

Usul al-Fiqh

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8. QIYAS (Analogical Deduction)

Literally Qiyas means measuring or ascertaining the length, weight or quality of something. Qiyas also means comparison to establish equality or similarity between two things. In the language of Usul, Qiyas is the extension of a Shariah ruling from an original case (Asl) to a new case (Far') because the new case has the same effective cause (Illah) as the original case.

The original case is regulated by a text of the the new case. The emphasis of Qiyas is identification of a common cause between the original and new case. Jurists do not consider law derived through Qiyas as a new law. However, for all practical purposes, Qiyas leads to new ruling on a different matter.

Qiyas is a methodology developed by jurists through which rulings in new areas are kept close to the Quran and Sunnah because new rulings are based on the Illah (causes) discovered in the legislation of the Quran and Sunnah. Rulings on new areas could diverge a lot, if Qiyas was not applied. This is a major justification for validity of Qiyas.

Qiyas is a rationalist doctrine (because intellect is largely used to find out the Illah), but in Qiyas personal opinion (Ra'y) is kept subservient to divine revelation (in that Illah is discovered from the text of the Quran and the Sunnah). Qiyas does not change any law of the text (Quran or Sunnah) for expediency. Qiyas as a methodology means that the jurists accept that the rules of Shariah follow certain objectives (Maqasid) which are in harmony with reason. Zahiris (a group of literalist scholars) do not accept Qiyas. However, majority is right on this point.

Qiyas does not give rise to certainty. Qiyas is therefore speculative. Law derived through Qiyas can not be of same authority as that of textual ruling (of Quran or Sunnah). There can be difference of opinion on the law derived through Qiyas, as is the case with almost all Ijtihadi law. (See examples of Qiyas in pp. 199-200 in Kamali's book). The essential requirement of Qiyas are Asl (original case, on which a ruling has been given), Hukm (ruling on the original), Illah (cause of ruling in the original case) and Far' (new case on which ruling is to be given). In the case of prohibition of wine drinking (Surah Maida : 90), if it is to be extended to narcotic drugs, the requirement of analogy would be fulfilled in the following manner.

Asl (original case)	Far' (new case)	Illah (cause of ruling)	Hukm (ruling)
Wine drinking	Taking narcotic drugs	Intoxicating Effects	Prohibition

One condition of Asl (the subject matter of original ruling) is that the Quran and Sunnah are the source of the Asl. (Many scholars do not consider Ijma to be basis of Asl). According to majority, one Qiyas can not form Asl of another Qiyas. However, Maliki jurist Ibn Rushd thinks a Qiyas can be basis for another Qiyas. Modern jurists Abu Zahrah and Muhammad Al Zarka agree. Minority seems to be right as long as it does not contradict Nusus (clear texts or rulings) of the Quran and Sunnah.

Conditions pertaining to Hukm (a ruling in the original case) are :

- a. It must be a practical Sharii ruling (Qiyas does not operate in the area of belief).
- b. Sharii ruling must not be an abrogated one,
- c. The Hukm must be amenable to understanding through human intellect (see examples in the text book).
- d. Hukm must not be limited to exceptional situations (in that case it can not be basis of Qiyas, such as the others).

Qiyas is operative or extendable in Hadud (prescribed penalties), according to majority.

New case on which ruling is to be given (Far') must not be covered by Nasus (texts). Qiyas ma'al tariq (analogy with discrepancy) is not permitted (see example in Kamali).

The effective cause (Illah) must be :

- a. Munasib (proper, according to Mujtahid or scholar of Fiqh)
- b. It must be a constant attribute (mundabit)
- c. It must be evident (Zahir, see example in Kamali)

According to majority, Illah must be muta'addi (that is transferable to other cases). Some hold different view with regard to Tadiyah (transferability). The effective cause must not run counter to Nasus. The effective cause may be clearly stated in the nass (text) but such cases are not many (Ref. 4:43, 59:7; and also reference of the hadith in Kamali).

Arabic expression, such as, Kay-la (so as not to), li ajli (because of), li (for), fa (so), bi (because), anna, inna, also indicate Illah in many cases (Ref. 5:38, 4:34). The word "Sabab" (cause) is also used as a substitute for Illah. However, some scholars make distinction between the two. The distinction is not substantive or even clear. However, Illah has become popular in usage.

When the Illah is not clearly stated in the nass, it is the duty of the Mujtahid to find out the Illah (reason) for the ruling of the text through Ijtihad. This is done by a 2-stage process. The starting point is "Takhrij al manat" (extracting Illah - *manat* is another word for Illah).

Now Illah for a ruling may appear to be a few instead of one (see the example of Illah of prohibition of riba in p.214 in Kamali). In that case, the Mujtahid proceeds to eliminate the improper Illah and find out the proper (munasib) Illah. This process is called tanqih al manat (isolating the Illah).

Tahqiq al manat consists of investigation of the presence or otherwise of Illah in the new case (far') where the ruling is to be extended. (whether analogy can be extended to pick-pocket from thief or whether herbal drink has the same Illah as wine).

Classification of Qiyas:

One classification of Qiyas is,

- i. Qiyas-al-awla (superior Qiyas),
- ii. Qiyas-al-musawi (analogy of equals) and
- iii. Qiyas-al-adna analogy of inferior).

Qiyas al-awla (superior Qiyas) means where the effective cause is more evident in the new case (far') than the original case (asl) (Ref. 17:23; see also text book). In Qiyas-al-musawi (analogy of equals), Illah is present in Asl and Far' equally (Ref. 4:2). In Qiyas-al-adna (analogy of inferior), Illah in Far' is present less clearly than the original case (Asl). This Qiyas also is accepted by Usulian.

There is another classification of Qiyas as,

- i. Qiyas jali (obvious analogy) and
- ii. Qiyas Khafi (hidden analogy).

Qiyas is accepted by majority, including four Sunni schools and Zaydi Shias. Proofs of Qiyas are in verse 59:2 of the Quran, and indications in verses 4:105, 2:79 and 59:7. Sunnah also supports Qiyas in that Ijtihad has been referred to in Sunnah and Qiyas is the most important method of Ijtihad (see Kamali, proof of Qiyas, see also discussion under "Talil" in the Chapter on Quran in Kamali).

Arguments against Qiyas have been put forward by mainly Zahiri school. They contend that Quran 6:89 ('we have neglected nothing in the Quran') is against Qiyas. They also say, Qiyas is based on Illah which is based on conjecture. They also say Quran 49:1 is against Qiyas. All these are very weak arguments and most of Ummah could not accept them. Majority hold that Qiyas is applicable in Hadud (prescribed penalties). Hanafis say that Qiyas is applicable to "Tazir" penalties (penalties which have been laid down by Parliament/Courts - not by Quran and Sunnah specifically) but not to Hadud (punishments prescribed in the Quran and the Sunnah). Hanafi opinion in this regard is more cautious.

Qiyas is redundant where Nass is there, according to majority. Some hold that Qiyas (which is speculative) can specify or qualify speculative of the Quran and the Sunnah (see Kamali). Some Ulama hold that Qiyas can take priority over Ahad hadith, if Qiyas is supported by other strong evidence. Qiyas will continue to be a major instrument of Ijtihad in future, along with Istihsan and Maslaha (will be discussed later in the course).