

only knew.” (2:280)

“Give measure and weight with justice” (6:152) and

“Allah commands justice, doing of good, & giving to kith & kin; and He forbids all indecent deeds & evil & rebellion. He instructs you, that you may receive admonition” (al-Nahl 16:90)

The Quran similarly guides Muslims about matters concerning marriage and divorce, crime and punishment and the ultimate reward in the Hereafter:

“Marry women of your choice, two or three or four, but if you fear that you shall not be able to deal justly, then only one” (4:3)

“We set down in (the Torah) for them, ‘Life for life, eye for eye ...’ 5:45).

“Do not eat anything over which Allah’s name has not been pronounced; that will be impiety” (5:90).

“Those who devour usury will not stand except as stands one whom Satan by his touch has driven to madness. That is because they say: ‘Trade is like usury’. But Allah has permitted trade & forbidden usury” (2:275)

“God has promised to believers, men and women, gardens under which rivers flow, to dwell there” (9:72)

## The Holy Quran as a Source of Islamic Law.

The Holy Quran constitutes the foundation of Islamic Law and is therefore the primary and most reliable source. All other sources must be in conformity with the Quranic injunctions. It is the Final Word of Allah revealed to the Last Messenger, Muhammad ﷺ. The Holy Prophet ﷺ then conveyed the divine message to the people for guidance to the Right Path. The Quran in this regard

“... if any do fail to judge by what Allah has revealed, they are Unbelievers.” (al-Mai’da; 5:44)

“... Judge between them by what Allah has revealed and follow not their vain desires” (al-Mai’da; 5:49)

The Holy Quran assures us of its authenticity and genuineness and its being a source of ultimate guidance for those who are God-fearing and who are true



Believers. It says:

“ This is the Book. In it is sure guidance, without doubt, for those who fear God.....” (2:2-3)

This verse sums up the basic and major features of true believers who are sure to seek guidance from it.

The Quran's supremacy in deciding the matters of daily life including the judicial issues is an established fact because the Quran says:

“ We have sent down to you the Book in truth so that you may judge between men, as guided by God.” (4:105)

The Quran covers not only the spiritual and moral aspects of life but it also deals with social, economic, judicial and even political spheres. It provides details of social behaviour and ethics. The Holy Prophet ﷺ said,

“ Whomsoever desired guidance from any other (source) except the Quran, shall go astray.”

Commandments derived from the Holy Quran are called 'nas' (Pl. 'Nussus'). The compulsory acts of worship, such as Salat, Zakat, Saum, Hajj are all direct 'nussus' of the Holy Quran. Furthermore, the laws of inheritance, marriage, and divorce are all found in detail in the Holy Quran. These instructions are invariable, and must be followed by all Muslims for all times to come. Refusal to obey any 'nas' of the Quran leads to kufr, disbelief.

The Holy Quran includes many instructions about:

### Personal Behavior

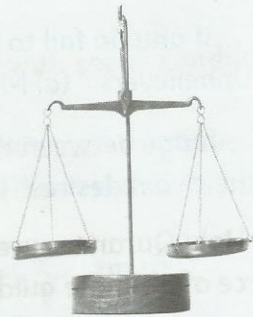
“ O you who believe! Intoxicants and gambling, sacrificing to stones and arrows are an abomination of Shaytan's handiwork: shun them so that you may prosper.” (Al-Ma'ida 5.90)

### Financial Dealings

“ Those who devour usury will not stand except as someone stands whom Shaytan by his touch has driven to madness. That is because they say: 'Trade is like usury'. But Allah has permitted trade and forbidden usury.” (Al-Baqara 2.275)

### Criminal Laws

“ We set down in [the Torah] for them: 'Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth





and wounds equal for equal'. But if anyone remits the retaliation by way of charity, it is an act of atonement for himself." (Al-Ma'ida)

### Order of Law Making

"O you who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah and His Messenger. If you believe in Allah and the last day, That is best and most suitable in the end." (Al-Nisac' 4.59)

### How the Quran is related with the Hadith, Ijma' and Qiyas?

The four sources of Islamic law are inter-linked. The Quran is the fountain-head of all aspects of legal thinking and provides guidance for legislation by the Muslims. All the Quranic commandments, collectively called Nasooos (singular Nass), are absolute and final. These are not open to any challenge, criticism or professional and legal opinion and being the word of Allah Almighty are final in their application. Allah reiterates this discipline at many places in the Holy Quran. The Quran says:

"These are the limits set by Allah. Whoever obeys Allah and His Messenger, He will admit him to gardens beneath which rivers flow, where he will live forever. That is a great success. Whoever disobeys Allah and His Messenger ﷺ and transgresses the limits set by Him, He shall admit him to the Fire, where he will remain forever. For him there is humiliating punishment" (4:13-14)

However, there are many areas that need detailed interpretation or even demonstration for the sake of their full application to the life of a Muslim. In the offering of Salah we need information and guidance with regard to preparation, timing, exact number of Raka'at and format. In such matters, relevance of the Hadith (or Sunnah) becomes obligatory. As a matter of fact, it is impossible for us to fully and properly comprehend the message of the Quran without first acquainting ourselves with the Hadith which tells us the practical application of the Quranic Injunctions. Thus, Hadith emerges as an essential requisite to our satisfactory comprehension of the Quran. The Quran, therefore, repeatedly commands the believers:

"And obey Allah and obey the Messenger ﷺ."

Both Quran and Hadith are collectively taken as the primary sources of Islamic law as together these encompass the entire foundation of legal behaviour in Islam.



Ijma' and Qiyas are the two secondary sources of legal system as both strictly and essentially depend on the primary sources. Ijma' and Qiyas are exercised by the doctors of Islamic law (Mujtahidun) who have full command over the minute details of the Quranic Text and Hadith. Hence, these sources become operative only when a Mujtahid or a team of Mujtahideen are fully convinced that they do not find any solution in the Quran or Hadith. It is to be kept in mind that Quran provides the framework of Islamic teachings, and Hadith elaborates the foundational teachings of the Quran along with practical demonstration of the issues. However, in view of the collective evolution of human intellect and society, time is sure to bring forth new situations and challenges whose details have not been covered by the primary sources. Such challenges are called 'Far' and in such a case an individual Mujtahid exercises his competence and knowledge by finding a striking similarity between the Nasoos of the primary sources and the 'Far'.

Such a material similarity is called the 'Illah, and the 'Far' is tackled on the basis of the 'Illah and the challenging issue is resolved. However, it is to be noted that when a team of the Mujtahidun works on a similar issue, it is not required to find an 'Illah. This is the mark of distinction between Ijma' and Qiyas.

### Ijma' (Consensus of Scholarly Opinion)

The word Ijma' literally means agreeing upon or uniting in opinion. In Islamic Shariah it is the third source of Islamic law and it refers to the consensus reached by the Muslim Scholars on some matter about which detailed answer in the Quran and the Sunnah is unavailable as such. There are many instances in which no clear parable is available in the Quran or Sunnah. The Holy Prophet ﷺ came across countless situations and through divine guidance was able to clarify many issues. It is to be noted and remembered that the companions of the Prophet ﷺ exercised 'Ijma' for the first time. The very word 'ijma' appears in the letter written by Umar رضي الله عنه to a judge. Umar رضي الله عنه directed him to pronounce judgements according to what had been agreed upon by the people in case he failed to discover a ruling in the Quran and the Sunnah. Thus all hypothetical questions were converted to practical experiences. As time passed and mankind underwent many social and technological changes, a few new questions began to be raised. A typical example is the issue of a test-tube baby or genetic engineering, which did



not exist at the time of the Holy Prophet ﷺ. These posed certain questions that needed practical solutions. Having been besieged with such questions the scholars exerted serious study and efforts through “Ijma” safeguarding against any departure from basic disciplines of Islam. Ijma’ is the consensus of the scholars dealing with such issues. It derives its sanction as an ‘usul’ or fundamental principle of Islamic jurisprudence from a number of Quranic texts and traditions of the Prophet ﷺ. For instance, the Quran says:

“ Thus have We made you an Ummah (community) justly balanced”  
(2:143)

This verse indicates that the essence of all Islamic teachings is to avoid extravagances or extremes on either side and strike a middle and balanced ground acceptable to all. Then at another place, the Quran asks us:

“ And hold fast all together the Rope of God and be not divided among yourselves” (3:103)

Here the simile of ‘Rope’ has been used for the set of principles designed by Allah and which Surah al-Fateha terms as the Right Way. Now if all hold fast to it together, their mutual support adds to the chance of their safety. This means that the practice of Ijma’ ensures the safety of the Ummah by means of universal agreement on controversial matters. This is for this reason that the Prophet ﷺ advised his followers:

“ Avoid the branching path and keep to the general community.”

This tradition also supports the practice of Ijma’ in order to avoid sectarianism. Another famous tradition of the Prophet ﷺ declares:

“ My community will never agree in error.”

This saying reflects the Prophet’s ﷺ very positive view about his followers who with consensus would agree only on goodness. The Quran and sunnah shall ever remain the fundamentals and basic sources of Islamic Law. However, where these sources do not clarify a matter then the opinion of the scholarly authority is to be sought as is clear from the following Quranic verse:

“ O you who believe! Obey Allah and obey the Messenger ﷺ and those charged with authority among you; if you differ in anything





among yourselves, refer it to Allah and His Messenger ﷺ if you do believe in Allah and the Last Day; that is the best and most suitable for final determination.” (4:59).

It further says:

“... if you do not know, ask of those who possess knowledge”.  
(Surah Nahl; 16:43)

These Quranic commandments sum up the relationship between the Quran, the Sunnah and the authority (scholars etc) that is to be followed only when he (the authority) himself practised in the light of and in conformity with the Quran and the Sunnah. After some ruling or judgement is established through Ijma it shall be adhered to with noble intention and with trust in Allah. We trace the roots of Ijma' from the Quranic commandments of “consulting each other” which was regularly practised by the Prophet ﷺ while making important decisions. A deep study and knowledge of the Quran and Sunnah is compulsory for a group of persons who are involved in Ijma'. Following are the types of Ijma'.

### Ijma' of the Companions رضي الله عنهم

This is the consensus of opinion done by the Companions رضي الله عنهم of the Holy Prophet ﷺ. The agreed upon principle is that the Ijma' of any one can be reversed or amended by one who is equal or greater than him. For example, a person who is a companion رضي الله عنه can amend the decision of another companion. None can match the companions of the Holy Prophet ﷺ in their comprehension and command over Islamic injunctions. Thus the Ijma' enacted by them is valid for all times to come, and is an invariable source of Islamic law. Examples of this Ijma' include the addition of the second Azan (call for prayer) in the Juma' prayer. Another example of the companions' Ijma' is the offering of Taraweeh prayer in twenty rakats, compilation of the Holy Quran in one manuscript, and the elections of the Caliphs رضي الله عنهم.

### Ijma' of the Imams

The four Imams, Imam Abu Hanifa, Imam Shafa'i, Imam Malik and Imam Ahmad bin Hunbal رضي الله عنهم are the elite of the scholars of the Ummah. Their grasp over the ology was the best after the companions رضي الله عنهم. The Ijma' they derived is given the highest regard in the Muslim world. There is little that they left out but the scientific development is of course there. Examples of their Ijma' include the issue of the missing (lost) individual, i.e. what should be





the maximum missing period for a person before he could be considered (declared) dead. This period was initially longer, but as communications have improved multifold over the last century, a seven-year wait is suggested. This brings us to the point that Ijma' of the Imams عليهم السلام is subject to change over time. Another example is the problem of a jailed husband. If a man is imprisoned for a long period of time, should not the wife be allowed to divorce him, or remarry? How long should that period be? These and many other issues have been attended through the Ijma' by the renowned scholars of Islam of the present day in the light of the Ijma' by the Imams عليهم السلام.

### Ijma' of the Scholars

There can be shortage but never disappearance of scholars in Islam. The Holy Prophet صلى الله عليه وسلم said that a Mujaddid (renewer) would be sent by Allah every hundred years to purify the faith of the Believers.

Modern day scholars are confronted with new issues, mostly which have to do with the advancement of technology. Examples of this include the permission to contract a marriage ceremony via telephone and prayer timings for those living in the North and South Poles. This form of Ijma' is not binding on all the Muslims and it could be revised or changed according to the demand of time and circumstance.

### Ijma' of the Local Muslim Community (Mashwara)

The members of a local Muslim community may also conduct Ijma' on the issues that pertain to them as individuals. For example, the timings for Salah are specified in the Sunnah, but the exact timing of the congregational prayer may be decided by the local community of any area differently. For example, the time for Salat-ul-Eid, (Festival Prayers) may be fixed by the local community though it must be within the time range specified by the Holy Prophet صلى الله عليه وسلم. This form of Ijma' is not binding on all the Muslims and is changeable according to local conditions.

### The Quran and IJMA:

#### Quranic support for IJMA:

**"And obey God and obey the Messenger and those charged with authority among you" (4:59)**

Here authority means scholarly or political body that makes collective efforts to tackle new challenges.



**"If you do not know, ask of those who possess knowledge" (16:43)**

This means that matter should be referred to the competent scholars for finding a solution.

**"Thus have We made you a community justly balanced" (2:143)**

The balance can only be attained by consensus, avoiding divisions and rifts, while solving problems. "If anyone contends with the Messenger even after guidance has been plainly conveyed to him, and follows a path other than that becoming to men of faith,

**"We shall leave him in the path he has". (4:115)**

This verse highlights the importance of following an agreed opinion that is based on the divine guidance conveyed to us by the Prophet ﷺ. It also warns of consequence of not following the agreed decision.

### Example of IJMA:

1 The share of grandfather in inheritance on the death of an orphan grandson:

**"It is prescribed when death approaches any of you, if he leaves any goods, he should make a bequest to parents and next of kin" (2:180).**

Now, grandfather is not mentioned in the verse but it was agreed by IJMA that he would take the father's place.

2. The prohibition of marriage with grandmother or grand daughter:

**"Prohibited to you (in marriage) are: your mothers, daughters, sisters" (4:23)**

No mention of granddaughter and grandmother in the verse, but it was agreed that they, too, are enlisted in the same.

3. Election of Abu Bakr رضي الله عنه as the first caliph:

**"And obey God and obey the Messenger and those charged with authority among you". (4:59)**

On Prophet's صلى الله عليه وسلم death the companions agreed there should be a successor (caliph) to the Prophet صلى الله عليه وسلم to act as an authority for Muslims. Eventually, most of them agreed on the choice of Abu Bakr رضي الله عنه.

### Quran and Qiyas:

#### Support /justification by the Quran

The Quran repeatedly commands its readers to ponder, observe & analyze:



- i “Then take admonition O you with insight” (59:2)
- ii “There are signs in this for people who understand” (13:3)
- iii “And We have put forth for men, in this Quran, every kind of parable (similitude) so that they may receive admonition” (39 : 27).

In fact, scholarly men can well understand various parables given in the Quran and are also able to link them with new situation.

These verses urge & encourage Muslims to understand the Quranic teachings more deeply in order to apply them on various challenging situations.

- iv “Marry women of your choice: two or three or four; but if you fear that you shall not be able to deal justly, then only one” (4: 3).

Now, a man himself will know whether he can do justice or not, by exercising personal reasoning & judgment.

Examples of working of Qiyas:

**Important terms:**

- i Asl or the fundamentals (Quran & Sunnah) with laws contained in them.
- ii The new issue /challenge / matter: ‘Far’
- iii The effective cause / similarity between the Asl and the Far’: ‘Illah.
- iv The final judgment thus made: Hukm

- a) “O you who believe! When the call is proclaimed to prayer on Friday, hasten to the remembrance of God and leave off business.....” (62 : 9)

Setting aside business on Friday for the prayer: Asl (fundamental law)

Far’: what about other (non business) transactions?

‘Illah: all transactions (business & non business) tend to distract believers from remembrance of God. Hukm: all transactions to be set aside for the Friday prayer.

- b) “And if you find no water, then take for yourselves clean sand and with it rub your face and hands” (4 : 43).

- Asl: permissibility of using clean sand to attain purity (by Tayammum instead of Wudu)
- Far’: can other impurities on body/clothes be removed by clean sand, when no water available?
- ‘Illah: water is better but sand has similar properties to rub off dirt/pollution.
- Hukm: clean sand to be used (in emergencies only) to remove impurity.
- c) “O you who believe! Intoxicants and gambling, sacrificing to stones and arrows are an abomination of Satan’s handiwork: shun them so that



you may prosper" (5:90)

- Asl, declaring khamr (intoxicant) as forbidden for Muslims. The Prophet also stated that all intoxicants were khamr.
- Far': new forms of drinks with intoxicating properties, regardless of way of manufacture (heroin, hash etc)
- 'Illa: ability of such drinks to intoxicate.
- Hukm: all such drinks are khamr because they intoxicate.

## Qiyas or Analogical Deduction

Qiyas is the fourth source (asl) of Islamic Law. Literally, Qiyas means measuring or comparing with or judging by comparing. In Islamic Jurisprudence (Shariah), Qiyas is a process of deduction by which the law of text (nass) is applied to cases which have not been clearly covered by the other sources (Far' or new case) of Islamic Law. Thus it is extended to cases or matters not explicitly covered by the Quran and the Sunnah on the ground of a material similarity in the nature of the two cases. The material similarity is termed as 'Illa or effective cause. So by taking the 'Illa of the Quran or the Sunnah as absolute we identify the existence of the same 'Illa in the new case and then decide. In the Quran we find a number of verses where Allah has enjoined upon us to use our brains and reasoning. For instance the Quran asks us to utilize our insight in order to learn lessons:

“ Then take admonition O you with insight.” (59:2)

(1) The Holy Prophet ﷺ while dispatching Mu'adh bin Jabal رضي الله عنه as the Governor of Yemen, asked him as to how he would judge the cases. His reply was “From the Book of God”. The Prophet ﷺ asked him if he did not find a clear solution therein, he replied that he would look to the Sunnah. The Prophet ﷺ further asked him that if he still found no answer from the Sunnah what he would do? Upon this Mu'adh رضي الله عنه said that he would decide by exercising his own judgement. On this the Prophet ﷺ was pleased and he prayed for Mu'adh. This shows the Prophet's صلى الله عليه وسلم approval for using Qiyas.

On another occasion a woman came to the Prophet ﷺ and stated that her mother who had solemnly declared to perform Haj, had died before doing so. She asked if it was necessary to perform Haj on her mother's behalf. The Prophet ﷺ paused for a while and then said,



2 " Verily, what would you do if she had left debts repayable?  
Naturally you would pay."

Here the 'Illa or effective cause in both cases is the fulfillment of obligation. Another classic example of the application of Qiyas is the method of manufacturing alcohol. At the time when the verses declaring Khumr (Date Wine) as Haram were revealed, alcohol was prepared from date palms or vine (grapes). As new methods were discovered to manufacture alcohol (e.g. Beer), all alcoholic drinks were declared Haram or forbidden because the 'Illa or common ground between all forms is that these all cause intoxication.

3 A third example in practical life is the appointment of a guardian over a minor. By analogy a guardian shall have to be appointed over an adult who has lost his or her senses because the effective cause between the two is the inability to take care of oneself. By this we see that there are three identifiable components of Qiyas. Firstly, the text of the Quran or the Sunnah and the law contained therein; secondly, the branch or the particular case (Far') in question and thirdly, the 'Illa or effective cause. There are certain conditions for a person to exercise Qiyas. The person has to be a Mujtahid or doctor of law with command over the Quranic and Sunnah matters and the Arabic language. He must have sound memory and enjoy good repute as a pious person. He must have good knowledge of history in contemporary matters.

Then there are necessary conditions for Qiyas. The aim of Qiyas is not to alter any Quranic or Sunnah law or text (nass). Moreover, it should be understandable for the Ummah or its reasoning should be easily comprehended by human intellect.