those who are well known for their piety and are well versed in the subject.

The Quran has made various references about the use of Ijma.

                “Get ye then an agreement about your plan and amoung your partners, so you plan.” (Surah Al-Nisa:59)

                The Holy Prophet said:  
                “My people will never agree on erroneous things.”  
After the death of the Holy Prophet, the constitutional question of selecting Hazrat Abu Bakar as the first caliph was solved bu Ijma. Collection of the Holy Quran was also done by ijma.

**Kind of Ijma:**  
1) Regular Ijma: In this kind, the jurists express their opinion by words or deeds.  
2) Irregular Ijma: In this case, a practical opinion is expressed and other jurist do not contradict it with (Say three days)  
3) Ijma-ul-Ummah: The companions used to be unanimous in their opinions. It was the most superior kind of ijma.  
4) Ijma-i-Madinah: This was ijma by the learned people who used to reside in Madinah.

The First requirement of ijma is that only a Muslim jurist may participate in ijma proceedings. The mujtahid who participate in ijma must be of sound mind. He must be a man of thorough judgment and must have the capability of making logical deductions. A mujtahid is one who has thorough knowledge of Quran & sunnah, Islamic Law & jurisprudence & rules and methods of analogical deductions.

According to Abu Huraira, “If a fatwa of a Mujtahid is published and is not opposed by his contemporaries, it is tantamount to valid ijma.” According to jurist, ijma of one age may be reversed by a subsequent ijma except the ijma of the comanions.

                According to Hanefi School, Ijma will be binding if the following conditions are fulfilled:

1)      No companions shall have differed

2)      No jurist shall have changed his mind later on.

3)      The decision must be proved as being either universally known or at least well-known.

4)      Ijma shall be based on an express text of theQuran or a tradition of a continuous or well-known character.

5)      It must be regularly constituted

According to Dr. Allama Iqbal in his book “Reconstruction of a religion thought in Islam”, that “The principle of ijma should e applied and that the power of ijtihad should reside not in one individual but in a body of learned Muslim scholars of advanced views who may interpret the law in the light of modern legal and social ideas.”

**4)**      The fourth source of Islamic law is **Ijtihad**, which means use of one’s judgment or common sense while deciding an issue, the use of ijtihad which was sanctioned by the prophet became another source of Islamic law. And it was the particular source that played a vital role in the evolution & development of Islamic jurisprudence.

The famous dialogue which took place between the prophets & the later in quoted as an example in which Maaz bin Jabal is stated to have said that he would look into the Quran & the traditions of guidance and, failing which, he would use his own judgment. The reference to self-judgment here is a pointer to the use of ijtihad.

However, it was during the prophet of Bani Abbasides when the use of ijtihad not only gained momentum with the establishment of four sunni school of thought but was at its height.  
        “Even if thou wert to bring to the people of the book all the signs (together), they would not follow thy Qibla; nor art thou going to follow their Qibla” (Al-Baqarah: 145)

“And those who strive in our (cause), we will certainly guide them to our paths: for verily Allah is with those who do right.” (Al-Ankabut: 69)

According to tradition, ou should see your judgment by ijtihad, as whoever is assigned the task verily Allah some of them his weng.

**Qualofication of Mujtahids:**1) He must a thorough knowledge of the Quran and must be able to interpret it. He must be Muslim.  
2) He must be a master of traditions.  
3) He must be fully acquainted with the theory of repeal.  
4) The governing qualification is amen at or trustworthiness.

**Modernist Ijtihad:**        Modern ijtihad means not only that a proposed reform may be justified by a fresh interpretation of a specific text of the Quran or Sunnah. The view of the earlier jurist & imams are entitled to the outmost respect & cannot be lightly distributed; but the right to differ from them must not be denied to the present- day courts.

**Ijtihad & Modern Legal Reform:**  
        Reform of family law the sphere to which the application of shariah had been broadly confined by the end of 19th century in one of the most striking aspect of the modernization process in contemporary Islam.

**5)**      The fifth source, popularly known as **Qiyas**. It is a process of deducing rule of law based on the Quran, Tradition or ijma in matters which have not been provided by a Quranic or traditional text. It was originated in the days of Hazrat Umer as caliph.

Qiyas helps to discover the law & not to establish a new law.

“Learn a lesson, then, O you who are endowed with insight.” (AL Hashr: 2)

“And shall devote themselves (instead) to acquiring a deeper knowledge of the faith.”(Al-Tawbah: 122)

“And to import them the divine write as well as wisdom.” (Al-e-Imran: 164)

**The element of Qiyas:**1) Text: *ASL OR ROOT.*This is the text either of the quran or the traditions.  
2) Law: this is the law laid down in the text.  
3) Branch: it is a particular care on hand to which the Law embodied in the text to be   extended.                
4) Effective cause: it is the fact, circumstance with the lawgiver had in consideration when laying down any law.

**Necessary Condition:**1) the law enunciated in the text to which analogy is attempted to be applied must not have been intended to be restricted to a particular state of facts.  
2) If a traditions or a text of the Holy Quran has been repealed, an analogical deduction cannot be made.  
3) There could be no analogy on the text regarding inheritance rights, share of inheritance or about fixation of poor-rate (zakat).  
4) The deduction contemplated must not eventually lead to a change in the law of the text itself.  
5) The rule of analogy must not be opposed to the text of the Quran or the Traditions.

The Quran is in favor of leading a need-based life and oppose all greed or a luxurious lifestyle. It clearly enjoins to give away what it left with on after fulfilling one’s needs (the Quran cells it afw.)

                If Muslim had taken the Quranic Verses seriously and put them into practice they would have been the role model for the world for introducing a distributive justice system and a conflict free world; a world without wars & bloodshed, a peaceful world where everyone would have felt secure, a living paradise on earth.