

Sources of islamic law theology religion essay



**ASSIGN
BUSTER**

Contents

- (2) The Correct Procedure.

First and first, in finishing this assignment and doing it a successful one, I would wish to take this chance to thank for the aid and guideline of some well-thought-of individuals. This thesis would non hold been possible without the counsel and the aid of several persons who in one manner or another contributed and extended their valuable aid in the readying and completing of this assignment. First of all I ' m thankful to Dr. Mohamed Ishak Bin Abdul Hamid, Senior Lecturer in the Faculty of Law section, of Multimedia University, Melaka for rendering me a good guideline for this assignment during his audience hours. His word " enthusiasm " has inspired me in making good in this peculiar assignment. His willingness to actuate us contributed enormously to our assignment. And non burying Mr. Mohd Azizie Bin Abdul Aziz who continuously guided us since foundation boulder clay now with his immense cognition and moral support in individual and through phone. Hence, I would besides wish to thank the Faculty of Law Department, Multimedia University for updated resources in the instruction system. Before I end, I would wish to take this chance to thank my fellow group couples who had helped and guided me since the first twenty-four hours of the assignment, they are none other than Audrey Teoh, Dinesh a/l Ramachandran, Faris Lee Dinie Lee, Ng Wei Wei, Loh Chin Ee and Khoo Yin Zhang for making legion research and geographic expedition of needful stuffs and information. Last but non least, an honorable reference goes to our households for their apprehensions and supports on us in finishing this

assignment. They shared their cognition and legion tips all of which culminated in the completion of this peculiar assignment. Thankss

Tan Chow Teng 1112700122

Declaration

We, hereby declare that the coursework produced herein is our ain work done by ourselves based on our personal survey and research except for citations and commendations that have been punctually acknowledged. This work of any portion of it has non been antecedently or is non at the same time submitted for any other grade at Multimedia University or other establishments. We besides to the full understand that in the event of any academic dishonesty on our portion, we may be subjected to the rigorous liability action at the discretion of Multimedia University.

Signature:

Name: TAN CHOW TENG (LEADER)

Student ID: 1112700122

NRIC NO: 930810-01-5521

Date: 29 APRIL 2013

Signature:

Name: AUDREY TEOH

Student ID: 1112701612

NRIC NO: 930824-01-6170

Date: 29 APRIL 2013

Signature:

Name: DINESH A/L RAMACHANDRAN

Student ID: 1112702200

NRIC NO: 930403-01-6535

Date: 1 January 2013

Signature:

Name: FARIS LEE DINIE LEE

Student ID: 1112700217

NRIC NO: 930104-04-5029

Date: 29 APRIL 2013

Signature:

Name: NG WEI WEI

Student ID: 1112702806

NRIC NO: 930629-10-5207

Date: 29 APRIL 2013

Signature:

Name: LOH CHIN EE

Student ID: 1112702851

NRIC NO: 930122-01-5122

Date: 29 APRIL 2013

Signature:

Name: KHOO YIN ZHANG

Student ID: 1112700413

NRIC NO: 930321-66-5013

Date: 29 APRIL 2013

Introduction

Pakistan is a parliamentary democracy with separation of executive, legislative, judicial powers. It is a federation of four states with a strong federal authorities at the Centre. The fundamental law provides for a figure of cardinal rights[1], which include assorted human rights and civil autonomies recognize internationally. These cardinal rights are enforceable through the tribunals.

However, the caput of province which is the president will bask significant powers in relation to certain executive and legislative maps. The premier curate is the main executive of the federal authorities and is elected by the

members of the National Assembly, the lower house of the Parliament. The members of the National Assembly [2]and the provincial assemblies are elected through direct election. A figure of political parties participate in the elections.

The fundamental law declares Islam a province faith but allows freedom of faith to the members of other religions. The economic system is based on a market economic system. The people of Pakistan are diverse, dwelling of assorted cultural groups talking different linguistic communication and with different civilizations. The fundamental law stipulates that Pakistan should populate in peace with all states in the universe and provides for a particular relationship with other Muslim states. However, based on the Constitution of Pakistan, the Quran and Sunnah did n't fixed any Constitution which must be follow by the Muslims in Pakistan. Emeritus Professor Ahmad Ibrahim have laid down certain rules which are used to steer the Muslims to take the best system of political administration for their society and clip which is the Quran, Sunnah, Consensus of Opinion (Ijma) , Judicial Reasoning, and different other beginnings.

Beginnings of Islamic Law

The Qur'an

The Qur'an which is the Holy Book of Islam is the beginning and foundation of Islamic jurisprudence and metaphysical cognition. The Qur'an is considered as God ' s ain words. It comprises 114 chapters, each chapter composed of a different figure of poetries. The Qur'an trades with extensively different capable affairs. Although it covers certain cardinal legal regulations, the Qur'an does non concern itself with all the diversified and <https://assignbuster.com/sources-of-islamic-law-theology-religion-essay/>

elaborate demand of the jurisprudence. Indeed, merely about 80 poetries (out of a entire 6000 uneven Qur'anic poetries) are straight mentions to the jurisprudence, there would still be less than 500 poetries indicating to legal issues. Therefore, resort to other beginnings of jurisprudence has been made to supplement the Qur'anic legal regulations. As godly disclosure, nevertheless, the general rules of jurisprudence contained in the Qur'an are the most important beginnings of Islamic jurisprudence.

Moslems have one basic papers that guides the religious, political, moral, and societal facets of their lives. This papers is the Qur'an, which Muslims believe is the revealed word of God. The Qur'an contains a assortment of elements, such as narratives (frequently similar to Biblical 1s) , moral injunctions, and general every bit good as specific legal rules. The constitutional rules are thin but basic. " They make clear that a province must fulfill two basic conditions to run into Muslim criterions. First, the political procedure must be based on " elections, " or bay'ah Second, the elected and regulating procedure must be based on " wide deliberation, " or shura!

Two cardinal characteristics of Qur'anic doctrine underlie the wide preparation of the above-named constitutional rules. The first is that of diverseness. The diverseness from the approval from God which encourage the moral principle from the Qur'an is the common rule which have being laid down. However, the Muslim legal expert have come to the point that when a peculiar fact which suit a civilization does n't intend will accommodate another civilization. For this peculiar ground, the state may present different imposts into the jurisprudence without beliiing with the rule

of Islam. Witness for illustration the difference in constitutional and household Torahs between Egypt and Morocco (both Muslim states) . ' By reserving room for usage, the Law Giver (God) emphasized the importance of cultural diverseness and the ability of each society to do its ain picks. These rules have far-reaching effects, particularly in the country of federalism. Section IV will exemplify how regard for local usage and diverseness led the Prophet to equilibrate carefully the rights of the assorted folks (predecessors of the modern provinces) against the powers of the Islamic federal system.

The 2nd cardinal characteristic of the Qur'anic doctrine is that of gradualism. Again, the Law Giver recognized both the human ability to invariably germinate and better and its demand to make so over Islam clip. For this ground, in an Arab society which at the clip of disclosure consumed a great trade of vino, the Godhead prohibition against devouring alcoholic drinks was imposed by the Qur'an bit by bit. The same characteristic applied to the debut of democracy. Given the permeant autocratic political orientation in the universe at that clip (over fourteen hundred old ages ago) , it was clear that human consciousness would necessitate clip to acknowledge the immoralities of dictatorship and reject it in favor of democracy. The Qur'an provided the basic rules for a constitutional democracy without supplying the inside informations of a specific system. Moslems were to construe these basic rules in visible radiation of their imposts and the demands of their historical consciousness, as informed by the epoch in which they lived. As a effect, Muslim constitutional theoretical accounts would ideally get down with basic democratic elements, remain flexible and go on to come on over

clip. Unfortunately, as will be pointed out subsequently, despite all attempts, the force of dictatorship in 7th century Arabia and the universe at big was hard to get the better of. As a consequence, absolutism replaced budding democratic theoretical accounts and thwarted their development.

The Sunnah

During the life-time of the Prophet Muhammad, he will settle differences by mention either to the Qur'an (God ' s Own Words) or as divine otherwise. Immediately, after him and during the clip of his Rightly-Guided Caliphs, when any legal differences arose the parties subjecting to Islamic jurisprudence would raise the Qur'anic poetries. By manner of illustration when Fatimah, girl of the Prophet, was denied the averment of her heritage right to a farm called Fadak she came to the Mosque for a public argument. Addressing the audience, she invoked legion poetries from the Qur'an which related to the jurisprudence of sequence. Fatimah ' s instance was heard by the first Republican Caliph Abu-Bakr, and was ab initio upheld by him. Later, nevertheless, ' Umar intervened and ensured that this comfortable belongings belonged to the public i. e. the Muslim State. The statements put frontward by Fatimah show that there had been different reading put on the Qur'anic texts and that is why Fatimah questioned the eldermen of the Community as to whether they were better versed with the reading of the Qur'an than the Prophet himself and Ali. At the terminal, Fadak was taken off from Fatimah and remained in the public sphere until the " merely " Ummayed Caliph (Umar ibn Abdul Aziz) returned the belongings to Fatimah ' s posterities.[3]

When there was no express Qur'anic poetry to the point, the early Muslims resorted to the Sunnah jus gentium which was fundamentally to be known in the affair of oecumenic Arabian customary jurisprudence. As the clip passed, the impression of Sunnah became more restricted and it was eventually taken to be confined to the Tradition of the Prophet (as opposed to tradition in general) . In this manner the 2nd textual beginnings of jurisprudence, . i. e. Tradition, developed.[4]This included non merely uttered sentiment (Hadith) of the Prophet, but besides covered his workss and silent blessings. By blessing is meant what the Prophet and his replacements did non really say or act, but what came to their notice and to which they did non object. While the Sunni Muslims confine the authorization to the Prophetic Traditions, the Shi'ite legal experts give to the expressions workss and blessings of the Twelve Shi'ite Imans the same authorization as those of the Prophet himself. In other words the Shi'its believes that the Twelve Imans possess Godhead cognition.

The Traditions holding received the position of a beginnings of jurisprudence were reduced to composing, compiled and used as a most of import authorization in Islamic jurisprudence ; ranking after the Qur'an. They can be likened to “ instance jurisprudence ” in Anglo - American legal systems or to doctrinal and institutional authorship in the Franco - German legal system.[5]

Consensus of Opinion (Ijma)

As Islam spread quickly and was accepted widely, the altering conditions of the Muslim societies brought about farther complicated jobs for which neither the Qur'an nor the Prophetic Traditions (the two textual beginnings)

, had provided any redress. It was found, hence, inevitable that certain derivative beginnings should be utilised for the declaration of these job. As such resort was made to “ consensus ” or “ common consent ” ijma which was accepted as a farther beginning of jurisprudence. This was an credence of human concluding as exercised jointly by the Muslim legal experts.

The construct of “ common consent ” in Islamic jurisprudence should non be mistaken for the regulation of the bulk and representative authorities in Western democracies. “ Common consent ” , as a beginning of jurisprudence, is an sentiment adapted and expressed by all high spiritual and erudite legal experts of the Muslim community. Unlike democracy, the Islamic system does non give any weight to the positions of the layperson. Merely the consensus of the erudite legal experts is a beginning of Islamic jurisprudence, because they possess the module and specialist expertness to research into all relevant legal governments. Learning the jurisprudence, nevertheless, is unfastened to any ordinary citizens in Islam.

Judicial Reasoning

In the 4th topographic point, jural analogy qiyas in the Sunni schools, and concluding or logical tax write-off aql in the Shi’a school, is accepted as a auxiliary beginning of jurisprudence. A Muslim justice, hence, has to seek foremost in the Qur’an, the Sunnah, and “ consensus of sentiment ” to happen out regulations applicable to a instance before him. In this manner human logical thinking is acknowledged as a farther beginning of Islamic jurisprudence whereby an single legal expert can exert him ain module.

The above beginnings of the Orthodox Islamic jurisprudence (ie the Qur'an, the Sunnah, the Ijma, and the Qiyas) should be distinguished from each other in two ways. On the one hand during the life-time of the Prophet Muhammad merely the Qur'an was recognised as adhering while the Sunnah derived its authorization either from the existing customary jurisprudence or from clear injunctions of the Qur'an. On the other hand, the textual beginnings, i. e. the Qur'an and the Sunnah, holding independent and nonsubjective features, should be distinguished from the Ijma and the Qiyas which are dependent on the logical thinking and the reading of the Muslim legal experts who are free to exert subjectively their own mind and intelligence in the procedure of legal analysis.[6]Furthermore, qiyas and aql are wholly dependent on the subjective apprehension of an single legal expert who tries to work out a job whereas ijma is the common sentiment and the prevalent position of the community of bookmans.

(WEI WEI)

If we truly eager to witness our Islamic Ideal are being applied in world, one must not supervise the cardinal footing of the jurisprudence of the nature which brings all inactive and alterations which seems impossible in the corporate life[7]of a human to make about increasingly. The lesser abruptness of alteration, the lesser it will for the ephemeral (persons) by and large turns out to be. In order to hold an ageless alteration, it is to be said basically that it shall be a nothingness in being radical bias and unstable attack.

The revolution brought on by the Holy Prophet[8](peace be on him) in Arabia will be one of the well performed illustrations of such gradual

<https://assignbuster.com/sources-of-islamic-law-theology-religion-essay/>

alteration. One who is holding cognition of, being cognizant, and even superficially[9], with the history of the Prophet ' s achievements, knows, that he did non implement the full frame of Islamic jurisprudence at one time. The populace was ready increasingly for their execution. He started his actions of transmutation by learning belief in the basicss of Islam[10]and by bring oning the people to populate a life of righteous and sacred. Those who recognized this message were trained by him to hold faith in and pattern the Islamic manner of life. The Prophet (peace be on him) went a measure further and established an Islamic province in Madinah with the object of doing the full life of the state conform the Islamic form when this was achieved to a considerable grade. After obtaining political power and taking the disposal in his custodies, he (peace be on him) started an thoroughgoing run for the reclamation and the reestablishment of the corporate life of the community on Islamic constructs of life[11]: an terminal for which he had been trying by ways of sermon and carrying merely. He (peace be on him) announced a new construction of instruction, a system which in protection the state of affairss obtaining in his clip entailed chiefly of verbal instructions and went on with a organized program for an general reform in the society, moral, economic and cultural life of the discredited society of his yearss. In proportionate with the development made in his field, the Prophet (peace be on him) relocated the behaviors during the " Age of Ignorances " and replaced for them recent, sensible and civilised political orientations of human behaviour and mode.

A cautious research of the Qu'ran and the Hadith[12]discloses the steady and spectacularly operative patterned advance implemented by the Prophet.

We found that the Islamic jurisprudence of heritage was applied merely in the 3rd twelvemonth after the migration (hijrah) . An atmosphere pleasant for the prohibition of wine was created bit by bit and its absolute prohibition was exaggerated in the twelvemonth 8 A. H. Similarly, thought the immoralities of involvement were worried early in the Meccan life (before the Holy Prophet migrated to Madinah) yet it was non about forbidden until twelvemonth 9 A. H. when the whole economic construction of the Muslim society had undergone a complete change and the new community order had been resolutely established. The on-going application of the instructions and guidelines refering matrimony and divorce merely finalized in the twelvemonth 7 A. H. The execution of condemnable codification was influential over an age of many old ages and was been finalized in the twelvemonth 8 A. H.

As we all know really good, the Britishers did non compel the mistake of changing the whole agreement of Indian life including its legal building all at one time. The tribunals had the Qadis to make up one's mind the instances in conformity with the Islamic Shari'ah which was merely to the single affairs of the Muslims but instituted the jurisprudence of the jurisprudence. The Britishers tolerated all that and took about a hundred old ages to replace the Shari'ah by their ain codification of jurisprudence. The Islamic Shari'ah[13]was the jurisprudence of the land before their reaching, and it was no easy occupation pass overing out the current imposts of life and to convey about a thorough Westernisation of the full life. Consequently, for a significant period of clip after the formation of the British regulation, the Islamic Shri'ah remained in tendency in the state.

Down to our ain times state, Pakistan, even if we demand to propagate the whole building created by British and the building of a new one in its topographic point. It is apprehensible that this will ne'er be accomplished by merely a parliamentary measure or an authorised declaration. This is because it is an amazing responsibility rendering to a well-planned and comprehensive work. For an illustration, we need a thorough reorientation of our educational system. At current state of affairss, two sorts of our instruction institutes working outright in our state, viz. , the modern secular school, colleges and universities and the old spiritual ' madrasahs[14]' . None of them stated above able to bring forth endowments in running the modern society of the Islamic province. The modern secular establishments, they produce people who are bereft of even a fundamental cognition of Islam and its Torahs, as for the old fashioned schools as viz. were to plunge in conservatism to such an extent that they have already lost all touch with the modern universe.

There is nevertheless, a superior and lager obstruction, which is populating under the control of an unfamiliar influence deprived of the Islamic effects for ages, the ornament of our cultural, moral, societal and economic life has suffered a sweeping fluctuation and is at present far to be able to take from Muslim criterions. With state of affairss as such, it shall non be productive. Even after all agencies, if it were still likely, to alteration on the legal building of the state all at a clip because so the overall ornament the legal construction and life will be falling apart and the legal alteration will hold to agonise the destiny of being in a hostile state of affairs. Therefore, it is critical and unchangeable that the obligatory reform should be steady and

the fluctuations in the Torahs should be achieved in such a mode as to equilibrium positively to the alteration in the cultural, moral, societal and economic life of the countrywide.

If we replicate for an blink of an eye and consider the samples cited above in endorsing up the steady alteration in the change of corporate life, we can grok that a rhythm of life, whether un-Islamic or Islamic, can be carried into world when the aim is clearly strong and a certain scheme is drawn out for the achievement of that purpose.

The Islamic rebellion brought approximately by the Holy Prophet (peace be on him) was the effect of old ages of work, old ages spend on building work forces appropriate for the beginning and in changing the point of view of the populaces by proclaiming the wisdoms of Islam. However from the above all, the whole running organisation mechanism of the province of Madinah was exploited for reclamation of the civilization and the formation of a fresh execution of the Islamic ordinances.

(2) The Correct Procedure.

None reasonable persons can disown that Pakistan was claimed and well-known in the name of Islam and in the interest of the Restoration of the impressiveness of Islam, hence, doing it theoretically an Muslim ideological statement. Hence, it is critical that Pakistan being known as an undeniable component that it is the state which must demo a constructive portion in the formation of the Islamic life of the rhythm.

First measure, which means if what has been specified is accurate so the undermentioned phase towards our mark would be to Muslimise (convert <https://assignbuster.com/sources-of-islamic-law-theology-religion-essay/>

into Islam) the province. Such action will merely muslimise the province but the province itself is still grounded in and occupied harmonizing to the same secular bases on which it did during the British period. The applied figure for the achievement would be doing that our Fundamental law Assembly to unequivocally denote:

Claiming the authorization of Pakistan belongs to the God Almighty entirely and entirely merely, whereby Pakistan will administrate this province as merely His agent.

The cardinal footing jurisprudence of the land shall be Shari'ah (Islamic jurisprudence) which the Islamic jurisprudence has passed down to us through our Holy Prophet, Prophet Muhammad (peace be on him) .

All Torahs which are non in conformity to Shari'ah (Islamic jurisprudence) shall be repealed as to accommodating the Islamic jurisprudence or destruct the struggle jurisprudence and no jurisprudence which is in struggle with Islamic jurisprudence shall be enacted.

The province itself shall by any agencies in transporting out or moving out its power, shall non incapable to disobey or in oversight with the boundary placed down by Islam.

(YING ZHANG)

Quranic poetries gave us assorted tax write-offs by great legal experts in the yesteryear and their statements in favour of those tax write-offs.

Other than books on Quranic injunctions, there are commentaries on the books of Hadith. In these books, other than commandments and Torahs, the best stuff on legal rules and their account can besides be found. From this hoarded wealth, there are some books that should be translated. For illustration, on al-Bukhari[15]: Aini and Fat'h al-Bari[16], on Muslim: Nawewi and Fat'h al-Badhli, on Abu Daud[17]: Aunul-Ma'bud and Badhl al-Majihud, on Muwatta[18]: Shah Wali-ullah ' s[19]Musawwa and Musaffa, and Aujaz al-Masalik[20]by a modern-day Indian bookman, on Muntaqa al-Akhbar: Shaukani ' s Nail al-A'wtar, on Mishkat[21]: Att'aliq-us-Sabeeh and on Hm-al-A'thar: Ma'ani al-A'thar by Iman Tahawi[22].

Besides, some cardinal books of fiqh besides must be peculiarly translated. These include, on Hanafi[23]Fiqh: Al-Mabsut and Sharh al-Siyar al-Kabir[24], by Iman Sarakhsi[25]; Badai al-Sana'I by Kashani ; Ibn Humam ' s Fat'h al-Qadir ; Hidayah and Fatawa-i-Alamgir, on Shafe'I Fiqh[26]: Kitab al-Umm[27], Sharh al-Muhadhdhab and Mughni al-Muhtaj, on Maliki Fiqh[28]: Al-Mudawwanah[29]and any other of import book that might be selected by bookmans ; on Hanbali Fiqh[30]: Al-Mughni by Ibn Qudamah[31]; on Zahiri Fiqh: Al-Muhalla[32]by Ibn Hazim[33]; on Madhahib-e-Arba'ah: Bidayat al-Mujtahid by Ibn Rushd[34]and Al-Fiqh-fil-Madhahib by Ibn Rushd and Al-Fiqh-fil-Madhahib al-Arba'ah compiled by Egyptian bookmans ; on certain particular jobs: Kitab al-Kharaj[35]by Iman Abu Yusuf[36]; Al Kharaj by Yahya Ibn Adam ; Kitab al-Amwal by Abu ' Ubaid al-Qasim ; Ahkam al-Wakf by Hilal Ibn Yahya and Ahkam al-Muwarith by Dimiyati.

On the other manus, some of the books on law and doctrine of jurisprudence are required in order to understand the spirit of Islamic fiqh right. These

include Usul al-Ahkam by Ibn Hazm, Al-Ihkam li-Usul al-Ahkam by Amidi, Usul al-Fiqh by Khadari, Al-Muwafaqat by Iman Shatibi, l'lam al-Muwaqqi'in by ibn al-Qayyim and Hujjat Allah al-Balighah by Shah Waliullah.

We non merely have to interpret those books but besides re-arrange the contents of these books into the form of modern books of jurisprudence. Besides, we should put new headers and garner the scattered treatments on legal jobs. The method of roll uping books in the yesteryear is really different from the method used today. Besides, in the yesteryear, there was no elaborate categorization of jurisprudence and hence, legal experts in the yesteryear had no separate the subdivision of jurisprudence such as Constitutional Law, International Law, etc. They dealt with these jobs under several headers such as Jihad[37], Kharaj[38], Marriage and Inheritance. They had no separate subdivision of condemnable jurisprudence. They merely discussed these jobs under headers of hudood[39]and Diyat[40]. The people in the yesteryear used to discourse a topic at different topographic points. They did non divide the topics of Economics and Finance. They dealt with these topics under headers of ' the book of gross revenues ' , ' the book of land-cultivation ' , etc. They did non hold the footings ' Law of Evidence ' [41], ' Civil Procedure Code ' [42]and ' Penal Code ' [43]. They discussed inquiries refering these facets of jurisprudence under the headers of ' the etiquette for the Judgess ' , ' the book of claims ' , ' the book of statements ' and etc. Therefore, these books may non be utile to us if they are merely simply translated.

Next, a organic structure of Islamic bookmans and experts should be appointed in order to codify the subdivisions and clauses of Islamic Law

<https://assignbuster.com/sources-of-islamic-law-theology-religion-essay/>

harmonizing to the form of modern jurisprudence. Not everything that contained in a book of Fiqh constitutes Islamic Law. There are merely four things that constitute Islamic jurisprudence. First, an expressed commandment of God laid down in the Quran. Second, an account or elucidation of a Quranic commandment or an expressed order or prohibition from the Holy Prophet. Third, an reading, interface, qiyas, ijihad or istehsan on which there has been a consensus of the Ummah ; or it may be a bulk determination of the ulema which have been accepted by an overpowering bulk of our ain people. Last, an ijma or a bulk determination about the affair discussed in supra arrived at by our ain work forces of acquisition and authorization.

A organic structure of experts of Islamic jurisprudence should roll up the first three classs of jurisprudence into a Code. The compiled codification will be the basic book of jurisprudence and all current books of Fiqh will function as commentaries for this book. The enforcement of Islamic jurisprudence by tribunals and instructions of Islamic jurisprudence in colleges will be facilitated.

The following step is to alter the prevailing system of instruction. Both the classs of survey and the methods of instructions should be changed radically in order to bring forth pupils that are both academically and morally every bit good.

The type of instruction in the jurisprudence collages today fails to develop penetration in Islamic jurisprudence. Besides, pupils in these colleges do not hold the opportunity to get moral qualities that needed in order to run an

Islamic province. Therefore, we have to amend the course of study and the methods of instructions to bring forth pupils who are well-versed in both Islamic jurisprudence and modern legal idea.

Some reforms should be made for the intent above. First, cognition of Arabic shall be made a pre-requisite for admittance to a jurisprudence college. This cognition of Arabic may enable pupils to analyze the Quran, Hadith and Fiqh. An penetration of Islamic jurisprudence can non be obtained unless one knows the linguistic communication of the Quran and that of the Prophet. In the initial phases, there may be jobs of deficiency of Arabic cognizing pupils in the colleges. But, after several old ages if the Arabic is made compulsory in the college, Arabic cognizing pupils will be easy available.

Besides, pupils should besides be made to analyze Quran and Hadith before get downing their instruction in Law. This is to enable them to understand the spirit of Islam better. In some establishments, they begin with the instruction of Fiqh. This is a incorrect method because although pupils who graduate from these establishments are good cognizant of inside informations of Islamic jurisprudence, but they may non understand the existent spirit of Islamic Law. Therefore, this state of affairs should be changed. The survey of Quran and Hadith should be done before the survey of Fiqh.

(CHIN EE)

The jurisprudence pupil in Pakistan must be able to understand that Islam is a system through the survey of Quran[44]and the Hadith[45]together with the survey of fiqh[46].

In the yesteryear, there were no alumnuss with good cognition in Quran and Hadith. Therefore, Quran and Hadith started to be taught in jurisprudence colleges. Merely those pupils who choose Tafsir[47]and Hadith as optional topic will be eligible for jurisprudence colleges.

The course of study of jurisprudence colleges in Pakistan must dwell of Principles of Islamic Jurisprudence, History of Islamic Jurisprudence and Fiqh. Without holding cognition of these topics, pupils non merely can non understand the fiqh but besides can non develop qualities of sound logical thinking. All these qualities are the demands of going good attorneies and legal experts. They will non be able to go experts in jurisprudence. They can non border new regulations and ordinances and can non articulate judgements of the criterion, lucidity, vision and deepness evinced. If they can non organize such judgements, they will non be able to have regard and blessing from the people. Besides, without holding cognition of their ain jurisprudence, they will non be able to use the jurisprudence to the new jobs. Merely the fiqh reveals the development of Islamic jurisprudence and points out the lines along which jurisprudence can develop.

Other than altering the course of study of legal instruction, Pakistan besides gives attending to the character-building and moral preparation of the pupils. Under the construct of Islamic jurisprudence, jurisprudence colleges should bring forth attorneies and legal experts with high moral criterion and unimpeachable unity but non to bring forth unscrupulous and unfair attorneies or Judgess. The pupils should be able to populate with equity, honestness and justness.

The highest grade of piety, the acutest sense of duty and the greatest step of fear of God are required in the professions of dispensation of justice. Therefore, pupils that graduated from the jurisprudence colleges in Pakistan must be able to replace leading lights of history such as Qadi Shurayh[48], Iman Abu Hanifah[49], Iman Shafe'II[50]and Qadi Abu Yusuf[51]. The alumnuss of thesecollegess must besides hold strong and reliable character, have their eyes, fixed on God, non swayed by greed, fear, personal involvement or single penchants while make up one's minding instances.

Besides that, in order to implement Islamic Law, our judicial system will hold to be reformed. Attention must be paid to two of import evidences for the enforcement of Islamic jurisprudence. First, the legal profession is one of the worst and likely the greatest curses of the present judicial system. From the moral point of position, non a individual statement can be put frontward in its favour. In practical field, there is non a individual echt demand of tribunal process for which a better option can non be provided for. The legal profession bases in contrast with the rules of Islam since it exists. Therefore, it is rather hard to implement Islamic jurisprudence in its existent spirit. Furthermore, if the same jugglery is practiced with the God ' s jurisprudence as is being practiced with semisynthetic jurisprudence, may non merely deprive us from justice but may besides rob our religion. Therefore, it can be said that this profession in its present signifier is bit by bit abolished.

In theory, the attorney ' s responsibility is to help tribunals in understanding jurisprudence and using it to instance under test. It is possible that two experts of jurisprudence may hold different sentiments and positions in the

<https://assignbuster.com/sources-of-islamic-law-theology-religion-essay/>

same instance. It can besides be possible that one of the experts has the stronger sentiment than the other and frailty versa. Therefore, it is necessary for the tribunal to cognize and hear statements on behalf of both parties in a peculiar instance in order to make at a sound judgement. But there is a inquiry: is these terminals achieved in existent pattern and does this profession truly run into this merely demand?

Actually, in world, the state of affairs is rather different. A individual possessing legal cognition sells his services in the market and ever ready to calculate out and supply legal points in favour of the highest bidder, irrespective of the virtues of the instance. Thus, a attorney helps his client, no affair the client is right or incorrect. They fight for the clients without taking consider whether the clients committed an discourtesy or inexperienced person. They besides ne'er concerned whether what the client wishes to acquire is truly due to him. What concerns to a attorney is that whether that client has paid his fees. He hides the weaker points of his client 's side, displays the favourable 1. He tries to act upon or confound the informant in order to misdirect the justice to do a judgement in favour of his client.

A attorney does non care about whether a individual acquitted is being a felon or inexperienced person. It is non his concern to back up truth and uphold justness. The exclusive purpose of a attorney is money. A individual who ready to pay the highest sum of money is ever the right to a attorney. Can a legal profession of such a nature be declared right and merely if we have even the least respect for Islam? Can any adult male with moral values, a healthy scruples and the fright of God, take such an atrocious duty upon

<https://assignbuster.com/sources-of-islamic-law-theology-religion-essay/>

himself as to hold a wronged adult male deprived of justness and see that the wrong-doer continues to bask the fruit of his evil? And can the advice of such legal experts who are paid to show a nonreversible image giving any aid to the tribunal in make up one's minding a instance rightly? Who can believe that the differences of sentiment in the reading of attorneies " hired " by opposing parties, can moderately be honest and genuine?

Therefore, seemingly, incalculable ill service has been done to the cause of jurisprudence and justness by doing jurisprudence a profession. It gives premium to misdemeanor of jurisprudence instead than observation of jurisprudence. It has corroded the corporate life and made the political relations highly dirty. Actually, the seeds of immoral character are sown during the attorney ' s educational life. Debates in college make them to talk against their strong beliefs habitually. A individual with the capacity to talk with the same energy[52]and fluency[53]both for and against a proportion, irrespective of his personal positions is deemed as a good arguer. He sharpened his proficiency in speech production and reasoning against the truth and becomes perfect in utilizing his lingua and head against the dictates of his scruples during his class of jurisprudence. After graduating, they poison the academic, cultural and political life of the whole state when they enter the country of political relations and public life.

Such an ugly province of personal businesss is non permitted by Islam. There is no room within its legal and judicial construction for this profession as it is prevailing today as it is rather contrary to the spirit and tradition of Islam. Moslems have ruled half the universe in the last 10 centuries but no legal profession can be traced in their judicial system. The muftis[54]in the past

<https://assignbuster.com/sources-of-islamic-law-theology-religion-essay/>

ever had independent agencies of support and used to render the service of publishing edicts[55]and assisting the tribunals in gratis[56]. We can prosecute legal experts including specializers in different subdivisions of jurisprudence and give them sensible wages from the authorities treasury. However, an attempt should be made to immune these legal experts from any duty to any postulating parties and protecting them from any force per unit area or allurements. Even the authorities of the state is non entitled to act upon the sentiment of the Judges. The tribunal can mention instances to them and beg their sentiment. They can be asked to look before tribunals and argue their positions. Other than the cross-examination of informants by the tribunals, during proceedings of a instance, these legal experts should be entitled to pull out facts from them which throw any visible radiation on the instance.

However, if there is an absence of attorney, one of import spread shall hold to make full up. The spread is the readying of the instances for presentation in tribunals. Without this machinery, non merely will do incommodiousness but besides waste the clip of the tribunals and confound them. To work out this job, the old establishment of ' Mukhtari ' may be revived. Law colleges should hold categories learning procedural jurisprudence to the people of mean instruction and do them conversant with the practical facets of judicial concern. Such individuals owing the responsibility of giving legal form to a instance in order to be presented in tribunal decently. They would besides teach judicial process at assorted phases of a instance to the parties. They may be permitted to bear down fees for their services. This may non take to evils that found in the legal profession today.