

SECONDARY SOURCE: QIYAS

Another secondary source of evidence or tool is *Qiyas*: analogical reasoning or deduction. This is the practice of basing a new legal ruling on a previous ruling concerning a similar case, given the similarity between the two cases with respect to their underlying basis or occasion. The tool of *qiyas* identifies a reason (*'illah*) evident in the text, or underlying wisdom (*hikma*) in a previous ruling and then applies it to a related issue.¹ *Qiyas* also refers to the “application of general rules to particular cases.”² Since each particular case is new, the crucial question is whether the unassimilated particular case actually falls under the relevant general rule or whether there is some reason to limit its application in the specific new case.³ Consequently, reasoning by analogy is actually a method or process of juridical decision-making and reasoning, rather than a ‘source’ of legislation in the strict sense of the meaning.

Analogy (*qiyas*) is the only form of reason-based legal argumentation (or rational method of *ijtihad*) accepted by all major Sunni schools that could boast of anything approaching consensus.⁴ Each of the 4 major Sunni jurists – Abu Hanifah, Malik, Shafi’i, and Ibn Hanbal – issued legal rulings based on it. Analogy however did not enjoy total consensus as the jurists differed in their methods of applying it, and the restrictions they were willing to use to curtail its strict application.⁵

Scholars differ with regard to the types, condition and the binding nature of *qiyas*.⁶ They generally do not approve of *qiyas* being applied to issues related to creed (*aqidah*) and prescribed

¹Gamal Eldin Attia, *Towards Realization of the Higher Intents of Islamic Law: Maqasid al-Shari’ah, A Functional Approach*, IIIT, London, 2007, p.291; Omar Farooq, *Towards Our Reformation: From Legalism to Value Oriented Islamic Law and Jurisprudence*, London, 2011, p.168-220.

² In other schools (such as the Ja’fari or Imami of the Shi’ah sect) the principle of “transference of ruling” (*ta’diyat al-hukum*) is invoked.

³ Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.154.

⁴ There is much greater divergence of opinions on the other “rational tools” or reason-based sources of Shari’ah such as *istihsan*, *sadd al-dhara’i* and *masalih al-mursalah*, as we shall see later on in this material.

⁵ Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.145-146.

⁶ Mohammad Hashim Kamali, *Methodological Issue in Islamic Jurisprudence*, Arab Law Quarterly, vol.11, no.1, (1996), Brill Academic Publishers, P.25-28, available on <http://www.jstor.org/>

devotional acts or rituals (*ibadah*),⁷ and they do not regard one who rejects *qiyas* as a disbeliever. They sometimes differ on what the effective cause (*'illah*) or underlying wisdom (*hikmah*) is, and its use when applying *qiyas*.⁸

An area of concern for scholars is the fact that the use of analogy (*qiyas*) – and the identification of the *illah* or *hikmah* – often implied some degree of conjecture in the implication (*zanni dilalah*). Its use on the basis of solitary hadith (*ahad*) or any other source of *Shari'ah* that was already speculative or presumptive in authenticity or credibility (*zanni al-thubut*), only increased the degree of conjecture (*zanni*) involved in arriving at a legal ruling or verdict. Various conditions and restrictions were therefore attached to the use of analogy (*qiyas*) so as to reduce the level of speculation or uncertainty involved.⁹

Scholars often rely on the following verse and authentic traditions for the authority of *qiyas*:

It is Allah who has sent down the Book (the Qur'an) in truth, and the balance (i.e. to act justly). And what can make you know that perhaps the Hour is close at hand?"
(Qur'an 42:17).

Ibn Uthaymeen comments on the above verse, that the "balance" (*mizan*) is what is used for measurement and comparison. He further said it implies the validity of analogical deduction (*qiyas*).¹⁰

Ibn Abbas (may Allah be pleased with him) reported: "A woman came to the Messenger of Allah (may peace be upon him) and said, 'My mother has died, and a

⁷ Mohammad Hashim Kamali, *Principle of Islamic Jurisprudence*, p.191; Abdul Wahab Khallaf, *Masadir al-Tashri' al-Islamiy fi ma la Nass fihi*, Kuwait, Dar al-Qalam, 1414 AH, 6th ed., p.26 and 30; Ibn Kathir, *Tafsir Ibn Kathir*, Dar Tayba, Madinah, 1420 AH, vol.7, p.465; Al-Hasan bin Ali al-Barbahari, *Sharh al-Sunnah*, Makrabah al-Sunnah, Egypt, 1416 AH, p.28, 47 & 49.

⁸ Mohammad Hashim Kamali, *Principle of Islamic Jurisprudence*, p.274-279; Mohammad Hashim Kamali, *Methodological Issues in Islamic Jurisprudence*, Arab Law Quarterly, vol.11, no.1, (1996), Brill Academic Publishers, p.25-28, available on <http://www.jstor.org/>; Omar Farooq, *Towards Our Reformation: From Legalism to Value Oriented Islamic Law and Jurisprudence*, London, 2011, p.168-220.

⁹ A discussion of the different approaches used by jurists and their schools in the application of various forms of analogy is beyond the scope of this work. Interested readers could refer to some of the main references used in this material for further reading. See also, Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.145-157.

¹⁰ Ibn Uthaymeen, *Al-Usul min Ilm al-Usul*, Riyadh, (no date), p.68

month's fasting is due from her.' Thereupon he said, 'Don't you see that if a debt was due from her, you would have to pay it?' She said, 'Yes (I would pay it on her behalf).' Thereupon he said, 'The debt of Allah deserves its payment even more (than the payment of anyone else).'"¹¹

Abu Hurairah (may Allah be pleased with him) narrated: *"A man said, 'O Allah's Messenger, my wife has given birth to a black son.' The Prophet said, 'Have you any camels?' He replied, 'Yes!' He asked what their colour was. The man replied, 'They are red.' He asked, 'Is there a grey one among them?' He replied, 'Yes,' then asked, 'Is it perhaps a strain which it has inherited?' The Prophet then said (to the man), 'It is perhaps a strain to which this son of yours has inherited.'¹²*

In the first hadith, the Prophet (ﷺ) makes an analogy between the legality of paying off the financial debt of a loved one and the legality of paying of a fasting debt. In the second hadith, the Prophet (ﷺ) makes an analogy between the birth of a camel bearing a different colour to its mother and the birth of a human child bearing a different colour to the child's parents. Just as the different skin colour of animal offspring is considered normal genetic variation, so is the different skin colour of human offspring not to be considered evidence of foul play.

Examples of laws established on the application of *qiyas* are the prohibition of narcotics based on the analogy with intoxicating alcohol; or that dog saliva is impure and spoils prayer based on the fact that a hadith requires that a bowl from which a dog drinks should be washed 7 times; and that a killer will not inherit from a will (*wasiyah*) even though the hadith only says s/he cannot automatically inherit (*mirath*) where there is no will.¹³

In order to draw a clearer line between the Sunnah and *Qiyas*, and so that it does not impinge or encroach upon the Sunnah, even when it appeared clear enough that its use was legitimate and

¹¹*Sahih Muslim*, no. 2553

¹² "Agreed upon". Cited in Ibn Qayyim al-Jawziyyah, *Ilam al-Muwaqqi'inan Rabb al-Alamin*, Beirut, Dar al-Fikr, 1374, vol. 1, p.182. Many other prophetic traditions are mentioned by Ibn Qayyim arguing in favour of endorsing *qiyas*.

¹³ Mohammad Akram Laldin, *Introduction to Shari'ah and Islamic Jurisprudence*, 2nd ed. CERT, Kuala Lumpur, 2008, p.101-102

even “a good Sunnah”, scholars such as Ibn Hanbal declared that “There is no *qiyas* in the *Sunnah*, and examples are not to be made up for it” (*wa laysa fi al-sunnah qiyas, wa la yudrab laha al-amthal*).¹⁴

According to Auda, a number of respected Sunni jurists expressed uneasiness about the level of “certainty” of determining the ‘illah, and the consequential deductions from its application. Jurists such as Imam Al-Ghazali who accepts the use of *qiyas* (reasoning by analogy), gave six reasons for the existence of a level of “probability” (*ihimal*) in the determination of the ‘illah of a certain ruling:¹⁵

1. We assume a certain cause for a ruling that does not have a cause, according to God.¹⁶
2. The ruling has a cause, according to God, but we make a mistake in concluding it.
3. The ruling has more than one cause, according to God, but we make a mistake in restricting it to one cause.
4. The ruling has one cause, according to God, but we make a mistake in adding invalid causes to it.
5. We succeed in defining the cause of one ruling precisely, but make a mistake in considering this ruling analogous to another, which is not, according to God.
6. We make the mistake of claiming a certain cause behind a ruling by pure speculation, without putting the right amount of effort (*ijtihad*).

For the above reasons, *qiyas* (reasoning by analogy) is better categorized amongst “presumptive” and “uncertain” (*zanni*), rather than “certain” (*qat’i*) evidences and “sources of law”. This also underscores the need to support the use of *qiyas* with other tools and “sources” such as *maslahah* (public benefits) and *istihsan* (juristic discretion or equity), etc. It is at least important

¹⁴ Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.157.

¹⁵ Al-Ghazali, Al-Mustasfa, p. 304. Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.216-217.

¹⁶ This is according to al-Ghazali’s Ash’arite school, which believes that God ‘does not have to have’ causes/purposes behind His actions. See Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.216.

to ensure that the use of *qiyas* does not produce rulings that contradict these other ‘sources’ of law, or the more certain text-supported objectives (*maqasid*) of Shari’ah.

Ahmad Ibn Hanbal had recourse to the most extensive number of texts of any Sunni Imam, and only resorted to analogy when he had exhausted his textual references and failed to find a relevant precedent in any of them.¹⁷

The Zahiri School did not accept the most common forms of analogical reasoning or *qiyas* as one of the valid secondary sources of *Shari’ah*. According to the Zahiris, Shi’a Ja’faris, Zaydis and some Mu’tazilis, *qiyas* is ‘uncertain’, “legislation according to whims” and an “innovation in the religion.” Ibn Hazm articulated this stand by referring to *qiyas* as, “a judgment without confirmed knowledge following uncertain evidences.”¹⁸ Ibn Hazm also criticized those who supported the legitimacy of *qiyas* based on *ijma’*, on the grounds that, in his view such an ‘*ijma’* could never be proven.¹⁹

Accounting for the amount of “uncertainty” inherent in *qiyas* or legal reasoning (*ijtihad*) in general allows flexibility in the produced rulings and greater accommodation for possible alternative opinions. As with all other tools of *ijtihad*, the greater the number of available evidences (*adillah*) from other ‘sources’ of law, for a particular position, the higher the level of certainty regarding the correctness of the conclusions reached by *ijtihad*.²⁰

DISCUSSION QUESTIONS:

1. What is meant by *Qiyas* and explain why it is a useful tool or source in *Shari’ah*?
2. Give at least 2 textual evidences used to justify the authority of *Qiyas* in *Shari’ah*.
3. List the minimum components of *Qiyas*.
4. Why are some scholars apprehensive of, or reluctant to use *qiyas*?

¹⁷ Umar F. Abd-Allah Waymann-Langraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Brill, Leiden, The Netherlands, 2013, p.146.

¹⁸ Ibn Hazm, *Al-Ihkam*, Vol. 1, p.121, 29, 70; al-Razi, *Al-Mahsul fi ‘Ilm al-‘Usul*, Vol. 5, p.144; al-Subki, *Al-Ihhaj fi Sharh al-Minhaj*, Vol. 3, p.18; al-Amidi, *Al-Ihkam*, Vol. 4, p.62; al-Basri, *Al-Mu’tamad*, Vol. 2, p. 299; al-Ghazali, *Al-Mustafa*, Vol. 2, p.557. Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.113

¹⁹ Ibn Hazm, *Al-Ihkam*, Vol. 8, p.103. Cited in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.113

²⁰ Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, Herndon, 2008, p.218.

5. Give examples of rulings (or features) arrived at through *qiyas*.