THE RELEVANCE OF *QIYAS* (ANALOGICAL DEDUCTION) AS A SOURCE OF ISLAMIC LAW IN CONTEMPORARY TIME

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DECLARATION

I, Tajudeen Muhammad B. Adigun, hereby declare that this project has been produced by me and is a record of my own research work. It has not been presented in any previous application for a higher degree by any body. All quotations and references are indicated in the footnotes and sources of information are acknowledged by means of a list of references.

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CERTIFICATION

This thesis is entitled: **THE RELEVANCE OF *QIYAS* (ANALOGICAL DEDUCTION) AS A SOURCE OF ISLAMIC LAW IN CONTEMPORARY TIME** by Tajudeen Muhammad B. Adigun meets the regulation governing the award of Masters of Law of the **Ahmadu Bello University**, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This study is dedicated to my parents, wife, children and the Muslim ummah particularly the ***Mujahidun***.

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ABSTRACT

Islamic Law covers every sphere of human endeavor. It comprises of the primary and the secondary sources of Law. The former consists of the Qur'an and the sunnah, to which all the jurists are at *ad-idem*. Qiyas is the second secondary source. However, there are divergent opinions amongst the jurists as to whether it can stand as a source or not.

It is in view of this that the choice of the topic of this thesis namely **The Relevance of Qiyas (Analogical Deduction) As a Source Of Islamic Law In Contemporary Time**.

Scholars of earlier times and the contemporary ones differ as regards to Qiyas been a source of Islamic law or not. The question however is: are the opinions different in essence? It is this fundamental question and others that this thesis will examine.

The aim of the research is to analyze the different opinions of the scholars. Also to clarify some fundamental controversial issues as relates to our present day world. Also, to show that Islamic law is not rigid and barbaric as misconceived by some people. Hence, it can be applied to solve modern day needs brought about by rapid development achieved due to break -through in technology. Observation in this research work shows that Qiyas is a correctly accepted source of Islamic law and the opponent of the above view are indirectly using Qiyas as a source of Islamic law. It has been observed that Muslims abandoned Qiyas and believed that they were solving their legislative problems. However, all they succeeded in doing was crippling their own intellectual powers. Even so, there has never been a time when the call for Qiyas was entirely silenced, only that such calls were never enough to extricate the ummah from the intellectual crisis in which it was, become ensnared, and as a

result, Qiyas was left mainly to heretics, deceivers and the orientalists. If jurists were to articulate ideas to which people were unaccustomed to or to announce their readiness to practice ijtihad, Muslims could have advanced better. The ummah must understand that Qiyas provides it with the fundamental means to recover its identity to re-establish its place in the world. The express textual injunction in the Qur'an and the sunnah are limited in number, while the incidents and problems of life are unlimited and unending. Hence, it would be illogical to assert that all the problems and exigencies of life will be covered by the textual injunctions. Reason demands that rules of law should be derived from the fundamental sources by means of exercising reasons and individual opinion. Qiyas therefore is a mode of reasoning to legislate for novel questions, to reveal the divine rule of law and to harmonize between divine legislation and human interests. No one among the Companions is reported to have injected correct qiyas, nor had any of them ever hesitated to exercise it in legal matters. They were all at one on the validity of this doctrine. From this, one must conclude that the companions must have been familiar with the permissibility of this doctrine, and of exercising correct personal opinion and independent legal reasoning by the instruction of the Prophet (SAW).

Public benefit and general interest are the aims and objectives of divine legislation. If two incidents are similar, and one of them is covered by clear legal rule, but not the other, it would be illogical not to apply the rule of the one to the other on the basis of the common link. If the purpose of the prohibition of wine is the preservation of human sense and reason, then all intoxicants should logically be prohibited on account of

intoxication hence the importance of this which most jurists wrote about in Arabic.

The study comprises of five chapters. Chapter one centers on general survey of the sources of Islamic law.

Chapter two deals with the various definitions of qiyas in accordance with the various views of the jurists.

Chapter three discusses the four pillars of qiyas namely: original case, new case, effective cause and the ruling.

Chapter four discusses the validity of qiyas as a source of Islamic Law and Chapter five, being the last of all the chapters, consist of summary, conclusion and recommendations.

TABLE OF CONTENT

Title page	… … … …	i
Declaration	… … … ….	ii
Certification	… … … ….	iii
Dedication	… … … ….	iv
Acknowledgement	… … … …	v
Abstract	… … … ….	vii
Table of Contents	… … … ….	x
Abbreviations	… … … ….	xiii
Glossaries	… … … ….	xiv

CHAPTER ONE

1.0	Introduction	1
1.1	General Survey on sources of Islamic law	1
1.1.1	The Qur'an	1
1.1.2	Characteristics of Qur'anic legislation	5
1.2	The Sunnah	10
1.2.1	Hujjiyah of Sunnah	11
1.2.2	Sunnah as an independent source	12
1.2.3	Hadith Sahih, Hassan and Da'if	15
1.3.	The Ijma'	16
1.3.1	Proof Hujjiyah of Ijma'	17
1.3.2	Feasibility of Ijma'	19
1.4	Qiyas (Analogical Deductions)	20
1.5	Al-Istihsan (Equity)	20
1.6	Al-Masalih, Al-Mursalah	22
1.7	Sadd Al-Zara'i (Blocking the means)	24

1.8	Al-'Urf (Custom)	25
1.9	The fatawa (verdicts) of the companions	26
1.10	Shar'u Man Qablana (Revealed laws Preceding our shari'a)	28
1.11	Istishab (Presumption Of Continuity)	31
1.12	Conclusion	33

CHAPTER TWO

2.0.	The development of Qiyas and its various types	41
2.1	The meaning of Qiyas	41
2.1.1	The technical definition of Qiyas	43
2.2	Types of Qiyas	47
2.3	Historical development of Qiyas	55
2.3.1	During the period of Prophet (SAW)	56
2.3.2	The Period of the Khulafa'u Arrashidun	61
2.3.3	The Period of Madhahib	64

CHAPTER THREE

3.0	The pillars of Qiyas	73
3.1	The Origin Case (Al-Asl)	73
3.1.1	Conditions of the Original Case	74
3.2	The New Case (Al-Far'u)	80
3.2.1	Condition of the New Case	81
3.3	The effective cause 'illah	84
3.3.1	Condition of illah.	92
3.4	Al-Hukum (The ruling)	95
3.4.1	Conditions for Al-Hukum.	95

CHAPTER FOUR

4.0	The Validity Of Qiyas As A Source Of Islamic Law99	
4.1	The Justification Of Qiyas As A Source Of Islamic Law	99
4.2	Authorities Relied Upon By The Supporters Of Qiyas	100
4.2.1	Authorities From The Qur'an	100
4.2.2	Authorities From The Sunnah	104
4.2.3	Decision Of The Companions	106
4.2.4	Rational Reasoning	107
4.3	Authorities Relied Upon By The Opponents Of Qiyas	108
4.3.1	Ibn Hazm's Argument against Qiyas	111
4.4	Whether Qiyas is An Independent Source of Law	126

CHAPTER FIVE

5.0	Summary, Observation and Recommendation	135
5.1	Summary On Qiyas	135
5.2	Observation	136
5.3	Recommendation	140
	Bibliography	141

ABBREVIATIONS

N.D	-	No date
S.A.W	-	Sallallahu Alaihi Wasallam (May the blessing and Peace of Allah be Upon him)
S.W.T	-	Subhanahu Wa Ta'ala (The Glorified and Exalted one)
P.B.U.H	-	Peace be upon him
R.A	-	May Allah Be Pleased with Him/her

Glossaries

Arabic		Meaning in English
Al-bara'ah Al-asliyyah	-	Original freedom
Al-Ahkam Al-Amaliyyah	-	Practical laws
Shari'a	-	Allah's law.
Sunnah	-	Prophetic tradition
Ijma'	-	Consensus
Qiyas	-	Analogical Deduction
Istihsan	-	Equity in Islamic Law
Masalih Al Mursalah	-	consideration of Public interest
Sadd Al-Zara'i	-	Blocking the means
Urf	-	Customs
Fatwa Sahabi	-	The verdict of a companion
Shar'u Man Qablana	-	Revealed law preceding the laws before our generation.
Tawatur	-	Continuous testimony
Wahyi Al - Zahir	-	Manifested revelation
Ilham	-	Inspiration
Ulama'	-	Islamic scholars
Qistas	-	Scales
Ghassal	-	Intense cold
Fiqh	-	Jurisprudence
Iddah	-	Waiting period
Raj'ah	-	Revocation
Qati'	-	Definitive text
Zanni	-	Speculative text
Yunfawna minal-ard	-	to be exiled from the land

Al - Ijmal Wat-tafsil	-	brevity and detail
Riba	-	usury
Salat	-	Muslim's prayer
Zakkah	-	Muslim's alms
Hajj	-	Muslim's pilgrimage
Aqidah	-	Creed
Ta'lil	-	Rationalization
Mujtahid	-	One who struggles to deduct legally
Ahkam	-	Laws
Jumhur	-	Majority
Khalifa	-	Vicegerent
I'ijaj	-	Inimitability
Nutfah	-	Mixed drops of the male and female sexual discharge
Hadith	-	Tradition of the prophet (SAW)
Hikmah	-	wisdom
Usul al-fiqh	-	principle of Islamic jurisprudence
Mujmal	-	Ambivalent
Al-Mu'asasah	-	The founder
Daruriyyah	-	Necessities
Al-muta'akhirin	-	Scholars of the latter ages
Hajiyyat	-	Complementary requirement
Tahsiniyyat	-	Embellishment
Khuluq	-	Character
Isnad	-	Chain
Sahih	-	Authentic
Da'if	-	Weak

Hassan	-	Good
Ijma'	-	Unanimous agreement
Mujtahidun	-	Jurists
Ummah	-	Muslim Community
Aqli	-	Intellectual
Lughawi	-	Linguistic
Sahabas	-	Companions
Urfi	-	Customary
Tabiun	-	Successors
Tabi’i tabi’una	-	Generation that follows the successors of the Companions (RA)
Hujiyyah	-	proof
Rasul	-	Prophet
Ulul-amri	-	leaders
Zahir	-	clear
Nass	-	Text
La	-	No
Nafy	-	Negation
Nahy	-	Prohibition
Dalil Qati'	-	Decisive Proof
Asl	-	Original Case
Far’u	-	New case
illah	-	Effective cause
la illah illa llah	-	None has the right to be worshipped but Allah
Hadd	-	Islamic penalty

Masalih Al-Mursalah	-	Unrestricted Public interest
Tashri'	-	legislation
Ra'ina	-	Attend to us or our shepherd
Unzurna	-	Make us understand
Fatawa	-	Verdicts
Ijtihad	-	Struggle
Muhajirun	-	Those who migrated from Makkah to Madinah
Ansar	-	Muslim who helped the Prophet (SAW) in Medinah
Taurat	-	Torah
Huda	-	Guidance
Hudahum	-	Their guidance
Al-Muttaqun	-	The pious ones
Assaum	-	Muslim’s fasting
Maita	-	Dead animal
Tayyamum	-	Sand ablution
Nisbah	-	Affinity
Idafah	-	Connection
Qaws	-	Bow
Mansus alayhi	-	Case covered by text
Ghairul mansus alaihi	-	Case not covered by text
Mithl hukum	-	The like of the rule
hukum	-	The rule
Hijrah	-	Migration
Ithbat	-	Establish
Ta'diyah	-	Extend

Dalatun nas	-	Textual indication
Taswiyah	-	Equalization
Jaliy	-	Patent
Khafiy	-	hidden
Ramadan	-	Ninth month of Islamic calendar
Adna	-	less
Qadii	-	Judge
Shab'ah	-	resemblance
Dalalah	-	signification
Al-aqs	-	Opposite
Fariq	-	separation
Al-'ittirad	-	Co-extensiveness
khulafa’u Rashidun	-	Rightly guided caliphs
Madhahib	-	Schools of thought
In sha Allah	-	if Allah Wills
Mutakallimun	-	theologians
Aqli	-	rational
Thabit	-	Firm
Hissi	-	sensual
Qawlur-rawii	-	Narrator’s statement
Jami’	-	Link or exhaustive
Zihar	-	Comparism of a wife to one's mother
Nabiy	-	Prophet
An-nisa'	-	Women
Masakin	-	Needy
Mushtarakah	-	In Common
Maznun	-	Probable

Musawi fi'illah	-	Equality in respect of cause
Khas	-	Particularly
'Am	-	Generality
Alamah	-	Sign
Mu'arrif	-	signifies
Baith	-	Motive
Jalibah	-	Draws
Mani'	-	Exclusive
Mustanbatah	-	Derived
Mujbar	-	Obligates
Zahir	-	Obvious
Mundabit	-	Regular
Adam indibat	-	irregular
Muqaddar	-	Assumed
Sifat muqadarah	-	Assumed qualities
Fa'tabiru	-	take heed, or take lesson
Uhud	-	Name of one battle fought by the Prophet {SAW}
Zikr	-	Reminder or remembrance
Laham	-	Flesh
Khinzir	-	Swine
Ra'y	-	Opinion
Dalalat An-nass	-	Textual indication
Taqalid	-	imitation {unlawful}

CHAPTER ONE:

1. INTRODUCTION

Islamic Jurisprodence has provided us with certain principles recorgnized by the Qur'an and Sunnah to interpret the law in a changing society Qiyas in one of this principles it is based on this that this research will discuss the meaning, types, development, usage and importance of qiyas by consulting the Qur'an, Sunnah and work of the scholars both classical and contemporary on this source of law.

1.1 GENERAL SURVEY ON SOURCES OF ISLAMIC LAW

The sources of Islamic Law (Shari'ah) comprise of (1) the Qur'an (2) Sunnah (Prophetic Tradition) (3) Ijma' (Consensus of Opinion) (4) Qiyas (Analogical deduction (5) Istihsan (Equity in Islamic Law) (6) Masalih al-Mursalah (Consideration of public interest) (7) Sadd al-zara'i (Blocking the means) (8) Urf (Customs) (9) Fatwa Sahabi (The verdict of a companion) (10) Shar'u man-qablana (revealed laws preceding the laws before our generation) and (11) Istishab (Presumption of continuity)[1].

The Muslim jurists unanimously agree that the Qur'an is a permanent proof of the prophethood of the Prophet (Peace be upon him), the most authoritative guide for Muslims and the first source of Islamic Law. Some even go as far as saying that it is the sole source of Islamic Law, that all other sources are explanatory to it. Some even consider it to be the only source and no more. However, this idea is a misconception,

which needs to be corrected. This chapter is an exposition of these sources.

1.1.1 The Qur'an

Qur'an is the Book containing the speech of God revealed to the Prophet Muhammad (PBUH.) through Angel Jibril in Arabic, and transmitted to us by continuous testimony or tawatur [2]. The revelation of the Holy Qur'an began with Suratul Alaq (Qur'an 96 verses 1-5) where Allah said: "Read! In the name of your Lord who has created (all that exists). He has created man from a clot (a piece of thick coagulated blood). Read! And your Lord is the Most Generous. Who has taught (the writing) by the pen. He has taught man what he knew not", and the revelation ended with the verse in Suratu Al-mai'dah (Qur'an 5 verse 3) where Allah said: "I have perfected your religion for you, completed My favour upon you, and have chosen for you Islam as your religion". But some are of the opinion that the last verse revealed is in suratu-al-Baqarah. [3] Q2:281. "And be afraid of the day when you shall be brought back to Allah. Then every person shall be paid what he earned, and shall not be dealt with unjustly". The two opinions are saying the same thing, because the last verse revealed on legislation is the former, while the one revealed, as the last is the latter.

There are 114 Suras and 6235[4] verses of unequal length in the Qur'an. The Qur'an consists of manifest revelation (*wahyul zahir)* which is defined as communication from Allah to the Prophet Muhammad (P.B.U.H.), conveyed by the Angel Jibril in the very words of Allah. Manifest revelation differs from internal revelation *(wahyul-Batin)* in that, the latter consists of the inspiration *(Ilham)* of precept only: Allah

inspired the Prophet and the latter conveyed the message in his own words [5].

The Qur'an was revealed in pure and clear Arabic language, as testified by Allah in Q43:3 where He said: "We have made it a Qur'an in Arabic that you may be able to understand". Although the Ulama (Islamic scholars) are in agreement that words of non-Arabic origin occur in the Qur'an, they are, nevertheless, words, which were admitted and integrated into the language of the Arabs before the revelation of the Qur'an [6]. Here are some examples: words such as *Qistas* (Scales) occurring in Surah al-Isra: 17:35, *Ghassal* (intense cold) in Surah al-Naba'i: 7:25 and *Sijjil* (baked clay) in Surah Al Hijr 15:74; these have Greek, Turkish and Persian origins respectively [7]. But not a phrase or a sentence of non-Arabic origin occurs in the Qur'an.The Prophet (P.B.U.H) memorized the whole Qur'an, and so did some of his companions among which are: Zaid bin Al-Harith, Ubai bin Ka'ab, Mu'az bin Jabal, Ali bin Abi Talib and many others[8].

The Qur'an was revealed in piece-meal over a period of twenty-three years in relation to particular events [9]. The Qur'an explains the rationale of gradualness *(tanjim)* in its revelation in Q25:32 where Allah said: "And those who disbelieves say: 'Why is not the Qur'an revealed to him all at once?' Thus (it is send down in parts), that we may strengthen your heart thereby. And we have revealed it to you gradually, in stages.

The gradualness in the revelation of the Qur'an according to the above quoted verse, afforded the believers the opportunity to reflect over it and to retain it in their memories. Furthermore, in view of the wide spread illiteracy of the Arabs at the time, had the Qur'an been revealed all at once, they would have found ir difficult to understand. The

Qur'anic legislation concerning matters which touched the lives of the people was therefore not imposed all at once. The prohibition of the consumption of alcohol is an interesting example of the Qur'anic gradual method in legislation. Consumption of alcohol was apparently subject to no restriction in the early years. Later, the following Qur'anic verses was revealed in form of moral advice [10]. Allah said: "They ask you (O Muhammad 'P.B.U.H') concerning alcoholic drink and gambling. Say: 'In them is a great sin and (some) benefits for men, but the sin of them is greater than their benefit' (Qur'an 2:219).

Then, praying while under the influence of intoxication as a result of drinking alcohol was prohibited. Allah said: "O you who believe! Approach not as-salat (the prayer) when you are in a drunken state until you know (the meaning) of what you utter [11]. At last, total ban on wine drinking was imposed, where Allah said: "O you who believe! Intoxicants (all kinds of alcoholic drinks), and gambling, and *Al-Ansab*, and *Al-Azlam* (arrows for seeking luck or decision) are an abomination, Satan's handwork. So avoid (strictly all) that (abomination) in order that you may be successful [12].

Both alcohol and gambling were declared to be works of the devil, and are prohibited.

During the Prophet's lifetime, the Qur'an was not only preserved in memories but also in inscriptions on such available materials as flat stones, wood and bones [13]. The first Caliph, Abubakar (R.A) collected the Qur'an after the battle of Yamamah, where Muslims lost over seventy memorizers of the Qur'an [14]. Zaid bin Thabit, the scribe of the Prophet, was employed in the task of compiling the text, which he accomplished between the eleventh and fourteenth Hijrah. The third Caliph Uthman bin

Affan (R.A) once again utilized the services of Zayd bin Thabit, Abdullahi bin Zubair, Sa'id bin Abbas and Abdur-Rahman bin Al-Harith to verify the accuracy of the text and compiled it in a single volume.

1.1.1 Contents of the Qur'an

The legal or practical rules of the Qur'an (Al-Ahkam al-amaliyyah) constitute the basis of what is known as Fiqh al-Qur'an or the Jurist Corpus of the Qur'an. There are many legal verses in the Qur'an most of which were revealed in response to problems that were actually encountered. Some were revealed against bad customs such as infanticide, usury, gambling and unlimited polygamy [15].

There are verses on devotional matters [16]. Some devoted to marriage, divorce, the waiting period of Iddah, revocation (rij'ah), dower, and maintenance of the wife, custody of children, fosterage, paternity, inheritance and bequest. Others are on rules concerning commercial transactions such as sale, lease, loan and mortgage. Some verses are on crimes and penalties, such as murder, highway robbery, adultery and false accusation. Others speak on justice, equality, evidence, consultation and rights and obligations of citizens. Some are related to economic matters regulating relations between the poor and the rich [17].

1.1.2 Characteristics of Qur'anic Legislation

The Qur'an, being the first source of Islamic Law, is fundamentally characterized by the following:

Firstly, it is made up of definitive texts (Qat'i) and speculative texts (*Zanni*)[18] .Definitive text is one which is clear and specific, and it has only one meaning. Example of this is the entitlement of the wife to the estate of her deceased husband. Allah said: "Their share is a fourth if you leave no child" [19].

A speculative text of the Qur'an is open to interpretation and ijtihad [20]. Example of this is the phrase *"Yun fau min-al –ard"* (to be exiled from the land) in Q5:33 where Allah said: "The recompense of those who wage war against Allah and His Messenger and do mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off from opposite sides, or be exiled from the land. That is their disgrace in this world, and a great torment is theirs in the Hereafter".

"Yunfa'u minal ard" in the above verse means exile from the place of offence and being committed to another place. This is in fact, the obvious meaning of the phrase, and the one, which has been adopted by the majority of scholars. The Hanafi jurists maintain that the phrase means imprisonment not exile [21].

The Qur'anic injunction may at the same time possess a definitive and a speculative meaning, in which case each of the two meanings will convey a ruling independent of the other. An example of this is the injunction concerning the requirement of ablution for prayers, which read in part, "… And wipe your heads" (Al-Maidah 5:6). This text is definitive as per wiping of the head in ablution but since it does not specify the precise area of the head to be wiped, it is speculative in regard to this point [22].

Secondly, there is brevity and detail (Al Ijmal wal tafsil). The Qur'anic legislation consists of an enunciation of general principles; it also provides specific details in some areas. Being the principal source of the Islamic Law, the Qur'an lays down general rules and guidelines on every major subject and topic of Islamic Law. Allah said: "Nothing have We omitted from the book" [23].

Also, Qur'an legislates on international relations by regulating war with non-Muslims. Allah said: "Permission to fight (against disbelievers) is given to those (believers) who are fought against, because they have been wronged; and surely, Allah is able to give them (believers) victory. Those who have been expelled from their homes unjustly only because they said: 'Our Lord is Allah'. For had it not been that Allah checks one set of people by means of another, monasteries, churches, synagogues, and mosques, where the name of Allah is mentioned much, would surely, have been pulled down. Verily, Allah will help those who help His (cause). Truly, Allah is All-Strong, All-Mighty" [24].

Qur'an also legislates on civil transactions and on ownership of property; believers are enjoined to devour not the properties of one another unlawfully. Allah said: "O you who believe! Eat not up your property among yourselves unjustly except it is a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you" [25].

Allah also says in Qur'an Chapter 2 verse 275: "Whereas Allah has permitted trading, and (He has) forbidden Riba (usury)".

In general, therefore, the Qur'anic commandments to do justice are confined to general rules and guidelines, and details are not provided. Allah said: "O you who believe! Stand out firmly for Allah as just

witnesses; and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety; and fear Allah. Verily, Allah is Well-Acquainted with what you do" [26].

With regards to Salat (Prayer), Zakkat (Alms), Hajj (Pilgrimage), etc. they are mentioned in brief, the detail of it are provided by Rasul Allah (P.B.U.H) in his numerous Ahadiths. The concise nature of the Qur'an makes it possible to contain all matters of life. But Qur'anic provisions are detailed in matters of Aqidah (creed). This is so, because, the basic objectives of the law regarding these matters are unchangeable.

Another very important characteristic of the Qur'an is the absence of rationalizations (Ta'lil) in it. As the first and principal source of Islamic Law, it is basically free from rationalizations [27].

The believers are to accept all legislations regardless of whether they can be rationally explained or not. The proponents of Ta'lil maintain that divine injunctions embodied in the clear text of the Qur'an have no basis unless the law giver provides us with one. There may also be more than one cause or explanation to a particular ruling of the Qur'an in which a Mujtahid cannot be certain as to which of the several causes might be the correct one. Based on this and many other reasons, the Zahiris are of the opinion that believers should surrender themselves to the command of Allah, by unconditionally accepting His injunctions. The jumhur (majority) are of the view that Ahkam (Laws) of Shari'ah necessitates identification of their causes, so as to take into account the analysis that the laws have been introduced in order to realize certain objectives and that the Law giver (Allah) has enacted the rules of Shari'ah not as an end in themselves, but as a means of attaining perfection in human life, as the vicegerent (Khalifa) of Allah on earth.

One other very notable characteristic of the Qur'an is in its inimitability (ij'az). It is only today that numerous verses of the Qur'an dealing with natural phenomena have become fully comprehensible.

Dr. Maurice said: "There are also some very rare examples of statements in the Qur'an which have not as yet been confirmed by modern science. I shall refer to these by pointing out that all the evidence leads scientists to regard them as being highly probable. An example of this is the statement in the Qur'an that life is of aquatic origin" [28].

Qur'an is manifest in its scientific truth "concerning the creation of man, the earth and the planetary system" [29]. Allah said: "And indeed We created man (Adam) out of an extract of clay (water and earth). Thereafter, We made him (the offspring of Adam) as a ***Nufta*** (mixed drops of the male and female sexual discharge and lodged it) in a safe lodging (womb of the woman). Then We made the ***Nutfah*** into a clot (a piece of thick coagulated blood), then We made the clot into a little lump of flesh, then We made out of that lump of flesh bones, then We clothed the bones with flesh and then We brought it forth as another creation. So Blessed is Allah, the Best of Creators"[30]. Allah said again: "Have not those who disbelieve known that the heavens and the earth were joined together as one united piece, then we parted them? And We have made from water every living thing. Will they not then believe?" [31].

The second aspect of I'ijaz of the Qur'an is its accurate prediction of future events, like the eventual defeat of the Persians by the Roman Empire. Allah said: "The Romans have been defeated. In the nearest land (Syria, Iraq, Jordan and Palestine), and they, after their defeat, will be victorious" [32].

The third aspect of its I'ijaz is the narration of events which took place centuries ago. For example, this can be seen in the life histories of Prophets that came before Prophet Muhammad (P.B.U.H) as narrated in Suratu Al-Anbiya (Q21).

The fourth aspect of I'ijaz in the Qur'an is its linguistic excellence [33]. Allah said: "Say: If the mankind and the jinn were together to produce the like of this Qur'an, they could not produce the like thereof, even if they helped one another" [34].

Allah said again in another Surah: "Or do they say: He (Muhammad P.B.U.H) has forged it? Say: Bring then a Surah (Chapter) like unto it, and call upon whomsoever you can besides Allah, if you are truthful!" [35].

In the Qur'an, everything is explained by commands, similitudes, examples, stories, parables etc. It does not merely narrate stories of laid down, vague, abstract propositions. The proof of the Qur'an is in its beauty and nature, the world is challenged to produce a book like it, but it has not produced one and will never be able to produce one! [36].

1.2 The Sunnah

The literal meaning of Sunnah is path or way. It also means practice or conduct, which may be good or bad [37]. The Prophet (P.B.U.H.) used the word Sunnah with the meaning of conduct or practice. He said in one of his traditions: "Whoever set a good conduct or practice shall have his reward and the reward of those who act upon it till the day of resurrection, and whoever sets a bad conduct or practice shall

have his sin and the sin of those who act upon it till the day of resurrection [38].

The technical meaning of Sunnah by the scholars of Hadith is all that is narrated from the Prophet, his acts, his sayings and whatever he tacitly approved. It also refers to all the reports which describe his physical attributes and characters either before or after revelation. Some scholars of Hadith said that Sunnah means Hadith [39]. An example of such scholars is M.M.Azami [40].

However, the Jurisprudential definition of Sunnah is the sayings, the acts and the tacit enactments of the Prophet (P.B.U.H.) [41]. This meaning is more relevant to the present discussion. The word Sunnah does not occur in the Qur'an with the above meaning. But the word Hikmah is used in so many verses of the Qur'an. Imam Shafi'i and majority of the scholars are of the opinion that wherever the word hikmah (wisdom) appears in the Qur'an jointly with the word Qur'an, that means Sunnah [42]. Example is where Allah is saying "Our Lord! Send amongst them a Messenger of their own, who shall recite unto them your verses and instruct them in the Book (this Qur'an) and Al-Hikmah (wisdom) and purify them. Verily! You are the Al-Mighty, the All Wise" [43].

Sunnah was mentioned by Rasul (The Prophet – SAW) as the second source of Islamic Law [44] where he said: ("I left two things among you. You shall not go astray so long as you hold onto them, the Book of Allah and my Sunnah") [45].

To the scholars of Usul al-Fiqh Sunnah refers to a source of the Shari'ah and a legal proof next to the Qur'an. Some scholars have used Sunnah and hadith almost interchangeably, but the fact is that each of them has meaning of its own. Hadith differs from Sunnah, in the sense

that Hadith is a narration of the conduct of the Prophet (P.B.U.H) whereas Sunnah is the example or the law that is deduced from it [46].

1.2.1 Hujjiyyah of Sunnah (The Proof)

Many verses of the Holy Qur'an enjoin obedience to the Prophet (S.A.W) and make it a duty for the believers to submit to his judgments and his authority without question. Imam Shafi'i, on the obligation of man to accept the authority of the Prophet quoted the verse of the Qur'an where Allah says: "But no, by your Lord, they can have no faith, until they make you (O Muhammad P.B.U.H) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission" [47].

Ibn Kathir [48] and Muhammad Shinkiti [49] said, "Allah swears by Himself that they are not believers until they submit to the authority of the Prophet (S.A.W) in all affairs. And this is not a matter of mere formalistic legality but is an integral part of the Muslim faith (Iman)".

In another verse of the Qur'an, Allah says: "So take what the Apostle assigns to you and deny yourselves that which he withholds from you" [50].

These verses, and their like clearly proof that Allah enjoins believers to take to the commands of the Prophet (S.A.W)[51], and to keep away from anything he has prohibited [52].

1.2.2 Sunnah as a Source of Islamic Law

With regards to matters on which the Sunnah merely confirms the Qur'anic rulings, it is obvious that in such cases, the Sunnah is not an independent source. To give an example of this is the hadith where Prophet (P.B.U.H) is saying, "It is unlawful to take the property of a Muslim without his express consent" [53]. This hadith confirms the Qur'anic verse where Allah says: "Devour not each other's properties

unlawfully, unless it is through trade by your consent" [54]. Since the hadith here confirms the Qur'anic verse,, there is no room for saying that it constitutes an independent authority.

2. The Sunnah may clarify the ambivalent provision of the Qur'an (Mujmal), qualify its unqualified statements or specify the general terms of the Qur'an To give a specific example with regards to contract of sale in the Qur'an, Allah says: "Allah hath permitted trade and forbidden usury [55].

The general principle was later, to be elaborated by the Sunnah which expounded the detailed rules of the Shari'ah concerning sale, including its conditions, varieties, and sales which might amount to riba. This type of Sunnah cannot also be separated or taken independently from the Qur'an. In fact, they are, integral to it. [56].

3. The Sunnah, which consists of rulings about which the Qur'an is silent. This type of Sunnah is called *"Al-Mu'assisah"* (founding). It neither confirms nor opposes the Qur'an, and its contents cannot be

traced back to the Qur'an. The example of this is the prohibition regarding marriage to the maternal or paternal aunt of one's wife.

There is some disagreement among jurists as to whether this last type of Sunnah constitutes an independent source of Islamic Law or not. *Jumhur* (majority) of the scholars including Imam Shafi'i are of the view that enacting a new legislation by Sunnah which cannot be traced to the Qur'an is still an explanation of the Qur'an, and as such an integral part of Qur'an.

Imam Shafi'i states in his book Ar-Risalah: "I do not know anyone among the scholars who oppose (the doctrine) that the Sunnah of the Prophet is of three types: first is the Sunnah which prescribes the like of what Allah has revealed in His book; next is the Sunnah which explains the general principles of the Qur'an and clarifies the will of Allah; and last is the Sunnah in which the messenger of Allah ruled on matters on which nothing can be found in the book of Allah. The first two types of are integral to the Qur'an but the scholars have differed as the third" [57]. Some scholars of the latter ages *(al-muta'akhirin)* including Ashatibi and Asshaukani, held the view that this type of Sunnah is an independent source. The jumhur advanced their argument by saying that there is no Sunnah which cannot be traced back to the Qur'an because the Qur'an and the Sunnah are unanimous in their pursuit of the three fold objectives of protecting the necessities (dururiyyah), complementary requirements (hajiyyat) and the embellishment (tahsiniyyat). It is then argued that even when the Sunnah covers new grounds; it is with the purpose of giving effect to one or the other of the objectives that have been validated in the Qur'an. They added that A'isha (R.A) said, "His conduct or character (Khuluq) is the Qur'an" [58].

The second group supports their argument by saying that Allah said: "Obey Allah and obey His messenger" [59]. The fact that obedience to the Prophet is specifically enjoined next to obeying Allah, and obeying the Prophet becomes compulsory even on matters regarding which the Qur'an is silent. If the purpose of obedience to the Prophet means obeying him only when he explained the Qur'an, and then obeying Allah would be sufficient and there would have been no need to add the phrase, "obey the messenger". It seems that the argument advanced by the second view that ruling on which Qur'an is silent is an independent source is more logical. However, the difference between the two opinions is more of theory than practical.

1.2.3 Hadith Sahih, Hassan and Da'if [60]

The narrators of Hadith are graded into the following classes:-

1. The Companions who are generally accepted to be reliable according to Sunni scholars, whereas the Shi'a condemns majority of them.
2. Thiqat taabiun or those ranked highest in respect of reliability next to the Companions.
3. Thiqat or trustworthy but of a lesser degree than the first two.
4. Saduq or truthful, that is one who is not known to have committed a forgery or serious mistakes and errors.
5. Saduq wahim, that is truthful but committing errors.
6. Maqbul or accepted, which implies that there is no proof to the effect that his report or narration is unreliable.
7. Majihul or Narrator of unknown identity.

These are followed by the lower classes of narrators (Fussuq), and outright liars.

Hadith is classified as Sahih or authentic when its narrators belong to the above first three categories. These have continuous Isnad (chain) all the way back to the Prophet, consisting of upright persons who also possess retentive memories, and whose narration is free both of obvious and of subtle defects.

The Hassan Hadith differs from Sahih in that it may include among its narrators, a person or persons who belong to the fourth, fifth or sixth grades on the foregoing classes.

The Da'if (weak) Hadith is one whose narrators do not possess the qualification required in Sahih or Hassan. It is called weak because of the weakness that exists in its chain of narrators or in its textual contents. Its narrator(s) is known to have had a bad memory or his integrity and piety has been subjected to serious doubt. With the Shari'ah scholars (jurists), a weak hadith does not constitute a Shari'ah proof or backing (hujjah).

1.3 The Ijma'

Ijma is the verbal noun of the Arabic word ajma'a which has two meanings: to determine and to agree upon something [61]. The second literal meaning of ijma often subsumes the first, in that whenever there is a unanimous agreement on something, there is also a decision on that particular affair or matter.

Ijma' is technically defined as the unanimous agreement of Mujtahidun of the Muslim community (Ummah) of any period after the death of Prophet Muhammad (S.A.W) on any matter [62]. The technical meaning of the word Mujtahidun (Jurists) precludes the agreement of

those who are not Mujtahidun. Similarly, the reference in the definition to any matter implies to all juridical (Shari'ah), intellectual (aqli), Customary (Urfi) and linguistic (lughawi) matters.

It is very clear from the definition of Ijma that it can only occur after the death of the Prophet (S.A.W). And this is so because during his lifetime, he was the highest authority on Shari'ah, hence the agreement or disagreement of others did not affect the overriding authority of the Prophet (S.A.W).

After the demise of the Prophet, the Sahabas (Companions) used to consult each other over the problems they encountered, and the community accepted their collective agreement. After the companions, the successors (Tabi'un), and after the successors, the generations that follows the successors (Tabi'i tabi'una) .

Whenever the succeeding generations differ on issues, they refer them to the practices and decisions of the Companions and their successors. Based on this, a fertile ground was created for the development of the theory of Ijma.

1.3.1 Proof (Hujjiyyah) of Ijma

The scholars have sought to justify Ijma on the authority of the Qur'an, the Sunnah and reasons [63].

On Ijma' in the Qur'an, Allah says: "And whoever contradicts and opposes the Messenger (Muhammad – S.A.W) after the right path has been shown clearly to him, and follows other than the believers' way. We shall keep him in the path he has chosen, and burn him in Hell- what an evil destination" [64].

Majority of scholars frequently quote this verse in support of Ijma'. Most commentators observe that "way of the believers" in this verse

refers to their agreement, and the way they "have chosen" in other words is their consensus. And departing from the believers' way has been approximated to disobeying the Prophet, both of which are forbidden [65]. Also Allah says: "O you who believe! Obey Allah and obey the Messenger (Muhammad S.A.W) and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger (S.A.W), if you believe in Allah and in the Last day. That is better and more suitable for final determination" [66]. Commentators of the Qur'an among scholars, said this verse is commanding the Muslim to obey Allah and to obey Rasul (Prophet – S.A.W) and those who are in charge of affairs – the ulul-amru (leaders). Since Allah has commanded obedience to the ulul-amru, they must therefore, be immune from error, for Allah will not command obedience to anyone who is liable to committing errors. Allah says: "And hold fast, all of you together, to the rope of Allah (i.e. this Qur'an), and be not divided among yourselves" [67].

This verse and it's like command the Muslims to be united and obviously forbids separation. And since opposition to Ijma' is a form of separation, it is therefore prohibited.

After quoting the foregoing verses and it's like to proof that Ijma is a sound source of Islamic Law, Imam Al-Gazali observes that all those verses are apparent indication. (Zawahir), none amount to a clear "nass" on the subject of Ijma. He added that the closest to the point is the verse of Q4: 115. Al-Shafi also share the same view and according to him, following the way other than that of the believers is "haram" and following the believers' way is "wajib".

On Ijma' in the Sunnah, the following ahadith are mostly quoted in support of it [68].

1. "My Community shall never agree upon an error"
2. "Allah will not let my Community agree upon an error"
3. "A group of my Community shall continue to remain on the right path. They will be the dominant force and will not be harmed by the opposition of opponents"
4. "Whatever the Muslims deem to be good is good in the eyes of Allah".

In some of the ahadith quoted above and many others, where the article "la" meaning "there is no" is mentioned, it could either imply negation (nafy) or prohibition (nahy). If it is the latter, it would simply prohibit the people from derivation, and as such the hadith could not sustain the notion of infallibility for the ummah. According to another scholar, the manifest (zahir) meaning of the hadith is that the community (ummah) abstains from a collective agreement on an error. The ahadith precludes a general agreement on an error, but not the error itself. These are some of the doubts expressed concerning the precise meaning of the Hadith. They may or may not be correct but so long as the Hadith is open to such doubts, it cannot provide a decisive proof (dalil – qati') for Ijma'.

Having discussed the ahadith relating to Ijma', Ahmad Hassan observes that they are inconclusive. All of them emphasized unity and integration. Some of them are predictive and others circumstantial. They may mean Ijma' or something else. Not withstanding the doubts and uncertainties in the consensus, the majority of ulama have concluded that the consensus of all the Mujtahidun on a particular ruling is a sure indication that the word of truth has prevailed over their differences.

Since Ijtihad is founded on sound authority in the first place, the unanimous agreement of all the Mujtahidun on a particular ruling indicates that there is clear authority in the Shari'ah to sustain their consensus.

1.3.2 Feasibility of Ijma [69]

Some scholars, including the Mu'tazili leader, Ibrahim al-Nazzam, and some Shi'ite jurists have held that Ijma', in the way defined by the jurists, is not feasible. And according to the Zahiri jurists and Imam Ahmad bin Hanbal, Ijma' refers to the consensus of the companions alone. Imam Malik confines it to the consensus of the people of Medinah alone, while the Shi'ah Imamiyyah recognizes only the agreement of the members of the Prophet's family.

1.4 Qiyas (Analogical Deductions)

Qiyas literally means measuring or ascertaining the length, weight or quality of something. It may also mean comparison with a view to suggesting equality or similarity between two or more things [70].

Technically, it is defined as the extension of a Shari'ah value from the original case (asl) to a new case (far'u) because the latter has the same effective cause (illah) as the former [71].

Thus, Qiyas is essentially an extension of the existing law. Some jurists do not admit that extending the law by the process of analogical deduction amount to establishing a new law.

In this thesis, there will be a detailed exposition on Qiyas, because it is the main focus of our research study.

1.5 Al-Istihsan (Equity)

Istihsan literally means to approve or to deem something preferable. But in its juristic sense, it is a method of exercising personal opinion in order to avoid rigidity and unfairness that might result from the literal enforcement of the existing law. According to some scholars, "Juristic preference" is a fitting description of Istihsan as it involves setting aside an established analogy in favour of an alternative ruling which serves the ideals of justice and public interest in a better form.

There is no direct authority for Istihsan either in the Qur'an or in the Sunnah. The Hanafi jurists who are proponents of Istihsan quoted verses which enjoin believers to follow the best of what they hear. Allah says: "Those who listen to the word [good advise *La ilaha illallah* – (none has the right to be worshipped but Allah) and Islamic Monotheism] and follow the best thereof (i.e worship Allah Alone, repent to Him and avoid *Taghut)* those are (the ones) whom Allah has guided and those are men of understanding" [72]. In another verse, Allah says: "And follow the best of that which is sent down to you from your Lord" [73].

Some commentators have suggested that the reference here is to a higher course of conduct.

The proponents of istihsan also quoted hadith to substantiate their view. “What the Muslims deem to be good is good in the sight of Allah” [74].

Imam Shafi’i, Al-Amidi, Al-Gazzali and many others do not accept Istihsan as a valid source of Islamic Law [75]. They argued that none of the above quoted provisions is a definite authority in support of the validity of this source. Al-Amidi points out that it merely praises those who follow the best of what they hear. Imam Shafi’i has raised serious objection against Istihsan, which he considered to be a form of arbitrary law making in religion.

During the Caliphacy of Umar bin Al-Khatab, he did not enforce the hadd penalty (the amputation of the hand for theft) during a widespread famine. He also prevented Muslims from marriage with the people of the book under certain circumstances. These were all instances of Istihsan. Istihsan has played a prominent role in the adaptation of Islamic Law to the changing needs of society.

Hanafi, Malikii, Hanbali and other jurists have validated Istihsan as a subsidiary source of Islamic Law. But Shafi’i and Zahiri jurists have rejected it altogether in their formulation of the legal theory. However, it seems that the two opinions are almost saying the same things in different ways. The proponents of sound acceptable Istihsan are saying that it is a method of exercising personal opinion in order to avoid rigidity and unfairness based on the Qur’an and Sunnah, while the opponents are saying no, so long as what you call Istihsan is within the scope of the Qur’an and the Sunnah, we do not call it any name but Qur’an and Sunnah.

1.6 Al-Masalih al-Mursalah (Consideration of Public Interest).

Literally Maslahah means benefit or interest, but when it is qualified as Maslahah Mursalah or Masalih al-Mursalah, it refers to unrestricted public interest that has not been regulated by the law giver, and no textual authority can be found on its validity or otherwise. [76].

Istislah derives its validity from the norm that the basic purpose of legislation (tashri) in Islam is to secure the welfare of the people by promoting their benefits and protecting them against harm. The ways and means, which bring benefit to the people, are uncountable and are virtually endless. To enact a law may be beneficial at one time and harmful at another, and even at one and the same time, it may be beneficial under certain circumstance, but harmful in other circumstances.

The supporters of Maslahah Mursalah include the majority of jurists of the four Sunni schools. In holding their views, they rely on some of the following: In Qur'an 22:78, Allah says: "And He has imposed no difficulties on you in religion, it is the religion of your father Abraham". Qur'an 5:6 also reads: Allah does not wish to place you in a difficulty but to make you clean and to complete His favour on you that you may be grateful".

And in a Hadith, the wife of the Prophet, A'isha (R.A.), is reported to have said that, "The Prophet did not choose but the easier of the two alternatives so long as it does not amount to a sin" [77].

The practice of the Companions, their successors, and the leading jurists of the past tend to suggest that they enacted laws and took measures in pursuance of Maslahah despite the lack of textual authority to validate it. Abubakar, the first Caliph of the Prophet (P.B.U.H) collected and compiled the records of the Qur'an in single volume after

Umar's advice. He also waged wars on those who refused to pay the Zakat (alms) and he nominated Umar to succeed him. Likewise Umar bin Al-Khatab poured away the milk in which water was added as a punishment to serve as a deterrent He, also approved the views of the Companions to execute a group of criminals for murdering one person.

The proponents of masalahah mursalah advanced their argument by saying that Shari'ah takes cognizance of the public interest, and, therefore, there is no any public interest outside the Shari'ah. This is the view of Zahiris, some Shafi'i, some Malikis and Ibn al-Hajib who do not recognize maslahah as a proof in its own right.

These jurists added that accepting maslahah as an independent proof of shari'ah would lead to disparity and chaos in the laws. Hence, the lawful and the unlawful would be held to be applicable in some places or to some persons, and not applicable to others.

The supporters of maslahah are ensured that only the genuine interests of the people who are in harmony with the objective of the shari'ah, will be accepted.

1.7 Sadd Al-Zara'i (Blocking the Means).

Sadd literally means blocking and Zara'I is the plural of Zari'a, which literally means way, pattern, or channel. And Sadd al-zara'i can be defined as blocking the means to evil end which is likely to materialize if the means towards it is not obstructed. [78].

Maliki and Hanbali and other supporting jurists who accept Sadd al-Zara'i as a valid source of Law, support their view with verses of the Qur'an among which is where Allah is saying: "And insult not those

whom they (disbelievers) worship besides Allah, lest they insult Allah wrongfully without knowledge. Thus we have made fair – seeming to each people its own doings: then to their lord is their return and He shall then inform them of all that they used to do" [79].

The means to an evil is obstructed by putting a ban on insulting the idol-worshippers, a conduct which might have been permissible and even rewarding as it would mean denunciation of falsehood: Also, Allah says: "O you who believe! Say not (to the Messenger P.B.U.H) *Raina* but say *Unzurna* (make us understand) and hear. And for the disbelievers there is a painful torment" [80]. The reason for this prohibition was that the word *Raina*, being a homonym, had two meanings, one of which is, "please look at us" or "attend to us", but the same word means, "Ourshepherd". The Jew used to insult the Prophet with it, the Muslims were forbidden from using that form of address to the Prophet despite their good intentions.

Authority is also found in the Sunnah. Supporting the principle of Sadd al-Zar'ia, and this includes the fact that the Prophet forbade the killing of hypocrites (al-Munafiqun), so that people would not start saying that Muhammed (S.A.W) was killing his companions.

However, jurists differ on the validity of Sadd al-Zara'i. The Hanafi and the Shafi'i jurists do not recognize it per se as a source of Islamic Law.

However, the whole concept of Sadd al-Zara'i is founded on the idea of preventing an evil before it actually materializes.

1.8 Al-Urf (Custom)

Urf literally means that which is known, and technically, it can be defined as recurring practices, which are acceptable to the people of sound nature [81].

For a custom to be accepted as a valid source of law, it must be sound and reasonable. Urf is regarded by the Hanafi jurist, Al-Sarakhsi, and subsequently adopted in the Usman Mujallah which provides that custom, whether general or specific, is enforceable and constitutes the basis of judicial decisions.

Muslim jurists have generally accepted Urf as a valid source of law. An example is where Allah says: "Let those who possess means pay according to their means" [82]. Jurists have referred to Urf in determining the precise quantum of maintenance the husband must provide for his wife, as this may differ from one society to another.

Similarly, as regards to the maintenance of children, the Qur'an only prescribes it on the children's father, but leaves the quantum to be determined by reference to custom. Allah says: "But he shall bear the cost of their food and clothing on equitable terms" [83].

Scholars supporting Urf have attempted to find categorical textual authority for it in the Qur'an which is not possible. They usually quote the verse where Allah says: "Hold for forgiveness, command what is right, but turn away from the ignorant" [84].

And also refer to the Hadith of the Prophet (S.A.W), which says: "What the Muslims deem to be good is good in the sight of Allah". [85]

The opponents of Urf said that reference in the above verse is to the literal meaning and not the technical one. Also, the Hadith above refers to the approval of all Muslims, whereas Urf varies from place to place. And modern societies have experienced disintegration and

degradation of their traditional pattern of social organization, so, a jurist must be very careful before considering Urf of today.

1.9 The Fatawa (Verdicts) of the Companions.

A Sahabi or Companion, according to the majority of scholars, is anyone who has met the Prophet while believing in him even for a moment and dies as a believer [86].

The saying of a companion may be an opinion arrived at by the way of Ijtihad or judicial decision he has taken on a matter in the absence of a ruling in the Qur'an, Sunnah or Ijma'. There is no disagreement among the jurists that the saying of a Companion is a proof which command obedience when it is not opposed by other Companions. Also, there is a general agreement among the jurists that the ruling of one Companion is not a binding proof over other (Sahabas) in matters of Ijtihad.

There are three juristic views as to whether the ruling of a Sahabi is binding on the Tabi'un and the Mujtahidun among their succeeding generations.

(1) That it is a proof, which is superior to Qiyas regardless of whether, it is in agreement with the Qiyas in question or otherwise. This is the view of Imam Malik, one of the two views of Imam Shafi'i, and one of the two views of Imam Ahmad ibn Hanbal and some Hanafi jurists. They refer to the Qur'anic text where Allah says: "And the foremost to embrace Islam of the Muhaji'run (those who migrated from Makkah to Al-Madinah) and the Ansar (the citizens of Al-Madinah who helped and gave aid to the Muhaji'run) and also those who followed them exactly (in

faith). Allah is well pleased with them as they are well - pleased with him" [87].

The proponents of this view said that Allah has praised those who followed the Companions.

(2) That Ijtihad of a Companion is not proof and it does not bind the succeeding generations. This is the view of Ash'arites, the Mu'tazilites, and one of the two views of Imam Ahmad. This is also the view of Al-Ghazzali, Al-Amidi, Al-Shawkani and many others. They quoted a Qur'anic verse in support of this idea where Allah says: "Consider! Oh you who have vision". [88].

This verse indicates that the mujtahid must rely directly on the sources (Qur'an and Sunnah) and not to imitate any other Mujatahid, including the Companions.

(3) That the ruling of the Companions is a proof when it is in conflict with Qiyas, but this is not so when it agrees with Qiyas. This is a weak opinion, but Imam Abu Hanifa is advocating it.

1.10 Shar'u Man Qablana (Revealed Laws Preceeding the Shari'ah of Islam).

All the laws revealed before the laws of Islam originated from the same single source, namely, Allah. Allah says: "He (Allah) has ordained for you the same religion (Islamic Monotheism) which He ordained for Nuh (Noah) and that which We have revealed to you (Oh Muhammad –

P.B.U.H) and that which We ordained for Ibrahim (Abraham), Musa (Moses) and Isa (Jesus) saying you should establish religion (i.e. to

do what it orders you to do practically), and make no divisions in it (religion)". [89].

The essence of belief in the oneness of Allah and the need for divine authority and guidance is to regulate the human conduct and values of morality and justice, which constitute the common purpose, and substance of all divine religions. Allah talks about the Torah as a source of inspiration and guidance thus: "And in their footsteps, We sent Isa (Jesus), son of Mary confirming the Taurat (Torah) that had come before him; and We gave him the Injeel (Gospel) in which was guidance and light and confirmation of the Taurat (Torah) that had come before it, a guidance and an admonition for Al-Muttaqun (the pious)" [90].

Also, Allah command the Prophet to follow the previous Prophets in Suratul An-am thus: "Those were the (Prophets) who received Allah's guidance. Follow the guidance they received" [91].

The Shari'ah has retained many of the previous laws while it has, at the sametime, abrogated or suspended others. But the meaning of the verses where Allah is commanding the Prophet to follow the footsteps of the Prophets before him is that he should follow them only in regards to faith (belief) which has been the bedrock of the religion, and is uniform right from the time of Adam till today. That is, belief in oneness of Allah (Monotheism).

It has thus been pointed out that the word Huda (guidance) and Hudahum (their guidance) quoted in the above verses means tawhid (oneness of Allah).

The Qur'an explains the laws of the previous nations in the following three forms:

(1) The Qur'an may refer to a ruling of the previous revelation and in the meantime make it obligatory on the Muslims. And that make the ruling to be an integral part of the Islamic law. Example of this is where Allah says: " Oh you who believe! Observing A-Saum (the fasting) is prescribed for you as it was prescribed for those before you, that you may become Muttaqun (the pious)". [92].

(2) The Qur'an or the Sunnah may refer to a ruling of the previous revelation, but at the same time abrogates it, and as such, it is abandoned and discontinued. Anexample of this in the Qur'an is where a reference is made to the prohibition of certain varieties of food to the Jews, which are legalized for the Muslims. Allah says: "Say (Oh Muhammad – P.B.U.H.): I find not in that which has been revealed to me anything forbidden to be eaten by one who wishes to eat it unless it be Maita (a dead animal) or blood poured forth (by slaughtering or the like), or the flesh of swine (pork): for that surely, is impure or impious (un lawful) meat (of an animal) which is slaughtered as a sacrifice for others than Allah (or has been slaughtered for idols, or on which Allah's name has not been mentioned while slaughtering). But whosoever is forced by necessity without willful disobedience, nor transgressing due limits; (for him) certainly, your Lord is oft-forgiving, Most Merciful. [93] But concerning the Jews, Allah says: " And onto those who are Jews, we forbade them every (animal) with undivided hoof, and we forbade them the fat of the ox and the sheep except what adheres to their backs or their entrails, or is mixed up with a bone. Thus, we recompensed them for their rebellion [committing crimes like murdering the Prophets, eating of riba (usury)]. And verily, We are truthful" [94].

A similar example in the Sunnah is where the Prophet was reported to have said: “Taking booty has been made lawful to me, bit it was not lawful to anyone before me” [95].

(3) Where the Qur’an refers to a ruling of the previous revelation without clear clarification of abandoning the rule or upholding it. Anexample is where Allah says in the Qur’an in reference to the law of retaliation which was enacted in the Torah: “And we ordained therein 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 shall be for him expiation”. [96]

It is not categorically stated whether the same law is obligatory on the Muslims. Muslim jurists differ regarding this. Some of the Hanafi, Maliki, Shafi’i and Hanbali jurists uphold that the foregoing is part of the Shari’ah because all the revealed laws came from the same source namely, Allah [97].

They support their view with the Qur’anic verse which provides that, “The same religion has He established for you. [98] Moreover, the mere fact that the Qur’an refers to it is sufficient to make it a binding law. It is on the basis of this conclusion that the Hanafi jurists have validated execution of a Muslim for murdering a non-Muslim, and the execution of a man for murdering a woman as they fall within the meaning of “life for life”. Those who disagree with them on this quote the Qur’anic verse which reads: “ And the punishment of an evil is an evil like it” (Q42: 40).

Some of the jurists like Shafi’i, Mutazilites, Ash’arites, Hanbali, Maliki, Hanafi and other jurists, on the other hand, are of the view that Islam abrogated the previous laws, so they are not applicable to the Muslims [99]. They substantiate their view with some verses of the Qur’an,

one of which is where Allah says: "For everyone of you, we have ordained a divine law and an open road". [100].

It is very clear from this verse that every nation has Shari'ah (laws) of its own and therefore, the laws that were revealed before Islam are not binding on the Muslims. [101]

1.11 Istishab (Presumption of Continuity).

Istishab literally means escorting or Companionship, while it technically means facts, or rules of law and reason whose existence or non-existence had been proven in the past, and are presumed to remain so for lack of evidence to establish any change

Istishab is validated by the Shafi'i, Hanbali, Zahiri and Shi'ah schools, but Hanafi and Maliki schools, and as well as Hassan Al-Basri, do not consider it as a proof in its own right.

An example of istishab is as follows:

"A" purchases a hunting dog from "B" with the proviso that it has been trained to hunt, but then "A" claims that the dog is untrained. "A"'s claim will be acceptable under Istishab unless there is evidence to the contrary. Because, istishab maintains the natural state of animal, it is untrained until it is trained.

There are four types of presumptions in Istishab, which are as follows:

(1) Presumption of original absence (Istishab al-adamul asli) which means that a fact or rule of law, which had not existed in the past, is presumed to be non-existent until the contrary is proved.

(2) Presumption of original presence (Istishab al-wujud al-asli). This type of Istishab takes for granted the presence of that which is indicated

by the law or reason [102]. For example when "A" is known to be indebted to "B", "A" is presumed such until it is proved that he has paid the debt or was acquitted of it.

(3) Istishab al-hukum or Istishab which presumes the continuity of the general rules and principles of law. When there is ruling in law, whether prohibitory or permissive, it will be presumed to continue until the contrary is proved.

(4) Presumption of continuity of attributes (Istishab al-wasf) such as presuming clean water (purity being an attribute) to remain so until the contrary is proved.

Scholars regard Istishab as the last ground of Fatwa (verdict) since it is not an independent proof or a method of juristic deduction in its own right, but mainly functions as a means of implementing an existing indication.

1.12 Conclusion

In the Islamic world today, Qiyas has become a very important source of Islamic law, after Qur'an, Sunnah and Ijma'. It started from the days of the Holy Prophet (PBUH), in a popular Hadith related thus:

"The Prophet (PBUH) sent Mu'az bin Jabal to Yemen as their judge and governor. Before Mu'az left the Prophet (PBUH), he asked the latter on what basis would he judge if he was confronted with a problem. Mu'az said that he would judge on the basis of the contents of the Qur'an.

The Prophet (PBUH) asked him: 'assuming that you do not find it in the Qur'an, on what basis would you judge?' Mu'az said he would judge on the basisof the Sunnah of the Prophet. The Prophet (PBUH) also asked him: 'assuming you do not find it in both the Qur'an and the

Sunnah of the Prophet, on what basis would you judge?' Mu'az bin Jabal replied that he would use his own individual judgement (Ijtihad). And the Prophet (S.A.W) was very happy to hear this statement" [103].

Hence, from the time of the Holy Prophet (S.A.W), Qiyas has grown from a systematic form of reasoning to a kind of sophisticated doctrine.

Hence, this research thesis is devoted to defining Qiyas, explaining the types of Qiyas, giving the historical development of Qiyas, expounding on the pillars of Qiyas, and also examining the validity of Qiyas as a source of Islamic law.

This thesis will also attempt to explain the exercise of Ijtihad by Mujtahids, using Qiyas.

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CHAPTER TWO:

2.0 THE DEVELOPMENT OF QIYAS, AND ITS VARIOUS TYPES

This chapter deals with the various definitions of Qiyas, in accordance with the various views of the Muslim jurists; and how the Muslim jurists, from various perspectives, have classified it.

The chapter also examines how Qiyas developed to become one of the most essential sources of Islamic Law.

2.1 The Meaning of Qiyas.

The verbal noun Qiyas has been derived from its root Qiyas, meaning to measure[1] .The expression "Qistu ash-shi'a bi gairihi" means, "I measured the things by another thing." Similarity between two things (in quantity) is an idea that underlines measurement. Qa'is is the one who measure thing or things, while Qayyas is the one who measure much. Literally, the meaning of Qiyas can be summed up as measurement, comparison, equality, ratiocination and analogy. The word Qiyas as such has not been directly mentioned in the Qur'an. The Qur'anic expression "Qaba Qawsain" [2] (meaning two bows length away or measure of two bows) may reflect the idea that Qiyas is from another root word, qaws meaning bow. In any case, it is difficult to say precisely whether the noun qaws (bow) has been derived from Qiyas, because bow was used for measurement in Arabia.

From this entomological analysis, Al-Amidi infers that Qiyas demand two things, each of which is connected with the other by equation. They are affinity (Nisbah) and connection (Idafah).

Hence the idiom goes: So – and – so is measured by so – and – so or So – and – so is not measured by so – and so, meaning respectively that one thing is equal to another or not equal to another [3].

Dr. Scratch is of the opinion that the term Qiyas and its concept and method, have been derived from the Jewish exegetical term (hiqqish) taken from Aramaic root, naqsh, meaning to beat together. [4]. He further asserts the existence of an original concrete meaning in Aramaic not in Arabic (where Qiyas belongs to the root Qa'is) makes the foreign provenance certain. He also infers from the similarity in the technique of discussion of As-Shafi'i and his Christian contemporary. Theodore Abu-Qurra, that the doctrine of Qiyas in Islamic Jurispudence has been influenced by the Greek logic and the Roman law. [5].

Dr. Scratch might be correct in his conjecture. But he has not proferred any positive evidence which shows that Muslim Jurists have actually borrowed this doctrine, its concept and method from the Jews, or they were influenced in this doctrine by the Roman or Greek rhetorics. In this research thesis, a number of examples will be cited from the Qur'an where the rules are based on analogy clearly. Sufficient evidence will also be given to show that the exercise of personal opinion, deriving rules on the basis of analogy and discursive arguments, constituted an important part of legal reasoning of the companions and early jurists. Also, examples of Qiyas in the Qur'an and the Sunnah will be discussed in this chapter. For a good deal of evidence can be produced to prove that the Prophet himself, in his teachings, employed Qiyas, though not in its pure technical sense. The above discussion may convince Dr. Scratch (if

he were alive) and his followers that the concept of Qiyas was not new to the Muslim Ummah before, and today.

2.1.1 THE TECHNICAL DEFINITION OF QIYAS

Those who treated the works of Usul on theological manner were punctilious in the technical meaning of Qiyas according to their theological method. Below are some of these definitions.

- As-Shafi'i who died in the year 204 A.H. defines Qiyas as "applying the law of the text (mansus alaihi) to a case not covered by the text (Ghairil mansus – alaihi) on the basis of the idea or cause, which is the legal cause (illah) of the original textual rule (hukum)" [6].

- Abu-Hashim who died in the year 321 A.H said; Qiyas means the accord (haml) of a thing (shai) with another and the application of its value or the rules of law (hukum) to it [7].

- According to Al-Qadi Abubakar Al-Baqillani (403 A.H): Qiyas is to accord (haml) a known case in the Qur'an or Sunnah with a known case not in the Qur'an or Sunnah in respect of establishing a law about them or negating it on the basis of a connecting link (Amr-Jami) between them. [8].

- Al-Qadi Abdul Jabar who died in the year (415 A.H.) defines Qiyas as "the accord of a thing (haml), with a thing in respect of some of its values (ahkam) by reason of a sort of similarity" [9].

Although these definitions are close in meaning to the definition enunciated by As-Shafi'i, they remain unaccepted by many jurists. Al-

Aamidi (who died in the year 631 A.H.), for instance, criticized the above definitions.

He says that, the word thing (Shai) in this definition implies that Qiyas does not apply to a non existent thing since it is not a thing. [10].

He also explains that Abu Hashim does not mention the correct connecting link (Jami) or effective cause (illah) on the basis of which one thing is accorded with the other. There should be a common link between two things for application of one to the other. Most of the above definitions are not exhaustive because they do not induce a non-existent thing, as their wordings are general, including the process to which Qiyas applies and that which is not applicable. [11].

But about the definition enunciated by Al-Baqillani above, the majority of the Shafi'i Jurists accept it.

Another set of definitions are represented by the definition enunciated by Abul-Hashim Al-Basri, which was elaborated and developed by Fakhrud-Deen Al-Razi (who died in the year (606 A.H). According to that definition, Qiyas is to establish the like of a rule governing a known (case) for another known (case) by reason of their similarity in the cause of the rule. Both Al-Baidawi and Al-Qarafi have accepted this definition from Al-Razi. [12].

The above definition differs from the previous one in the following points: -

1. In this, the phrase mithl hukum (the like of the rule) instead of hukum (the rule) as in the previous one, is used. [13].
2. It has a qualification or similarity in the effective (illah) cause of the rule in the opinion of the mujtahid. [14].

We find a third set of definitions of Qiyas in the seventh century of Hijrah. During this period, some scholars like Al-Amidi and Ibn Al-Hajib (who died in the year 646 A.H) presented a fresh definition of Qiyas, different from the previous ones. They opined that Qiyas is an independent source or basis of law like Qur'an and the Sunnah.

According to them, the definition of Qiyas starting from As-Shafi'i (who died in the year 204 A.H.) up to Al-Razi (who died in the year 606 A.H) is not compatible with the real nature of Qiyas. The reason is that they defined it as: to establish (Ithtab), to accord (haml), to join (ilhaq) to extend (ta'diyah) and similar other phrases. These phrases imply that Qiyas is the work of the mujtahid. It is already known that the work of Mujtahid goes beyond the use of qiyas as an independent source of law. This is the basis of the criticism of Al-Amidi and Ibn Al-Hajib on the definition of Al-Bagillani and Abul-Hussain Al-Basri. [15]

Amidi's definition is that Qiyas is equation between the parallel case and the original case on the basis of the cause derived from the law of the original case. [16].

The word "derived" restricts the scope of Qiyas, and so Ibn Al-Hajib omitted it from his definition. He defines Qiyas as "equation of the parallel case with the original case in respect of the cause of its rule". Ibn Al-Human gives a definition as that of Ibn Al-Hajib, even though in his own definition, he excluded textual indication (dalalat – Annas). He says that "Qiyas is the equation (musawat) of an object with another in respect of the cause of the rule of the Shari'ah in respect of which the cause cannot be known from its text by mere understanding of the language" [17]. Thus, Ibn Human holds that Qiyas is not the novel idea of the jurist but instead, it is an independent source of law which has already been

established by the text. What the jurist (mujtahid) does is to look into the evidence of the cause (dalil-al-illah) and reflects on its existence in the parallel case. So what the jurist does is the result of Qiyas and not Qiyas in itself.

About the definition of Al-Amidi, Ibn Al-Human holds that it is exhaustive (jaml), and exclusive (mani), that completely fulfils the purpose, and is free from all defects as in the other definitions. It is worthy of note that Al-Amidis definition has also been severely criticized by Ibn Al-Subki, because according to him, Al-Amidi has raised against his definition the same objection which he raised against Al-Baqillani's definition. [18].

The most significant question raised by the definitions of Al-Amidi and Ibn Al-Hajib is that Qiyas means equation (musawat, istiwa) of the parallel case with the original case. This idea brought about a change in the theory of Qiyas. It was earlier thought of as the parallel case with the original case by the effort of a mujtahid. [19]. But this fresh theory influenced the later jurists like Ibn Human.

They now hold that Qiyas is an independent source of law the Qur'an and the Sunnah, and that it means equation between the parallel and the original case in respect of the effective (illah) cause. A Mujtahid investigates this equation, as Ibn Al-Human explains and sometimes he finds it and sometimes not. [20].

However, majority of both the classical and modern jurists hold the view that Qiyas is the process of equalization (taswiyah) between the original and the parallel case in respect of the legal value (hukum) on the basis of the effective cause and that it is a principle of derivation of law

from the original source but not an original and independent source of law by itself.

2.2 TYPES OF QIYAS

There are various types of Qiyas regarding which the Muslim jurists have divergent views. But the most important types are as follows:

(a) Analogy on the basis of the cause (Qiyas illah) [21]

(b) Analogy on the basis of resemblance (Qiyas shabah) [22]

(c) Analogy on the basis of signification (Dalalah) [23]

(d) Analogy on the basis of opposite (Aks) [24]

(e) Analogy on the basis of a corresponding case having similar idea (Qiyas Fariq) [25].

The detailed exposition of these types is presented below.

(1) Qiyas Illa (Analogy based on cause). This is an analogy where the law governing the original case, is applied to the parallel case on the basis of a cause on which the law of the original case is based. Some jurists call it Qiyas al-ma'ana (Analogy of the same meaning) [26].

Qiyas Illah is divided into two:

(a) Qiyas Jali and (b) Qiyas Khafi.

(a) Qiyas Jali (Patent analogy).

This is an analogy where the cause is only one, and which is established by certain evidence allowing no other interpretation. However, the cause may be more pronounced in certain cases.

For this reason, some Jurists divide Qiyas Jali into two subdivisions while others like Qaffal Al-Shashi divide it into three as follows: [27].

(i) Qiyas Ajla or Qiyas Awla. This is an analogy where the cause is only one, and more pronounced than the cause in the original case. For example, Allah (S.W.T) in Qur'an 17:23 says: "And your Lord has decreed that you worship none but Him and that you be dutiful to your parents. If one of them or both of them attain old age in your life, say not to them a word of disrespect, nor shout at them but address them in term of honour" [28]. Word of disrespect is prohibited, but beating them is more pronounced as a sign of disrespecting them. [29].

Another example is where Allah (S.W.T) in Qur'an 99:7-8 says: "Whosoever does good equal to the weight of an atom shall see it. And whosoever does evil equal to the weight of an atom shall see it" [30].

From the above verse, an atom weight of good shall be rewarded with goodness, which means two atoms weight will be more rewarding and three atoms weight will be more rewarding etc. [31].

Similarly, since an atom weight of evil deserve punishment, two atoms weight of evil deserves more punishment while three atoms weight of evil deserves more punishment. Some Jurists are of the opinion that Qiyas Ajla is not Qiyas, but further explanation of what the verses contain of indirect meaning as illustrated by the jurists is what is what is referred to as Qiyas Jali.

(ii) Qiyas musawi or Qiyas fi ma'anal asl. This is where the cause is to the one mentioned on the original text. For example, where Allah (S.W.T) in Qur'an 5:90 says: O you who beilieve, intoxicants (all kinds of alcoholic drinks) and gambling (Al-Ansab [32] and Al-Azlam [33]) are an

abomination, of Satan's handiwork. So avoid the abomination in order that you may be successful) [34].

Based on the above verse, Nabidh is prohibited as wine is prohibited, because the two share common illah (cause) which is intoxication. [35]

Another example is this. During the life time of the Prophet (S.A.W), a Bedouin had sexual intercourse with his wife intentionally while fasting during Ramadan in the daytime. The Prophet (S.A.W) asked him to fast for sixty days as expiation. On the analogy of this case, a rule was derived that if a person has sexual intercourse while fasting during Ramadan, he will have to expiate for breaking the fast intentionally.

In this case, only the act of breaking the fast has been taken into consideration. The other qualities have been neglected. The qualities which have been neglected are as follows: being a Bedouin. The rule will apply to a Negro and an Indian; being a lawful intercourse – the rule will apply to an adulterer; being Ramadan of that particular year – the rule will apply to all other months of Ramadan. The Hanafis also neglect the quality of breaking the fast by sexual intercourse. In their opinion, the cause of expiation for breaking the fast of Ramadan intentionally may be anything, sexual intercourse, eating and drinking.

According to them, the rule of expiation will apply not only to the one who breaks the fast by having sexual intercourse, but also to the one who eats or drinks intentionally while fasting. [36].

Another example is the permissibility to say supererogatory prayer on a mount (e.g. horse, camel or donkey), and it is also permissible to perform prostration while reciting the Qur'an on a mount. This shows

that prostration while reciting the Qur'an is not obligatory, but supererogatory, for making prostration on a mount is a quality peculiar to the voluntary or supererogatory act. Saying supererogatory prayer on a mount is the original case. Making prostration while reciting the Qur'an is the parallel case. Permissibility of doing these acts on a mount is the cause of the rule, and the rule is that, these acts belong to the non-obligatory category.

(iii) Qiyas Adna. This is an analogy where the cause is only one but less pronounced than the cause in the original case.

An example; Allah (S.W.T) says in Qur'an 24:2 "The woman and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes, let not pity withhold you in their case, in a punishment prescribed by Allah, if you believe in Allah and the last day" [37].

Having illegal sexual intercourse is an act of immorality, and matured male or female involved in such act should be given hundred stripes. Similarly, kissing and romancing a woman illegally is an act of immorality which is less than having real sexual intercourse. In this, a Qadi (Judge) may decide to flog the person involved with forty stripes.

Al-Amidi thinks that the Qiyas called Ajla or Awla or Qiyas Jali generally is not Qiyas, but it is the import of the speech. For this contention, he gives two reasons. First by consensus of opinion, it has been established that there is no condition for Qiyas that the reason suited to the rule in the parallel case should be more suited than in the original case. But this kind of reasoning can not be materialized without fulfilling this condition. Secondly, it is unanimously agreed that the original case is not included in the parallel case, and it is also not a part of it. But in this

kind of reasoning, the original case is part of the parallel case. For example, a master says to his slave; do not give even a grain to so and so. This indicates that he prohibited his slave to give a dinar and more than it. The original case, viz, a grain is included in it. The Qur'an verse which discusses issue of seeing an atom weight of good or bad is quantity of an act, good or evil.

The truth towards the above disagreement is that, the two ideas are saying the same thing because none of the two is saying that more pronounced cause in the parallel case is exempted from the text of the original case.

The only difference between the two ideas is that, some are given names to the nature of analogy based on the grade of the cause and establishing the law on the parallel case by extension from the original case, while others give no name by saying that the text covers everything that shares the cause with the original case.

(b) Qiyas Khafi (hidden)

Qiyas Khafi is an analogy where there is a possibility of many causes, and these causes are established by uncertain means. Al-Mawurdi and Al-Rawaiyani divided Khafi into three types: [38].

- Where the meaning of the original case is clear and equal to what is found in the parallel case.

Example: - Allah says in the Qur'an 4:23 "Forbidden to you for marriage are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, your brother's daughters, your sister's daughter, your foster mothers who gave you suck, your foster milk-suckling sisters, your wives' mothers, your step-daughters under your

guardianship, born of your wives to whom you have gone in, but there is no sin on you if you have not gone in them to marry their daughters, the wives of your sons who spring from your own loins, and two sisters in wedlock at the same time, except for what has already passed; verily, Allah is of forgiving, most-Merciful" [39].

Based on the above verse, classes of prohibited women are mentioned. Although father's aunt were not included in the verse, but father and mother's aunt are prohibited by jurist based on analogy of father's sisters and mother's sister, because of close blood relationship.

- Where the meaning of the original case is clear but vague and ambiguous in what is found in the parallel case.

An example is a sound Hadith of the Holy Prophet Muhammad (S.A.W). A slave girl Barirah was emancipated. Her husband was a slave. The Prophet gave option for remaining with her husband. The cause of the option may be the slavery of her husband.

Another example is that of edibility (Ta'm) as the causes of prohibition of usury in the case of exchange of commodities like wheat (bur), while others said the cause is storing while others combined the two.

- Where the meaning of original case is ambiguous and equivocal, but equal to what is found in the parallel case.

2. QIYAS SHABAH [40] (Analogy on the basis of resemblance). It means to apply the parallel case to the original on the basis of

resemblance. There may be a parallel case which resembles many original cases but resembling one more than the others.

Example: Where the parallel case resembles the original case in three qualities and the others in two qualities. In this case, it will be joined to the one which has more resemblance. A slave resembles a freeman, for he is a human being, rewarded and punished, thus he will be joined to the one to which he has more resemblance with free man.

3. QIYAS DALALAH [41] (Analogy on the basis of signification). It is an analogy where the parallel case is applied to the original case on the basis of a quality which is not the case (illah) of the rule, but it signifies the existence of the cause (illah) in the parallel case.

Example: It is permissible to perform supererogatory Prayer on a mount and it is also permissible to perform prostration while reciting the Qur'an on a mount. This shows that prostration while reciting the Qur'an is not obligatory and making prostration on a mount is a quality peculiar to the voluntary or supererogatory act [42]. Saying supererogatory prayer on a mount is the original case and making prostration while reciting the Qur'an is the parallel case. Permissibility of doing these acts belongs to the non-obligatory category.

Another Example: The divorce of a non-Muslim is valid, his Zihar (to call one's wife mother) is also valid, because he is a sane adult and under legal obligation.

In the above examples, the reasoning is based on an earlier decision which signifies that the cause of the rule of the original case is present in the parallel case.

4. QIYAS AL-AKS (Analogy on the basis of opposite). [43]. It is an analogy where the parallel case is having a similar idea and meaning expressly indicated, although the cause is not indicated in the original case. Al-Asfahani said that this is not Qiyas. Similarly, Ibn As-Sabag shares the same view that this is only extending the meaning to the parallel case but not analogy. Some jurists said it's metaphorical. My simple submission is that it's Qiyas because the law is established on the original case and extended to its opposite by analogical deduction.

Example: The Holy Prophet said to the Sahabas in one of his Hadith "If one has affairs with his wife, he is going to be rewarded. The Sahabas were surprised and said: O messenger of Allah, one of us will have sexual satisfaction with his wife and then be rewarded. The messenger of Allah said: What of if one does that illegally"? Some jurists support the existence of Qiyas Al-Aks with the verse of the Holy Qur'an where Allah Ta'ala said: "Had there been therein (in the heavens and the earth) alilah (gods) besides Allah, then verily, both would have been ruined. Glorified is Allah the Lord of the throne, (High is He) above all that (evil) they associate with Him" [44].

5. QIYAS FARIQ (Analogy of no separation). [45]. It is an analogy where the basis of the original case is similar in idea with the parallel case with no difference of separation. Although Al-Ghazali is of the view that this is not Qiyas, since the original case and the parallel case are the same with no separation.

An example is a sound Hadith of the Messenger of Allah where he says that if one of the partners in a slave emancipates his share, he should

give the price of the other shares of his partners to emancipate the other slave alone. According to this tradition this rule applies to a male slave alone.

But in this respect, there is no difference between a male and a female slave but of sex, and the lawgiver has not taken into consideration the difference of sex in emancipating the slave. Therefore on the basis of analogy, this rule will apply also to female slave.

Al-Amidi has added other kinds of Qiyas based on mode of establishing the derivative cause (illah Mustanbatah). It is either Munasabah (suitability) or Shabah (resemblance) or sabr wa taqsim (probing and division) or tard wa'aks (Co-extensiveness and Co-exclusiveness). [46].

1. If it is the first, the Qiyas is called Al-Ikhalah (Analogy by imagination).

2. If it is the second, the Qiyas is called Qiyas at Shabah (Analogy of resemblance).
3. If it is the third, the Qiyas is called Qiyas Al-Sabr (Analogy by probing).
4. If it is the foruth, the Qiyas is called Qiyas Al-ittirad (Analogy by Co-extensiveness).

2.3 HISTORICAL DEVELOPMENT OF QIYAS

Historical development of Qiyas can be categorized into three major periods: the period of the Holy Prophet (P.B.U.H), the period of the Khulafa'u Rashidun (Rightly guided leaders) and the period of the Mazahib (school of thought).

2.3.1 During the period of the Prophet (S.A.W).

Qiyas was a systematic form of reasoning in law, before it developed into a sophisticated doctrine, and it was simply used to show resemblance between two parallel cases. And before then, it started with the use of personal opinion (ra'y) in cases not covered by an explicit text (nass) using the employment of sound personal opinion (ra'y) to settle important matters. It was not uncommon in the pre-Islamic Arabia, so therefore the exercise of ra'y was not something novel in Islam.

The Prophet (Peace Be Upon Him) acted as a judicial authority in Medina and also appointed a number of persons among his companions as judges in various part of Arabia. The settlement of disputes naturally requires exercise of reason and personal opinion.

Obviously, the Prophet (Peace Be Upon Him) consulted his companions on different occasions and in doubtful situations, when he was not guided by revelation.

The emphasis of the Qur'an on mutual consultation in matters of social policy, and the special directive to the Prophet to consult the companions, signify the importance of the role of individual reasoning and judgement in Muslim society. Allah says: "Pass over their faults, and ask Allah's forgiveness for them, and consult them in the affairs" [47].

Also, Allah says, "And those who answer the call of their lord and worship none but Allah Alone, and perform As-Salat, and

conduct their affairs by mutual consultation, and spend of what he have bestowed on them" [48].

Here are some illustrations to show that the Prophet (S.A.W) had taken decisions on the basis of individual reasoning.

a. The Prophet (S.A.W) reportedly asked Sa'ad bin Mu'az (R.A) to decide the case of Banu Quraizah on the basis of his personal opinion. Infact, the Jews were happy that his decision is going to favour them being a soft-minded person.

He decided to have the male members executed and make the women and children captives. The Prophet approved his decision.

b. On the event of signing the treaty of Al-Hudaybiyah, the Prophet (S.A.W) asked Ali (R.A) to delete his name-Muhammad (S.A.W) the Prophet of Allah- from the document, and to write instead, Muhammad the Son of Abdullahi, as desired by Suhail bin Amr, the then representative of the Quraish. Ali (R.A) did not obey his order out of respect and homage to him. The Prophet made no objection to the exercise of his opinion in this matter but rather asked Ali (R.A) to show him the portion of his name and he (P.B.U.H) deleted it himself.

c. The Prophet is reported to have consulted his companions in a number of cases. His consultations about the fate of the captives of the battle of Badr and about the call to prayer (adhan) provide significant illustrations for the use of individual opinion in law.

d. Bilal (R.A) once came to the Prophet who was asleep to awake him for prayer. He awoke the Prophet (P.B.U.H) by uttering the words "The prayer is better than sleep". The Prophet appreciated the effort of Bilal (R.A) and included these words in the call for the dawn prayer.

e. The Prophet left the matter of appointing an Imam (head of state) to the judgement of the community. The selection of a right person obviously depends on the sound opinion of the people.

The above examples are situations where the Prophet welcomed opinion (Ra'y). To be more precise, here are some illustrations to show that the Prophet had taken decisions on the basis of similarity of two cases:

A. According to one tradition of the Prophet (S.A.W). The Prophet (SAW) said that the husband is rewarded for having intercourse with his wife. He was asked how a man could be rewarded for fulfilling his desire. He replied that if he had unlawful intercourse, he would commit a sin.

B. Another tradition is where Umar (R.A) kissed his wife while he was fasting. When the matter was reported to the Prophet (S.A.W), he said that there was no harm in kissing one's wife while fasting, just as there are some scholars who are of the opinion that kissing one's wife while fasting is not allowed, going by the doctrine of blocking the means to evil end which is likely to materialize if the means towards it is not obstructed.

C The Prophet (S.A.W) was asked about performance of Hajj by proxy. He replied to the questioner: what do you think if your father runs into debt and you pay it off on his behalf, would it be valid? The question said, yes. Likewise, the religion of Allah is more deserving.

Going by the above hadith, one can perform Hajj on behalf of dead Muslim or fast in the month of Ramadan or any other compulsory fasting, but one can not perform Salat (Prayer) on his or her behalf, that is because Salat must be performed by all matured Muslims at a fixed time and in all conditions.

D. The decision of Sa'ad bin Mu'az (R.A) as per the case of Banu Quraizah which I had mentioned earlier, that their male members were executed and he made their women and children captives, and the idea was approved by the Prophet, was based on the analogy of Allah's judgement in the Holy Qur'an, where Allah says: "The punishment of those who wage war against Allah and His messenger, and strive with might and main for mischief through the land is execution or crucifixion or the cutting off of hands and feet from opposite sides or exile from the land" [49].

This judgement was passed on them by Sa'ad (R.A) and was approved by the Prophet (S.A.W) because of the covenant between the Muslims and the Jews of Banu Quraniza that the two parties should not assist an enemy over the other. The Banu Quraniza assisted Quraish with plan and plots and in person during the battle of Al-Ahazab that is why such judgement was passed on them.

E. Some group of companions traveled out of media, among which were Umar bin Al-Khattab and Mu'azu bin Jabal. The two of them had wet dreams that necessitated Ghusl bath before prayer (Salat), and there was no water available. So Umar delayed his Salat while his partner Mu'az used sand to rub all his body, so as to serve as sand bathing. And this idea was built on an analogical deduction which is, in the absence of water, there will be sand ablution (tayammum), so also in the absence of water there should be sand bathing. Sand ablution is allowed in the Qur'an 5:6. When the Prophet (S.A.W) was informed of this analogy, the Prophet (S.A.W) said: that is not the correct measure, but rather it is enough for you to wash your face and your hands for prayer (Salat). Now bringing this backing might look strange, and that is because the Prophet (S.A.W) condemned the analogy. But then, the reasons for quoting this story are two:

1. The Prophet did not accuse Mu'az of making effort by analogy but instead informed him that there is no need for analogy. That is, performing sand ablution in the absence of water for a person who want to perform ritual bath.

2. All the analogical deductions made by the Prophet or the companions that where not corrected by the Qur'an or the Prophet himself are to be called Sunnah (Prophetic tradition). And making unintentional mistake in analogy by a sound jurist is not crime.

2.3.2 The period of the Khulafa'u Arrashidun:

This period started immediately after the death of Prophet Muhammad (S.A.W) 10 years after the Hijra. And it ended with the death of Ali (R.A).

This is one of the golden periods of Islamic History and that is so because the Sahabas (companions) saw the Prophet, they heard from him directly the dos and don'ts of Islamic legislation. Abubakar (R.A), who was the first Khalifa after the death of the Prophet, exercised Ijtihad. He fought those who refused to pay Zakat (Alms). He compiled the Qur'an. But a clear example of his exercising Qiyas (analogy) and many other companions is in the share to be given to the father's father, and collaterals in inheritance. This case is not directly mentioned in the Holy Qur'an nor is it mentioned in the Sunnah of Rasul Allah (S.A.W). [50].

Because of this, when a case of a woman who died and was survived by her mother, father's father and sister (not from the same mother), was presented before Abubakar As-Siddeeq (R.A), he contacted the companions for their views and opinion as to who are the legible heirs to inherit and what are the quantum shares to which they would be entitled. This generated a lot of controversies among the companions themselves.

In the above case, Abubakar As-Siddeeq (R.A) had allotted 1/3 to the mother and allowed sister to participate in the residue of the 2/3 with father's father, considering the father's father as a brother who agnatises his sister. Discussion will be made further on these two divergent opinions in the coming pages of this work in Sha'Allah. Ibn Rushdi, a

great Muslim jurist said: -"The main reason why there is a different approach to this legal issue is due to conflicting analogy". All Muslim jurists agreed that father's father will inherit but they disagree on whether he can exclude all the collaterals from the inheritance as the father would. [51].

There are two major understanding on the matter, all based on analogical deductions, by the companions. They are:-

1. Father's father stands as father and with regards to this he exclude the collateral. And that is the idea of the first Khalifa Abubakar (R.A), Aishah bint Abubakar, Abdullahi bin Umar, Abu Sa'id Al-Khudri, Huzaifa bin Yaman, Mu'azu bin Jabal, Abu Musa Al-Ash'ari and Abdullahi bin Abbas. [52]. These are some of the authorities strongly backing their ideas:

A. In the Qur'an Allah said: "It is the religion of your father Ibrahim" (Al-Hajj Q22:78), and in another verse, Allah said: "And I follow the ways of my fathers Abraham, Isaac and Jacob" (Suratu Yusuf Q:12:38).

The above verses have made mention of Abraham as the father of the children of Israel. And Jacob, popularly known as Ya'qub, were Abraham's grand and great grand children. Going by analogical deduction that father's father can stand the position of father; father's father by the above verses can exclude any heir capable of being excluded by father. [53].

B. In the Hadith, the Prophet (S.A.W) said: "Distribute specific shares to all entitled heirs and the residue go to the closest male relative of the deceased" [54].

Those who are excluding germane and consanguine brothers and sisters in the presence of true grand father back their opinion using the above hadith by saying that true grand-father is closer to the deceased than his brothers and sisters.

In Islamic Law sometimes when you are progenically close, marriage become prohibited (haram) between you. Examples are two germane brother and sister or germane brother and consanguine sister. So also, it is not allowed for a father to marry his grandson's wife and this is because they are too close. But the case of a brother is not so, he is allowed to marry his brother's wife after death or if he divorces her. Because of the above argument, father's father is closer to his grandson than germane and consanguine brothers and sisters. Again in Islamic Law, father's father is treated equally with father irrespective of many legal issues; for example, father has legal immunity to spend from the wealth of his child without being liable for the offence of theft. In the same way, the same privilege has been extended to father's father for spending the wealth of his grand child. This is not and can never be true with brother spending wealth of his brother.

The above authorities give father's father the right to stand the position of father and with that father's father can exclude germane and consanguine brothers and sisters in inheritance.

2. The second group include Zaid bin Thabit, Ali bin Abi Talib, Abdullahi bin Mas'ud, Umar bin Al-Khatab after been convinced by Zaid bin Thabit.

Here are some of the authorities used to back their view:

a. The similitude of father's father and collateral is like roots of a tree with two distinct branches. The two branches are closer and more related to themselves than the roots of the tree. The two branches of the tree stand in place of the collateral, the roots stand in place of the father's father, and the trunk of the tree stands in place of the deceased. That has been the view of Zaid (R.A).
b. In the analogy of Ali bin Abi Talib he considered the case of competition between grand-father and the collateral as of a valley with two fountains from which spring of water flow. To him, the fountains are more closer and related to themselves than the spring of water.
c. Brother is closer to the deceased than the father's father, because while the latter is father's father of the deceased, the former is child of the deceased's father. The child is always closer to the deceased than the deceased's father.

The above case of father's father and collaterals and many other cases is a proof that the companions considered analogical deduction as a source of law in the absence of any direct verse from the Qur'an or direct Sunnah of the Prophet on any legal matter.

2.3.3 The period of Mazahib (school of thought):

This period starts with the first year of the second century after Hijra to the year 132 (A.H). [55]. This is a period when different types of Islamic Knowledge were documented which included Usul Al-Fiqh.

(Islamic Jurisprudence). The interpretation of a textual injunction and its' application to a particular case obviously presupposes the use of reason and intelligence.

The emphasis of the Qur'an on mutual consultation in matters of social policy and its special directive to the Prophet to consult the companions signify the importance of the role of individual reasoning and judgement in times and places. Listed below are the methodology of the four Imams towards reasoning (Ijihad and Qiyas).

(A) THE METHODOLOGY OF IMAM ABU HANIFAH

The principles of Abu hanifah's methodology are summarized in his statement:

I first resort to the book of Allah to find evidence (if I am faced with an issue). If I do not find any (reference) therein, I resort to the Sunnah of the messenger of Allah, May Allah bless him and grant him peace, and authentic precedents from him which have been handed down by trustworthy persons. If I do not find anything in the Book of Allah or in the Sunnah of His messenger, I resort to the statement of his companions drawing (freely) upon these as I wish. I do not go beyond this to the statements of others. If the line of enquiry descends to the rank of Ibrahim Al-Sha'bi, or Ibn Al-Musayyib, then I am entitled to endeavour to use my Ijtihad in the same way as they had done. These are the cardinal principles of Abu Hanifah's Madh-hab.

(B) METHODOLOGY OF IMAM MALIK

Malik (May Allah be Merciful to him) adopted a different approach. He is reported to have said: How is it that whenever some

people come to us (with an argument),we abandon what Jibril brought to Prophet Muhammad (Allah's peace and blessings be on him), and argue with them? Malik's methodology is that of the people of the Hijaz, upholders of the school of Sa'id Ibn Al-Musayyib.

The principles of Malik's school of thought may be summarized thus, in order of priority:

a. Reliance on the unequivocal verbation test of the Qur'an.

b. Reliance on the clear or manifest meaning when it is general.

c. Validation of evidence from the Qur'an of a divergent meaning (Mufhum Al-Mukhlafa).

d. Validation of a harmonious meaning (Mafhuin al-muwafaqah).

e. Reliance on the Qur'an, warning or cautioning, as the effective reason for avoiding anything which is an abomination or immoral as in the Qur'anic verse: "For verily, it is an abomination or is immoral and impious" (6:145).

After these five principles with regard to the Qur'an, there are ten others from the Sunnah in order of priority:

- Consensus (Ijma')
- The practice of the people of Medinah.
- Qiyas (Analogical deduction)
- Istihsan, which involves setting aside an established analogy in favour of an alternative public interest in a better way.
- Blocking the means to evil (Sadd aldhara'i).
- Consideration of public interest (al masalihal mursalah).
- Testimony by the companion of the Prophet (if the chain of transmission is sound and he is an eminent companion).
- Consideration of disputed matters where divergent evidence is

strong.

- Presumption of continuity of that which is proven and negation of that which had not existed (Istishab).
- Acceptance of some laws which existed before Islam.

(C) METHODOLOGY OF IMAM AL-SHAFI'I

The principles of the school of thought of As-Shafi'i, may Allah be merciful to him, are contained in his book, AR-Risalah, which is considered to be the first and most comprehensive book on the principles of Islamic Jurisprudence. As-Shafi'i says in this book:

"The Qur'an and the Sunnah are the original sources of Islamic jurisprudence. If there is no clear evidence in these two, the legist may resort to qiyas from this two. If there is a hadith of the Prophet whose chain of transmission is sound, no other sources shall be consulted. Ijma is more authoritative than the report of a hadith transmitted by a single person.

"The interpretation of a hadith should be based on its clearly apparent meaning. If the hadith is open to various interpretations, preference should be given to the interpretation which is closest to the apparent meaning. If a number of Hadith, pertaining to a special issue, are equal in their import, preference should be given to the hadith those isnad is sound.

In this respect, a hadith whose Isnad is interrupted (Munqati) should not be consulted except those reported by Ibn Al-Musayyib.

"Analogy from a principle (asl), which has already been deduced from a previous principle, is not admissible. There should be no question as to "why" or "how" with regard to the original source

"Questions as to why should only be addressed to a subsidiary source of law. If analogical deduction from the original source proves to be sound, It should be accepted as such as a basis for proof."

(D) IMAM AHMAD IBN HANBAL.

The principles of the Hambali school of thought are extremely close to those of Shafi'i school. These principles, in order of priority are:

1. When evidence is available in the texts of the Qur'an and Sunnah, he does not consult any other source. If there is hadith which is "raised" (Marfu) to the level of authentic, he does not give priority to any other source such as the practice of the people of Medinah, independent reasoning, analogy, saying of a companion, or consensus based on the lack of knowledge of the questions in dispute.

2. If no test is available on a question, Ibn Hambal resorts to the juristic judgements of the companions. If he finds a companions saying that which is not contested by other companions, he adheres to his saying and gives it priority over any other practice opinion, or analogy.

3. If there is a difference of opinion among the companions over a particular issue, he chooses the opinion which is closest to Qur'an and the Sunnah. He would report the controversy in complete objectivity and abstain from making any decision.

4. He takes as an authority any hadith whether Mursal or Da'if (weak), whose authenticity – in either its chain of transmission or content – is not absolutely beyond question, provided it does not clash with an established practice, a companions saying, or a consensus of opinion. He would give such a hadith priority over analogical deduction.

5. In this opinion, analogy should only be resorted to as a source of law when there is a necessity of passing judgement on an issue which can not be settled by referring it to any one of the above-mentioned sources and principles.

6. He would adopt the principle of sadd al dhara'i (blocking the means to wrongdoing).

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CHAPTER THREE

3.0 THE PILLARS OF QIYAS: -

Qiyas means accord of a known (Case) with a known (Case) in respect of establishing a rule for them, or negating it from them on the basis of a common link between them by establishing the rule or its attribute or negating them. [1].

From the above definition, as well as from other similar definitions, it is evident that Qiyas has four pillars, namely: the original case, the new or subsequent case, the effective cause and the ruling of the original case.

This chapter will be devoted to an extensive exposition of these pillars.

3.1 The Original Case (Al-Asl)

Al-Asl is an Arabic word which literally means the original.

A-Qadi Abdul-Jabbar has given four meanings of asl as follows: (1) A way or channel to something; like the Qur'an which is the original source of all injunctions (asl-al-ahkam). (2) A law (hukum) by which a new case is covered (Maqis alaihi) and this is the original case for drawing an analogy (Asl-Qiyas). (3) A thing on whose knowledge depends the knowledge of another thing. (4) A thing which stands independently and nothing depends on it by way of analogy. [2].

There are differences of opinion among the jurists about the technical meaning of the original case. Thus, according to the theologians (Mutakalli mun), the asl means the text (nass). For example, the Qur'anic verse which prohibits wine or the hadith which prohibits barter of wheat

with unequal weight is the original case. As-Shawkani defines it as rule of law (thubut al-hukum). This opinion is held by Al-Qadi Abubakar Al-Baqillani and the Mu'tazilah. [3] The reason is that text (nass) and a thing on which another thing depends is called asl (original), therefore, the text (nass) is the original case (asl).

On the contrary, some other jurists believe that if the text is regarded as asl because it is a way through which a rule of law is known, then the statement of a narrator (qawlar-rawi) should be considered an asl for drawing an analogy because it is also a medium to know the text. [4].

Al-Amidi is of the opinion that, the dispute over this point is mere logomachy. Actually, this depends on the meaning of asl. Asl means a thing on which another thing depends. Hence the rule of law can be asl for the law (hukum) in the parallel case (far'u). If the law (hukum) is asl in the case of prohibition of wine, then the text (nass) by which the law is known is the original for the original, (aslul-asil). [5].

3.1.1 Conditions of the Original Case:

For the Asl to be a pillar of Qiyas, the following conditions must be fulfilled.

1. The rule of law must be extendible from the original case to the parallel case. [6]. This is because, the purpose of the analogy (Qiyas Al-Shari) is to apply a legal rule to a parallel case positively or negatively. If the law of the original case is not legal(shar'i) but sensual (hissi) or rational (aqli) or etymological (lugawi), then Qiyas will not operate in all such cases. According to the Jurists, analogy is not valid in rational, legal and sensual matter. [7].

2. The law of the original case (hukum al-asl) should be an established one (thabit) and not abrogated by any other law, so that it may be extendible to a parallel case. A law is extended from the original to the parallel case on the basis of a quality, which serves as a common connecting link (Jami). When the law is not established on the basis of a quality recognized by the shari'ah, it will not be taken into consideration. Majority of the jurists are of the opinion that the law applied to a parallel case is subsidiary to the law recognized and established in the original case (thubutihi fil-asl). This depends on the recognition of the original case by the lawgiver. If it is abrogated, it means that the lawgiver has abrogated it. So it could be extended to a parallel case. [8].

3. The law of the original case must be a recognized, legal and revealed authority; for the establishment of a legal injunction is either a text (Nass) of the Qur'an or of the Sunnah or the consensus of opinion (Ijma). [9].

The rules based on the text are two kinds: those whose causes are intelligible as prohibition of drinking beer, and those whose causes are not intelligible as the number of the raka'ats. Analogy is not operative in the latter. The injunctions whose causes are intelligible are further classified into two kinds: those whose cause is found in other similar cases too and those whose cause is not found in their parallel cases. Analogy is not operative in the latter kind of injunction but in the former. The rule established by Ijma are classified like those classified in the case of the text. Some Shafi'i jurists are of the opinion that analogy is not operative in the rules based on ijma unless the textual authority on which the Ijma stands is known. [10]. But the fact is that all Ijmas cannot be Ijma

(consensus) except when built on sound text (nass) which is the Qur'an and the Sunnah of the Holy Prophet (Peace Be upon Him).

4. The original case should not be a derivative from another original case. The injunction which is an original case for a parallel case should be independent having its own legal cause. But Abu Abdullahi Al-Basri and the Hanbali Jurists allow the validity of an original case even if it is based on another original case. The reason is that, the cause of the original and the parallel case is the same as found in the original case which has been derived from another original. [11].

It is disputed whether a rule of law derived by analogy can be the original case on the basis of the same cause (illah) other than the one on which this stands by itself. Al-Ghazali elaborates this condition; he says that a rule of law which is not based on the nass or Ijma is not capable of being a basis for analogical reasoning because this would lead to the analogy of resemblance (Qiyas Shabah). A rule derived from an original case may resemble a third parallel case and this third may be similar to the fourth one to the fifth. The end result will be that, the last parallel case will not resemble at last the first original case. This amount to taking a pebble and searching for the second, until the tenth pebble, the last one, will not resemble the first one in all its respects. This is because the increase of the minor differences will ultimately result in the variance between the first and the last. [12].

5. After assessing and acknowledging the cause of the original case, the rule of law should not be changed when applied to the parallel case. [13]. Under Islamic law, if one has forty goats, he should give one goat as Zakat. Imam Al-Shafi'i is of the opinion that since the injunction is

Supra-rational, one can give only a goat and not its price, Imam Abu-Hanifah is of the opinion that one can give a goat or its price, since the purpose of giving the goat is to supply the need of an indigent and not the goat by itself. Imam Al-Shafi'i replies that the latter idea is two folds: One, it is admitted that the object of giving the goat is to supply the need of an indigent, but this is the object in part and not in all. By mentioning the goat, the Prophet (SAW) might mean the goat and other, so that the indigent will share of the property of a wealthy person. Added to the above, giving the goat as Zakah will imply following both the literal and the obvious meaning of the text as well as its supra-rational character (ta'abbud). Two, the cause of this injunction is to satisfy the want of the indigent and this has been derived from the tradition. But, the derivation of value or cause in this manner nullifies or removes the very textual injunction. [14].

Al-Karkhi is of the opinion that original case is not valid except with the fulfillment of the following three conditions: [15].

a. The lawgiver has to indicate the cause of the rule, for his express indication of the cause is tantamount to his permission for the analogical extension.
b. That the Islamic community at large must agree upon its causality so that this rule is excluded from the category of the injunctions which are not causal, and whose causality is disputed.
c. The analogical extension of the original case should not contradict the general principles and doctrines of jurisprudence.

6. The cause of the rule of the original case should be definite and unambiguous. The reason is that the parallel case is covered by the law of the original case on account of the cause which is common to both cases. Where the original case is not causal, the analogy shall not be valid. [16]. Umar bin Al-Khattab (RA) is reported to have said to Abu-Musa Al-Ash'ari (RA): Be acquainted with similar cases and precedents and then compare the matters analogically by your opinion. [17]. It is important to note that, Umar (RA) did not mention the details of this process. A man for instance says to his wife, "you are unlawful for me". Opinion differs about the interpretation of this expression. Some take it as divorce others as Zihar, and a group as an Oath. But there is no express text or consensus about a transmitted method of analogical deduction from the original cases and about the legitimacy of their causality.

7. The evidence by which the original case is established should not contain or indicate the parallel case too. Where the parallel case is established by the same authority by which the original case has been established, the parallel case will no longer remain a parallel but will become original case. Therefore, showing an analogy between the two will be of no use because both had become independent entities. [18]. For example, in the hadith of the prophet (SAW) that says: "Do not sell grain for grain except that the payment is being made on the spot, and sell equal weight for equal weight".

Grain includes both wheat and maize, so considering wheat or maize to be the original case or the other way round will be invalid, because both cases are covered by text.

8. The parallel case should not have precedence over the original case, because a derivative law should of necessity be posterior to the case from which it was derived. If the subsidiary law is prior to the original case, this presupposes contradiction or contrariety between the two. [19]. This condition is valid if there is no evidence for the establishment of the parallel case except analogy. If this is allowed, the law of the parallel case will exist before the legal validity of the original case without any evidence, and this is an unattainable obligation. But in case there exists evidence other than the analogy for the law of the parallel case, then this condition of precedence is not necessary because the law of the parallel case will be established by an independent authority before its derivation from the original case. And later on when the original case is established, the law of the parallel case will again be established by it and by analogy. [20]. Some jurists normally give example of obligation of intention in ablution on the analogy of the intention in tayammum where it is obligatory.

The law of tayammum is posterior to the law of ablution because the Qur'anic verses about tayammum were revealed in Medina while the law about ablution came down earlier. According to my own little understanding, there is no need for any analogical deduction of intention because Allah says in the Holy Qur'an Chapter 98 Verse 5: "And they have been commanded to worship Allah, offering Him sincere devotion". The Prophet (SAW) also said in one of his Sound Hadiths: All actions are to be judged based on intention.

3.2 The New Case (Al-Far'u): -

The definition of Far'u is disputed amongst the jurists. Far'u is an Arabic word which means branch, ramification, section, division, subdivision and department. [21]. But jurists have different views as to the technical meaning. The following are some of it:

1. The theologians define far'u as rule of law required to be established by causation.

2. Some jurists define far'u as a case or an object about which a rule of law is sought by analogical reasoning.

3. Some define it as a case to which the law about another case is extended or an object whose rule of law is known at the secondary stage. An example is: If the law of drinking is called asl which is prohibited, then the law of drinking nabiz (date wine) in called far'u which is also prohibited by extension. And the above is the example of those who are considering the rule of law. But other jurists consider the object, the wine, as asl while the Nabiz as far'u [22], but my submission is that the first object is called the asl while the second object by extension is called far'u.

3.2.1 Conditions of the New Case:

The jurists differ on the conditions of far'u (parallel case). Some says it is two, some says it is five, and some are of the opinion that is more than five. Below are some of these conditions:

1. The law of the parallel case should in no case be a textual injunction (mansus alaihi). And if already there is an injunction from the Qur'an or the Sunnah of the prophet (SAW) on that matter or issue, then there shouldn't be analogical deduction (Qiyas). [23]. Analogy is operative where one case is covered by the text and the law of the other case is not known. And in case both the original and the parallel cases are covered by the text, one cannot apply one to the other. One of the juristic, sound and accepted popular principles is that; There is no analogical deduction in the presence of text on a matter or case, (La al-Qiyas Ma'a an-nass). [24].

Simply, it means that, there is no analogical deduction where text has covered a case. Example is the manumission of a Muslim slave only as an atonement or expiation for killing a believer unintentionally based on a wrong analogy of atonement for swearing by Allah (Aiman). Allah says about the former case: "Never should a believer kill a believer, but if it so happens by mistake, compensation is due. If one so kills a believer, it is ordained that he should free a believing slave and pay compensation to the deceased's family unless they remit it freely"…. (Al-Nisa 4:92). The above analogy is strongly rejected because Allah has made provision for the two cases differently and He said about the later:

"Allah will not punish you for what is unintentional in your Oath, but he will punish you for your deliberate oaths, for its expiation feed ten masakin (poor persons), on a scale of the average of that with which you feed your own families or cloth them or manumit a slave. But whosoever cannot afford (that), then he should fast for three days. That is the expiation for the oaths when you have sworn. And protect your oaths (i.e.

do not swear much). Thus Allah makes clear to you his Ayah (signs) that you may be grateful" Suratu Al-Ma'idah Q5:89.

In this case, making the Oaths is the original case while the killing stands as the parallel case, because if one atoned for his Oaths by manumission of a believer, it is generally accepted by all the jurists, but it is not compulsory that the slave is a believer unlike killing a believer unintentionally – which is compulsory to emancipate a believer.

Objections has been raised to the manumission of a Muslim slave as an expiation for Zihar on the analogy of the expiation for murder, for both these cases have been covered by the text of the Qur'an. Hence this analogy is invalid. Allah said about killing a believer as earlier mentioned (he must set free a believing slave…) Q4:92.

And if he calls his wife his mother (Zihar), his expiation is to free a slave. Allah said: "And those who make unlawful to them (their wives) by Zihar and wish to free themselves from what they uttered the (penalty) in that case is the freeing of a slave before they touch each other. That is an admonition to you. And Allah is All-aware of what you do" (Suratul Mujadalah Q56:3).

2. It is compulsory that the cause of the original case should be found in the parallel case, for the extension of the rule of law of the original case to the parallel case is due to the similarity of the cause of both cases. [25]. But this similarity has been expressed by different jurists in various ways. Al-Ghazali thinks that the self-same cause of the original case should be found in the parallel case. But Al-Amidi said that the cause of the parallel case should be common (Mushtarakah) with that of the original case. But Al-Baidawi calls it extension of the cause with only

difference or variation (wujud al-illah bila tafawut). And Al-Isnawi explains it as equality in respect of the cause (Musawi fi'i – illa). [26].

A-Ghazali has raised the question of certainty and uncertainty of the cause of the parallel case. According to him, if the cause of the parallel case is uncertain, yet probable (maznun), the law of the original case (hukum) can be applied to it validity. And this is the opinion of Al-Ghazali (may Allah have mercy on him, amin). [27].

Some of the jurists are of the opinion that the application of law to the parallel case is not known for certain. The law is applied to the parallel case on the basis of similarity between the causes of both cases. But in doubtful cases, the law cannot be applied. Imam Ghazali refutes this argument by adducing some examples. One of which is the sale of the skin of a dead animal not slaughtered in a traditional manner is void. The cause of the voidness or prohibition of this sale is impurity manner of the skin. On the analogy of this case, the sale of the skin of dog is prohibited or void for same reason. But it should be noted that the impurity of the skin of a dog is not established definitely, it is probable (Maznun). [28].

3. It is necessary that parallel case should not have precedence over the original case. Drawing an analogy of ablution with tayammum in respect of intention is an example of such Qiyas. [29]. According to As-Shafi'i, intention is necessary for the validity of ablution on the analogy of tayammum. But it is worthy of remark that the injunction about tayammum was revealed after that of ablution. In the case where the parallel case which is (ablution) has precedence over the original case which is (ablution) then the analogy is not valid, according to majority of the jurists. [30].

Imam Al-Ghazali's idea is weak because, as agreed by majority of the jurists, the parallel case should not have precedence over the original case. And if there exist a law on the parallel case, then there is no need for analogy completely.

3.3 The Effective Cause (Illah)

The literal meaning of illah changes from one condition to another, as change from health to illness and from strength to weakness. In other words, it refers to a cause of change in the existing condition of a thing. Hence, accident (arid) is called illah. [31].

Another view goes that it has been derived from the word, alal, which means to drink water by an animal a second time after it has drunk it once before. To put it more plainly and clearly, it means to drink water repeatedly. [32].

A third views says that the illah is a thing which effects another thing, whether that which it affects is a quality or essence, and whether it affects an action or not. [33].

Now, let us apply these meanings to the juristic definitions of the illah. According to the first meaning, the quality which affects the rule of law is called illah, for the condition of the textual law changes by it from particularity to generality. Before the determination of the illah, the rule of law was restricted to the case mentioned in the text. But after the discovery of this affective quality, the rule of law contained in the text excternally changed from particularity (Khas) to generality (am). Now the same rule of law will apply where the same illah (cause) is found. [34].

According to the second meaning, this quality is called illah, because, the rule of law is established eternally by this meaning, and it repeats by the repetition of this quality. Since a jurist reflects repeatedly

on a problem concerning analogy, his act of reflection on the rationalization of an injunction is called illah.

According to the third meaning, this quality has been named illah for it is effective in the establishment of the rule of law, whether in the original case or in the parallel case. [35].

The term illah has been technically defined variously as follows: [36].

1. It means the idea or ground which demands or determines the rule of law.
2. That which stands as a sign (alama) for the rule of the text.
3. That which signifies (mu'arrif) the rule of law, i.e. it is an indicator (dall) to the existence of an injunction.
4. That which is effective (mu'aththir) in the rule of law, i.e. that which causes the existence of the rule of law.
5. That which serves as a motive (ba'ith) for the rule of law, not by way of obligation (ijab), but being a wisdom (hikmah) or public good (maslahah) designed by the law giver while giving the rule of law.
6. That which necessitates the rule of law by itself (mujib lil-hukum) as held by the Mu'tazilah.
7. That which obligates the rule of law not by itself but on the authority of the lawgiver.
8. That which necessitates the rule of law by its nature or habit (adah) as held by Fakhr Al-Din Al-Razi.
9. That which draws the rule of law (Jalibah).

Due to the differences of opinion on the definition of the word illah, various names have been given to it. [37]. Some call it jam'i (common link or a connective between the original case and the parallel case) which justifies the use of Qiyas. Some call it (Sabab) (cause), amarah

(sign), da'i (motive), Mustad'i (urging factor), Ba'ith (driving force or motive), haml (bearer), dalil (indication), Muqtadi (that which requires or demands), Mujib (that which necessitates or obligates), and mu'aththir (effective). It is also call Jalib (that which draws the law), or mu'arrif (signifier) [38].

The different names of illah are among the cause of the multifarious meanings of illah enunciated above, although the meaning has been summarized by some jurists into four as follows. [39].

a. Illah is that which affects the law by itself (Al-Mu'aththir bi zatihi fil-hukum). This point of view says that the illah of a rule of law affects the law by itself. In other words, the illah of an injunction makes it obligatory. This view has been attributed by the medieval jurists to the mu'tazilah for the reason that they held that the evil and good of actions are rational. [40].

Hence, they are reported to have defined the illah as that which affects the rule of law by itself (mu'aththir bi zatihi).

Those who think that the rational causes (ilal – aqliyah) are affective by themselves think that the legal causes (ilal-shar'iyyah) are also the same. They are the mu'tazilah.

Just as fire, in their opinion, is the cause of burning by itself, without the creation of burning by Allah. To this point of view, an objection has been raised; a sane person can never think that time can be the cause of existence (mujid) for the obligation of prayer.

By the judgement of intellect (hukum – al-aql), they mean that it (intellect) perceives that there is a divine command for a given case, because there is an implication or a necessary connection (talazum) between the judgement of intellect and judgement of the shari'ah.

This has been explained by Ibn – Al-Human. He is of the view that the real point of view of the Mu'tazilah is that intellect in the first place perceives the good and evil of an action, and secondly it perceives that there is a divine command about that action according to its perception. They do not hold that the intellect imposes its judgement on Allah. Allah knows best.

b. Illah is that which signifies the law (arrif bili-hukum). [41]. Here illah means the signifier or the sign (alamah) of the rule. This definition has been adopted by Al-Baidawi, Tajudeen Al-Subki and other Shafi'i jurists. Tajudeen Al-Subki says that this view was held by the people of the truth. This definition was initially enunciated by some Shafi'i jurists like Fakh Al-deen AlRazi, and accepted by the later jurists. The Hambali too consider too consider the illah the sign (alamah) of the rule of law. Ibn Qudamah says: "The intensity of intoxication which you treated as the sign of unlawfulness of wine may be taken as the sign of lawfulness of wine for it does not necessitate the rule by itself". What this might mean is that to Allah alone belongs the right of saying this is legal and the other is illegal, regardless of whatsoever the cause or the illah might be.

Alamah literally means a sign (amarah), or that which signifies a thing- like minaret which indicates the mosque. Legally, it means a thing by which a rule of law is known, without its existence (wujud) and obligation (wujud) being dependent on it. The illah, according to this view, signifies the rule of law of the text, but it does not cause it to exist. The authority which causes the rule is Allah Ta'ala. [42].

The illah is only serving as a sign of the rule. Sometimes it exists and sometimes it does not. This is like a cloud which is a sign of rain, but the rain does not necessarily fall when there is a cloud.

The above definition of illah has been criticized on the ground that it is neither exhaustive (Jam'i) nor exclusive (mani). As for exhaustiveness, it may be noted that it does not include the illah which is denied from the text (mustanbadah), for such an illah is known by the rule of law.

However, Al-Taftazani is not satisfied with this definition. He criticized it as follows: In the first instance of the quality (wasf), which constitutes that the illah is a sign for the law of the original case and it signifies it; it will resultantly signify the rule of law of the parallel case. Besides, if it signifies the rule of law of the original case, and not of the parallel case, in the sense that it is not the motive of the rule of the original case, then it would mean that the original case has no connection with the parallel case.

The other objection is that the definition of the ilah as a signifier (mu'arrif) is also not exclusive (mani) for it includes the sign (alamah) too. And alamah differs from sign because legal injunctions about transactions and punishments are attributed to their causes.

For example, ownership is attributed to the purchase, and retribution to murder. But is should be noted that the legal injunctions are not attributed to the sign (alamah) as the punishment of storing is not attributed to ihsan (quality of being free, and married in the case of commitment of adultery by a married person).

c. Illah is that which necessitates or obligates the rule of law not by itself but on the authority of Allah Ta'ala. In the other words, illah does not make a thing obligatory by itself as the mu'tazilah believed, it is Allah who obligates and the obligation is attributed to the illah figuratively. [43]. This definition has been enunciated by the Hanafis. This is the

middle way between the two extreme views of the mu'tazilah and of the Ash'aris. The Ash'aris thinks that the illah produces no effect on the rule of law. It pays no role in the obligation of law. They do not attribute the obligation of commands to the illah.

Going by the above definition, A-Bazdawi observes that Illah is the one which the obligation of a rule of law is attributed primarily (ibtida'an)- as marriage is the illah of lawfulness of a woman, and murder is the illah of retaliation, but the legal causes (ilal-shar) do not obligate the rules of law themselves. It is Allah Ta'ala who obligates them. Since His act of obligation (ijab) is attributed to the causes (ilal), they become obligating (mujibah) for the people by virtue of being made so by the lawgiver. He further said. "If we treat the causes (ilal) as obligating (mujibah) by themselves, it will lead to polytheism for The One who really obligates is Allah alone." Allah says: "The command or the judgement (and law giving) is for none but Allah" (Suratu Yusuf Q12:40).

It is also not possible to treat the causes (ilal) as mere signs (alamat) for in this case the actions of man will become devoid of will and thus all the rules of law will become predestined without any causes.

Retaliation, for instance, was instituted as a retribution (jaza) for the action of the offender, and similar to it is the case with the prescribed punishments (hudud). And if we treat the causes as mere signs, as the Ash'aris think, the punishments (uqubat) will no longer remain retributions.

d. Al-Amidi, Ibn Hajib, Sadr Al-Shari'ah and Kamal Bin Al-Humam and other jurists says: Illah is the motive (ba'ith) which moves the lawgiver to give the law.

Al-Amidi says: It is disputed amongst the jurists that the illah in the original case is used in the sense of abstract or pure sign (amarah mujarradah). The generally accepted view is that the illah must have the sense of motive (ba'ith) in the original case. [44]. In other words, it contains the wisdom or inner reason (hikmah) which is the purpose of giving the law, otherwise it is a quality of general type (wasf tardi) having no wisdom (hikmah) in it.

Ibn Al-Hajib has also given the same definition and the objection to the use of the illah in the sense of pure sign of the rule of law. Explaining the purpose of the lawgiver, the cause of prohibition of wine has not been mentioned in the Qur'anic verse. But the cause is intoxication which has been derived from it. [45].

Ibn Al-Humam does not call the illah the motive (ba'ith) which moves the lawgiver to institute the law. His definition however carries the same meaning.

He defines it as "a quality for which a rule of law is established for the attainment of the wisdom which is either acquiring public good or completing it, or averting the evil or mitigating it". He further says that "this wisdom (hikmah) is the object of the lawgiver by instituting the law, and the quality which constitutes the illah has the probability (mazannah) of bearing this wisdom". [46].

The word ba'ith has been interpreted by most of the scholars as a motive or an incentive which induces the lawgiver to give the law.

The intentional murder by aggression is the motive (ba'ith) which moves the lawgiver to give the law of retaliation to protect human life from murder. But according to some jurists, this motive does not bind Allah or compel Him to command or prohibit a thing necessarily.

The mu'tazilah on the contrary, holds (as attributed to them) that the illah binds Allah to command or prohibit, for according to their theory, to command what is fittest for man is binding on him. The jurists view is that nothing is binding on Allah.

The Ash-aris however criticized the interpretation of illa as ba'ith. In their approach to legal injunctions following Fakhr Al-deen Al-Razi, they think that the rules of the Shari'ah are not subject to causation and not based on public interest and human good. [47].

They come into being by the creation of Allah and His will. Criticizing the definition of the illah as Ba'ith, ibn Al-Subki says: We, the Shafi'is, interprete the illah as mu'arrif (signifier or sign) and do not interprete it as ba'ith (motive). We criticize those who interpreted it as ba'ith, for nothing moves Allah to do a work.

Similarly, those who defined the illah as Ba'ith criticized their opponents i.e. those who reject the causation of legal injunctions and think that the illah is only a sign and not cause. The view that the legal Shar'iyyah (aqliyyah) causes are analogous is erroneous, for there are causes which are not appropriate (for the rules of law); and those which are appropriate do not obligate the rules by themselves, but it is possible that the rule may not prohibit wine, and that the hadd punishment may not be inflicted necessarily by fornication and theft.

The difference of opinion in the definition of the illah is due to divergence in approach to the causation of the rules of the Shari'ah. It is however definite that the rules of the shari'ah have their causes and they can be attributed to the lawgiver as well as the jurist. The attribution of a legal cause to the lawgiver means that, that is the reason why He gives the law. Its attribution to the jurist means that he thinks that the rule of

law in a given case is so and so in his opinion when he ascertains its cause. In a word, illah may be defined as a quality which necessitated the knowledge of the rules of the shari'ah in cases which are not covered by the text.

3.3.1 The Conditions of Illah

Muslim jurists stipulate several conditions that must be fulfilled before illah is regarded as valid, even though most of them are controversial. The most essential and controversial of them are summarized as follows:

(1) The illah must be effective in relation to the law. If it is not effective, it will not be a valid illah, for it must have an effective reason (ma'ana muathir) in relation to the rule. [48]. And effectiveness here means the rule of law that exists with the existence of the illah and is eliminated by its elimination. For example, intoxication is the illah of prohibition of drinking wine or alcohol.

(2) It should be consistent and of regular quality (wasf thabit) indicating or containing the underlying reason (hikmah) of the rule designed by the lawgiver. The illah should not be the pure wisdom of the rule, for it is generally latent and irregular. It is disputed whether the hikmah by itself can be the illah instead of a quality (wasf) which contains it. Al-Imam Al-Razi in his book "Al-Mahsul" said that pure wisdom can be the illah of a rule of law, and other jurists invalidate this view. The third view is that of Al-Amidi and Assafi Al-Hiadi (died in the year 750A.H) which goes that if the hikmah is obvious (Zahir) and regular (Mundabit), it can be the illah of the rule.

Most jurists agree that the quality which contains the hikmah or the probable quality which contains it is the illah of the rule so long as it does not contradict Qiyas. Except Imam Abu Hanifa who rejected this idea. [49].

An example is the hikmah of shortening the prayer and suspending the fasting during journey which is hardship. It is not the illah because it is irregular (Adam indibat), for it changes from condition to condition and from person to person. More over, it has several degrees.

(3) It should be evident. In case it is not so, the rule of law cannot be applied to the parallel case. The reason is that, if the illah is more latent than the illah of the parallel case or equal to it in respect of latency, the rule cannot be applied to it. [50]. Therefore, the journey and not hardship has been appointed as the illah of shortening prayer and omitting fast during journey, the rule may also be applied to the residents when they feel hardship in doing complete prayers and keeping fast. Besides some travelers may not feel hardship during journey and therefore may not shorten their prayer, although it applies to all travelers. [51].

(4) It should not contradict the causes (illah) that are stronger than it. The reason is that the law is grounded in a stronger illah and not in a weaker one. This is like the text (nass) as compared with analogy (qiyas). In the presence of the text, the rule of law will be based on the text and not on analogy. [52].

(5) The illah must be definite.[53]

(6) The illah should not be implicit and assumed (muqaddar). Assafi Al-Hindi says that the majority of the scholars maintain that the causation of the rules by the assumed qualities (sifat muqaddarah) is not valid. Only a minority of the later jurists allow it.

(7) Where the illah is deduced, it should not contradict anything in the original case. [54].

(8) Where the illah is deduced, it should not establish anything additional to the text, i.e. it should not establish a rule not established by the text. [55].

(9) In case there are two causes of a rule of law, the original cause should not contradict the other cause in such a way that both seek to establish the contradictory rules. [56].

(10) In case the original case is conditional, it is not permissible that the illah should be the cause of eliminating the condition. [57].

3.4 Al-Hukum (The Ruling)

Al-Hukum is an Arabic word which literally means rule, [58] and technically, it means a ruling such as command or prohibition, and is dispensed by the Qur'an, the Sunnah or Ijma.

3.4.1 Conditions for Al-Hukum

1. It must be a practical shar'i ruling, for qiyas is only operative in regard to practical matters in as much as this is the case with fiqh as a whole. The general maxim such as original freedom from liability (Al-bara'ah Al-asliyyah) will continue to be real in all aspects of life except when there is any ruling from the only lawgiver (Allah). [59].
2. The Hukum must be operative, which means that it has not been abrogated. [60].

3. The Hukum of the original case that need to be extended by Qiyas (analogy) must not be subject of disagreement and controversy by the majority of the jurists. [61].
4. The Hukum must be rational in the sense that the human intellect is capable of understanding the reason or the cause of its enactment or that the illah (cause) is clearly given in the text. [62].
5. The Hukum must not be confined to an exceptional situation or to a particular state of affairs. When prophet Muhammad (SAW) admitted the testimony of Khuzaimah alone to be equivalent to that of two witnesses, he did so by way of an exception. Therefore this case is not extendable. [63].
6. The law of the text must not represent a departure from the general rules of Qiyas. For example, travelling during Ramadan as the cause of a concession is an exception to the general rule which requires everyone to observe the fast. It may not therefore form the basis of an analogy in regard to other types of hardship. [64].

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CHAPTER FOUR

4.0 THE VALIDITY OF QIYAS AS A SOURCE OF ISLAMIC LAW

This chapter will dwell deeply into the divergent opinions of jurists on the validity of qiyas as a source of Islamic law – elucidating on the views of the advocates and opponents of qiyas, and their justifications from the Qur'an, Sunnah, and practices of the Sahabas, and from rational approach.

4.1 THE JUSTIFICATION OF QIYAS AS A SOURCE OF ISLAMIC LAW

The use of qiyas in cases not covered by text (nass) started during the lifetime of the Holy prophet (SAW). The same was the case during the period of the Sahabas (companions) of the Prophet (P.B.U.H).

Despite this solid foundation however, some later jurists began to reject qiyas as a valid source of Islamic law. According to Dr. Umar Sulayman Al-Ashqar, the first person to reject qiyas as a source of Islamic law was Ibrahim bin Sayyar Al-Nayyam, followed by some group of Shi'ah and the literalists (Ahl-al-Zahir). [1].

4.2 AUTHORITIES RELIED UPON BY THE SUPPORTERS OF QIYAS

Majority of the companions of the Holy Prophet (SAW), the jurists of the four Sunni schools and the Mu'tazilites consider qiyas as a valid source of Islamic law. In holding this view, they rely upon some Qur'anic verses, Ahadiths, decisions of the companions (of the Prophet – SAW), and rational reasoning.

4.2.1 Authorities From The Qur'an

Proponents of qiyas as a valid source of Islamic law advance the following verses of the Qur'an to back their opinion.

1. Allah says: "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 do believe in Allah and the last day. That is best and most suitable for final determination" (Q4: 59).

The above verse is commanding the believers to refer their cases back to the Qur'an and the Sunnah whenever there is dispute over something, if they really believe in Allah. The proponents of Qiyas have reasoned that a dispute can only be referred to Allah and to the Prophet by following the signs and indications that we find in the Qur'an and Sunnah. One way of achieving this is to identify the rationale of the ahkam (Laws) and apply them to disputed matters, and this is precisely what qiyas is all about. Imam Al-Shafi'i said that the matter should be referred to the Qur'an and then to the Sunnah. If there is no direct solution, then analogy must be applied to solve the matter, and that is qiyas. [2].

2. Allah says: "If they had only referred it to the messenger or to those charged with authority among them, the proper investigators would have known it from them (direct)". Q4 V 83.
3. Allah says: "The mothers shall give suck to their offspring for two whole years for him who desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms ……. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them…" (Q2 V 233).

4. Allah says: “There shall be for divorced women provision honourable” (Q2 V 241).
5. Allah says: “O you who believe! When you marry believing women and then divorce them before you touch them, you have no period to reckon against them, so make provision for them and set them free with kindliness” (Q33 V 49).
6. Allah says: “……. So pardon them, and pray for forgiveness for them, and take counsel with them in the affairs. And when you are resolved, put your trust in Allah” (Q3 V 159).
7. Allah says: “Test well the orphans until they reach the age of marrying, then if you perceive in them sound judgement, deliver to them their property”(Q4 V 6).
8. Allah says: “Whosoever commits aggression against you, then commit aggression against him like as he has committed against you” (Q2 V 194).
9. Allah says: “…. Who, when they expend are neither prodigal nor parsimonious, but between that is a just stand” (Q25 V 67). Balanced expenditure depends on exercising of sound reasoning.
10. Allah says: “And we have sent down unto thee also the message, that you may explain clearly to men what is sent for them, and that they may give thought”(Q16 V 44).
11. Allah says: “It is He who got out the unbelievers among the People of the Book from their homes at the first gathering of the force. Little did you think that they would get out. And they thought that their fortresses would defend them from Allah! But the wrath of Allah came to them from quarters from which they little expected, and He cast terror into their hearts so that they destroyed their dwelling by

their own hands and the hands of the Believers. Take warning, then O you with eyes to see"(Q59 V 2).

The aforesaid Qur'anic verses cited by the jurists are not originally meant for justifying doctrines like analogy as an independent legal thinking, but their ensemble signifies one important postulate. The Qur'an in all such verses candidly approves of the exercise of individual opinion, employment of personal judgement and employing the faculty of speculation, conjecture, deep thinking and contemplation in religious-social affairs. It provides wide latitude for variant approaches to a problem. [3].

The opponents of qiyas as a source of Islamic law have reservations as well as objection as per the interpretation given to the above verses backing qiyas as a source of Islamic law. They said these verses and its like are not supporting qiyas as a source of Islamic law.

In case of dispute in matters of concern, the Qur'an requires us to refer to Allah and the Prophet (S.A.W) - (Q4:59). Al-Jassas interpretes that this verse means derivation of rules from the Qur'an and the Sunnah by individual reasoning (Ijtihad) and reflection (Nazar).

Qur'an 2:233 gives liberty in providing maintenance honourably or according to the prevalent custom. Moreover, mutual consultation and agreement require freedom of opinion in making a decision for weaning the child.

Q2:241 and Q33:49 recommend that the husband should make some provision for the divorced woman in addition to the dower. The Qur'an is silent on the quality and quantity of the provision. This will be determined by the husband's fair judgement (Ijtihad) and conjecture.

The direction of the Qur'an to the Prophet to consult his companions and to take counsel with them in matters of concern (Q3:159) justifies the use of reason and individual opinion in legal reasoning. The Prophet used to consult his companions in questions not decided by revelation. He then adopted the opinion which was sound and reasonable in his eyes.

Q2:194 require that if any one commits aggression, he should be paid in his own coins. It is remarkable that the degree of aggression will only be determined by one's thinking and speculation. The counter aggression should be similar to the one committed by the other party. The similarity cannot be determined without the exercise of reason. [4].

Q16:14 called people to reflect upon the cases not covered by the text. Such types of cases are to be settled by exercising analogy with textual injunctions on the basis of similarity.

The key-word in Q59:2 is Fa'tabiru (take heed, or lesson or warning). Al-Jassas and other jurists have made lengthy discussions on explaining the meaning of the word. They seem to agree that deciding questions for which there is no precedent on the basis of analogy (I'tibar) is an explicit Qur'anic commandment. I'tibar connotes consideration and comparing one thing with the other. In view of this word, I'tibar, the classical jurists have asserted that exercise of analogy in law is not only permissible but obligatory on Muslims. The verse in question refers to a historical incident, which took place at the time of the Prophet (SAW). The tribe of Banu Nadir concluded a treaty with the Prophet to remain neutral. But they violated their vow after the defeat of the Muslims at Uhud. The term I'tibar in this verse and many other verses therefore means to take a decision in any matter for which there is no precedent

similar to one taken in parallel on the basis of common ratio on which the original decision stands. [5].

As-Shaukani mentions the following verses in addition to the previous ones. Allah says: "……. Who shall quicken the bones when they are decayed? Say: He shall quicken them, who originated them the first time" (Q36:78-79).

Allah says: "Allah is not ashamed to strike a similitude even of a gnat, or aught above it" (Q2:26).

Al-Badawi tends to show that Muslims are duty-bound to think deeply over the causes and values of injunctions of the Qur'an. He contends that the Qur'an mentions a large number of anectotes from the past history so that people may take lesson from them. This can be done by reflection upon the historical events mentioned in the Qur'an. This type of thinking is called I'tibar. From this, it follows that I'tibar and qiyas are identical. The former stands for taking a lesson from a past event and applying it to the corresponding existing situation. Qiyas conveys the same meaning. Here the value is the common factor between the two similar rules of law, as a lesson or warning is a common factor between the two situations in the case of I'tibar. [6].

4.2.2 AUTHORITIES FROM THE SUNNAH:

Here are some Ahadith which prove qiyas as a source of Islamic law according to its advocates. [7].

1. The Prophet (SAW) resorted to qiyas when a woman known as Al-Khata'amiyyah came to him and said that her father had died without performing the hajj. Would it benefit him if she performed the hajj on her father's behalf?

The Prophet (SAW) asked her: Supposing your father had a debt to pay and you paid it on his behalf, would this benefit him? To this, her reply was in the affirmative. And the Prophet (SAW) said, the debt owed to Allah merits even greater consideration. [8].

2. According to another tradition of the Prophet (SAW), the Prophet (SAW) said that the husband is rewarded for having intercourse with his wife. He was asked how a man was rewarded for fulfilling his desire. He replied that if he had unlawful intercourse, he would commit a sin. If one is accountable for doing an evil, why should not one be rewarded for doing good? It is very clear that the Prophet (SAW) in this case derived a rule from the unlawful intercourse for lawful one on the basis of analogical deduction. [9]

3. In popular hadith on Mu'az, when the Prophet sent him to be a judge in Yemen, the Prophet asked Mu'az bin Jabal that if a case is brought before him, how will he judge it? He said: I will judge with the Qur'an. Then the Prophet (SAW) said: if you could not get the solution directly in the Qur'an? Then he said: I will judge with the Sunnah. The Prophet (SAW) said: if you could not get the solution directly from the Sunnah? He said: I will resort to my own Ijtihad (reasoning). [10].

   Since the hadith does not specify any form of reasoning in particular, then analogical deduction falls within the meaning of this hadith.

4. On the event of signing the treaty of Al-Hudabiyah, the Prophet (SAW) asked Ali to delete his name, Muhammad (SAW)- the Prophet of Allah, from the document, and to write instead Muhammad- the son of Abdullahi, as desired by Suhaib bin Amr,

the representative of the Qurayish. Ali did not obey his order out of respect and homage to him. The Prophet (SAW) made no objection to the exercise of his opinion in this matter.

5. Abu Hurairah (RA) states that he heard the Holy Prophet (SAW) saying: "Suppose if one of you had a running canal at his door and he takes bath in it five times everyday, then would any dirt be left on his person? The companions submitted: In such a case, no dirt would be left on his person. The Holy Prophet (SAW) remarked. Similar is the case of the five obligatory prayers. Allah remits all sins in consideration of these prayers" (Bukhari and Muslim).
6. The prophet is reported to have consulted his companions in a number of cases to do Ijtihad in his presence. He was reported to have asked Sa'ad bin Mu'az to decide the case of Banu Quraizah on the basis of his personal ijtihad.

   He decided to have the male members executed, and made the females and children captives. And the Holy Prophet (SAW) approved his decision.

4.2.3 DECISIONS OF THE COMPANIONS

1. No one among the companions is reported to have rejected qiyas, nor had any of them ever hesitated to exercise qiyas in legal matters. They were all at one on the validity of this doctrine. From this, one must conclude that the companions must have been familiar with the permissibility of this doctrine, and of exercising personal opinion and independent legal reasoning by the instruction of the Prophet (SAW). Were it not so, they would never agree upon its use in law. [11].

2. Al-Jassas said that there is a consensus of opinion among the companions upon the validity of qiyas. [12].
3. Abubakar As-Sidiq (RA) drew on analogy between father and grandfather in an aspect of their entitlements in inheritance. [13].
4. Umar bin Al-Khattab is reported to have ordered Abu Musa Al-Ash'ari to ascertain the similitudes for purposes of analogy. [14].
5. The companions pledged their allegiance (Bai'ah) to Abubakar (RA) on the strength of the analogy that Umar drew between two forms of leadership. Umar (RA) and the companions were aware that during the sickness of the Holy Prophet (SAW), he commanded Abubakar (RA) to lead the Sahabas in Salat (Prayers). Based on this fact, Umar (RA) asked the companions: "Will you not be satisfied as regards worldly affairs, with the man with whom the Prophet was satisfied as regards religious affairs? And they agreed with Umar's (RA) analogical deduction. [15].

4.2.4 RATIONAL REASONING

1. The express textual injunctions in the Qur'an and the Sunnah are limited in number, while the incidents and problems of life are unlimited and unending. Hence, it would be illogical to assert that all the problems and exigencies of life will be covered by the textual injunctions. Reason demands that rules of law should be derived from the fundamental sources by means of exercising reason and individual opinion. Qiyas therefore is a mode of reasoning to legislate for novel questions, to reveal the divine rule of law, and to harmonize between divine legislation and human interests. [16].

2. Qiyas is countenanced by nature and logic. The intellectuals in their reasoning derive conclusions, through the process of qiyas. Those who prohibit drinking wine because it is an intoxicant prohibit other intoxicants too based on sound analogical deduction on wine. Similarly, those who forbid behaviour which involves cruelty and injustice forbid all such practices that involve injustice. There is no difference of opinion among the jurists in general on the fact that what applies to one object applies to the similar object. To differentiate between the two parallel objects would be rather injustice; hence the use of qiyas in legal reasoning is nothing novel. [17].
3. Public benefit and general interest are the ends and object of divine legislation. If two incidents are similar, and one of them is covered by clear legal rule, but not the other, it would be illogical not to apply the rule of the one to the other on the basis of the common link.

   If the purpose of the prohibition of wine is the preservation of human sense and reason, then all intoxicants should logically be prohibited on account of intoxication. [1].

4.3 AUTHORITIES RELIED UPON BY THE OPPONENTS OF QIYAS

The opponents of Qiyas as a valid source of Islamic law are mainly the Rawafid, the Ibadiyyah, the Azariqah, some Najdat from the Khawarif, a group of the Mu'tazilah of Baghdad like Yahaya Al-Iskafi, Ja'far bin Mubashshir, Ja'far bin Harb, Dawud Al-Ishafani, Ibrahim Al-Nazzam and the Zahiri jurists. In their opposition to Qiyas, they quote some Qur'anic verses and cite many Ahadith to support their arguments. Some of the Qur'anic verses they quote are as follows:

1. Allah says: “This day I have perfected your religion for you, completed My favour upon you, and have chosen for you Islam as your religion” (Al-Maidah Q5:3).
2. Allah says: “And we have sent down to you The Book (the Qur’an) as an exposition of everything, a guidance and mercy, and glad tidings for those who have submitted themselves to Allah as Muslims” (An-Nahl Q16:89).
3. Allah says: “With clear signs and Books (we sent the messenger). And we have also sent down unto you (O Muhammad – SAW) the Zikr (reminder and the advice that you may explain clearly to men what is sent down to them and that they may give thought)- Surah An-Nahli Q16:44.
4. Allah says: “Surely we have sent down to you (O Muhammad – SAW) the Book in truth, that you might judge between men by that which Allah has shown you, (i.e. has taught you through Divine revelation), so be not a pleader for the treacherous” (Surah An-Nisa Q4:105).
5. Allah says: “There is not a moving (living) creature on earth, or a bird that flies with its two wings, but are communities like you. We have neglected nothing in the book, and then unto their Lord they all shall be gathered” (Surah Al-An’am Q6:38).
6. Allah says: “Say (O Muhammad, to mankind) if you love Allah, follow me: Allah will love you and forgive you your sins. Allah is forgiving and merciful” (Surah Al-Imran Q3:31).
7. Allah says: “Similarly we have sent among you a messenger of your own, reciting to you our verses (the Qur’an) and purifying you and teaching you the book (the Qur’an) and Hikmah (the Sunnah), and

teaching you that which you used not to know" (Surah Baqarah Q2:151).

8. Allah says: "O you who believe! Make not decision in advance before Allah and His messenger, and fear Allah. Verily, Allah is All-hearing, All-knowing ("Surah Al-Hujurat Q49:1).

Based on the above verses of the Holy Qur'an and many other verses with almost the same meaning, the opponents of qiyas holds that analogical deduction is forbidden. However, a closer observation will show that all these verses are telling us is that legislation is only from Allah and His messenger, while advocates of qiyas are giving the jurists chance to also legislate law from their own understanding. They further said that the Qur'an has provision for all events of the past, the present and the future. Because of this, qiyas is not necessary.

And the following are some of the ahadith they cite:-

1. From Aishah (RA) who relates that the Holy Prophet (SAW) said: "If somebody tries to introduce into this faith of ours (Islam) something which is not a part of it, it is to be rejected (and the person is condemned)"- Related by Bukhari and Muslim.

Another tradition by Muslim says; "If anybody introduces some innovation or practice, which is not authenticated by me, it is to be rejected (i.e. the person responsible for the innovation is to be condemned)."

2. From Abdullahi bin Mughafal (RA) who relates that the Holy Prophet (SAW) prohibited stoning with the help of the thumb and forefinger, as a missile, and said: such a shot neither kill a game nor harm the

enemy, but it injuries the eye and breaks a tooth (Related by Bukhari and Muslim).

Another version says: A close relative of Abdullahi bin Mughaffal shot somebody with a stone in this way. The latter admonished the former saying: The Holy prophet (SAW) has forbidden this practice and said that it does not kill the game. But the man did not listen and continued throwing stones where upon Abdullahi bin Mughaffal (RA) said to him: I told you that the Holy prophet (SAW) had forbidden such throwing of stones and yet you repeat it. I shall never speak to you again (Related by Bukhari and Muslim).

4.3.1 IBN HAZM'S ARGUMENTS AGAINST QIYAS

It is believed that Ibn Hazm's doctrines against Qiyas originated as a reaction to the wide spread activities of those who applied analogical deduction (qiyas) to nullify legal decisions in matters of religion. Then the new doctrine reached Muslim in Spain and was adapted by a small number of Andalusian theologians through whom it reached ibn Hazm who developed the new doctrine and became an eloquent spokesman of it. The essence of Zahirite doctrine centers on the idea that the Qur'an and the authenticated traditions ought to be the sole guiding criteria for arriving at judicial theological decisions. They should be understood in the context of what they say rather than what they may imply. This can be done by adhering strictly to the apparent meaning (zahir) of the test and by conforming to the grammatical and lexical rules of the Arabic language. Hence, the name of the new doctrine (al-zahiriyyah) which emphasized the exoteric meaning of the text as opposed to the traditional way of emphasizing the esoteric (batin) meanings of the text. [19].

Ibn Hazm waged a fierce and ceaseless war against the advocate of qiyas in matters of religious law. He wrote extensively, refuting Qiyas, especially in his "Al-Ihkam fii Usulil Ahkam", in which he advanced a lengthy argument against it.

The following discussion is an attempt to elaborate on Ibn Hazm's rejection and refutation of qiyas – his approach, the basis of his rejection and examples of his refutation. Due to the wealth of information that Ibn Hazm provides, under this topic, only a sampling is possible here: reference is to be made when necessary for more details and examples.

In his religious writing and discussions, Ibn Hazm depended on the text as well as the rational principle which are determined by the self-evident truth of the intellect. For this, he refutes from the outset all the theories that employ qiyas, emphasizing that Allah's revelation are all clear, self-proven, and exoteric with no hidden or esoteric meanings. [20]. It is a general rule for Ibn Hazim to follow the way of disputation in arriving at his demonstrations and proofs.

He begins by singling out his opponent's evidence one by one. Then he proceed to discuss them revealing their invalidity, mentioning proofs that would support and confirm his claim on one hand and renders as invalid his opponents' claims on the other hand. In the second stage, Ibn Hazm moved to nullify his opponents' claims from within, showing their immobility and contradictions.

Ibn Hazm's approach to his refutation of qiyas follows a fixed pattern. In the case of analogy (qiyas), he starts by mentioning the century when it first came into existence; the second century of the Muslim era is the time that Ibn Hazm suggests for the appearance of analogy. He maintains that analogy is an innovation that came into

existence during the second century A.H (the year of the Hijra). But it became widespread and well established in the third century A.H. [21]. There is, however, some disagreement concerning this point. Al-Zhahabi (d. 1348) wrote on the margin of ibn Hazm's Mulakhkhas, saying that analogy was used during the time of the companions of the Prophet (SAW), that is to say the first century of the Islamic era. The modern scholar, Abu Zahrah, seems also to disagree with Ibn Hazm on this point; he maintains that analogy went side by side with personal enquiry (Ijtihad) which was in the first century of the Hijra.

No matter what the case may be, Ibn Hazm considered the refutation of this claim within the framework of refuting the analogist. He maintains that using analogy in religion was an innovation of a later generation of jurists; it did not exist in the day of the Prophet (SAW) and his companions and their early followers. [22].

The second step in Ibn Hazm's approach to the subject is to consider the definition and meaning of analogy according to its advocates and their reasons, applying it in matters of religion. To them, the justification for using analogy rests on their claim that there are problems and occurrences that take place without having direct mention to their legal decisions in the Qur'an, the Prophetic traditions, or the consensus of the prophet's companions. For this reason, they claim, they look for issues and occurrences in the Qur'an and the Prophetic traditions which resemble these new issues and then apply the legal decision of the former to the latter. For them, Ibn Hazm states, analogy is passing a judgement upon a given problem which has no basis in the sacred texts, or the consensus; like the judgement passed by a direct text upon a similar problem. The advocate of analogy justify passing the same judgement

upon the new problem on the basis that the two problems agree on the reason (motive) for which the judgement was passed in the original problem. Ibn Hazm adds that some Hanafis and Malikis justify passing the same judgement even though the new problem resembles only part of the original problem with no need for a complete and full resemblance between the two cases.

1. In his initial approach to his refutation of analogy, Ibn Hazm quotes the legist Abu Hanifah who is reported to have said: It is preferable to adhere to a broken or weak tradition (al-khabar al-mursal wa al-da'if) than to analogy. Ibn Hazm then proceeded in his refutation of the very definition that the analogists provided. They say they use analogy to pass a judgement upon a problem "which is not dealt with in a direct and explicit text"

   To Ibn Hazm, this is not true because everything in religion is represented by a direct text. [28]. He adds that even on the assumption that there really exists a problem to which a judgement cannot be made upon it on the basis of another problem, because that would be passing a claim without having a solid proof of it. [24].

2. The text stage of Ibn Hazm's approach to the subject is his discussion of the three kinds of analogy used by its advocates.
   - Firstly, there is what they call the most similar and impelling (al-ashbah wal-awla) which they explain as if a certain judgement was passed upon a given problem, then a second given problem is more deserving of that judgement. An example of this is found in the saying of Al-Shafi'is followers, if expiation is required for both unintentional

killing and for unintentionally telling a lie, then the intentional killing and the intentional lie are more deserving of expiation than the first situation.

- Secondly, there is a similar situation. An example of which is found in the saying of Abu Hanifah and Malik which says that if expiation is required for he who intentionally had sexual intercourse while fasting in any day of the fasting month (Ramadan), then the same expiation is required of the one who breaks fasting intentionally by eating. Another example is found in As-Shafi'is saying that if it is obligatory to wash a vessel seven times after it has been used by a dog, then the same would be required if used by a pig.
- The third kind of analogy is the least similar (al-adna) which is found in Abu Hanifah's saying that if urine nullifies the ablution, then bleeding does so, or if touching the penis with the inner parts of fingers nullifies ablution, so does touching it with the backside.

In the following stage of his approach, Ibn Hazm cites some Qur'anic verses which the analogists single out in support and as proof of the validity of their claim. Of course, Ibn Hazm proceeded to refute their claims using the same verses and adding others.

The analogists in support of their claims quote the following part of the Qur'anic verse (Q17:23-24) which says " …..Say not 'fie' unto them (your parents)". The analogist claims that according to the direct and exoteric meaning of the verse, Muslims were only ordered not to say 'fie'. But by analogical deduction, they were ordered not to beat them, not to kill them, and not to do any harm to them.

To this, Ibn Hazm replies that though the word 'fie' does not include the meaning of beating or killing, it is understood that this

include not beating or killing them as well. This is understood not by analogical deduction but by taking into consideration the whole context in which the words "say not fie" have occurred. Ibn Hazm cites the whole context that reads, "Thy lord hath decreed that ye worship none save Him and (that ye show) kindness to parents. If one of them or both of them attain to old age with thee, say not 'fie' unto them nor rebuke them, but speak unto them a gracious word. And lower unto them the wing of submission through mercy, and say: May Lord! Have mercy on them both as they did care for me when I was little" (Q17:23-24).

After citing the whole context, Ibn Hazm comments that it is within the framework of the whole context that Muslims were ordered to be good and kind to their parents in all forms and aspects of kindness and goodness, while on the other hand they were ordered not to do any harm to them no matter in what form it was done. Thus Ibn Hazm maintains that the meaning that the analogists claimed that they understood through analogical deduction was false. Ibn Hazm claims he directly understand this through the esoteric meaning of the words included in the whole context; so there is no need to deduct any meaning by analogy. Ibn Hazm concludes this discussion by attacking the analogists saying that it is their habit to cut off parts of the Qur'anic verses from their whole context to prove falsely their own point of view. [25].

Another example the advocates of analogy quote in support of their system is the verse that reads "And who so does good an atom's weight will see it then (in the hereafter)" Q99:7. They argue that though only an atom's weight of good is mentioned, by analogical

deduction it is understood that any other quantity of good is to be accounted for, not by applying analogy but rather through other verses of the Qur'an. The direct and exoteric meanings of which indicate what the analogists understood through analogical deduction. Ibn Hazm quotes the following verses to support his view: "This day each soul is requitted that which it hath earned: no wrong is done this day, Lo! Allah is swift at reckoning" (Q40:17). "And the Book is placed and thou seest the guilty fearful of that which is therein and they say, what kind of book is this that leaveth neither a small thing nor a great thing but hath counted it! And they find all that they did confronting them and thy Lord wrongeth no one" (Q18:49). [26].

In a third example, the advocate of analogy claim that in the Qur'an, only "fearing fall to poverty" is mentioned as unaccepted reason for killing our children, but by analogical deduction, we understand that no other reason is acceptable for killing our children. They quote the verse that says, "Slay not your children fearing a fall to poverty. We shall provide for them and for you! The slaying of them is a great sin" (Q17:31). [27]. To Ibn Hazm, the killing of our children is a great sin, no matter what the reason is not by virtue of applying analogy but rather by direct and exoteric meaning embodied in other verse of the Qur'an, such as: "They are losers who besottedly have slain their children without knowledge. …." (Q6:140). And "And slay not the life which Allah hath forbidden save with right". (Q17:33). [28].

Judging from the way Ibn Hazm has approached the refutation of the two last examples, one might conclude that for him the Qur'an represent the whole unity: that is to say that Ibn Hazm believes that

the whole verse of the Qur'an are supplementary to each other. So when there is a verse that does not convey a direct meaning concerning a given matter, there should be another verse or verses that supplement and directly clarify what was not directly understood in another verse. This also leads one to conclude that Ibn Hazm was very knowledgeable and aware of every single verse in the Qur'an. Moreover, for him, the prophetic traditions (Sunnah) are supposed to serve as supplementary tools for the Qur'an, so whenever there is no direct mention to a given problem in the Qur'an, it would be found in the prophetic traditions. [29]. In other passages of his refutations of analogy, Ibn Hazm displays a profound knowledge of the Arabic language which he employs as a method in refuting his opponents. Judging from the way he approached some problems in his refutations, Ibn Hazm seems to be revealing the shortcoming of his opponents in understanding the Arabic language in which the Qur'anic verses and the prophetic traditions were expressed and written.

A good example for this method in his refutation to the analogists in their claim that the direct prohibition for eating pork is related only to swine flesh (Lahm Khinzir) according to the Qur'anic verses.

By analogical deduction, it is known that eating of its fats is prohibited too; therefore, the flesh and fat of the swine is prohibited. To this, Ibn Hazm replies that the swine's fat was prohibited not by analogical deduction, but rather because the context in which the prohibition occurred had a direct bearing upon the prohibition of the swine's fat and the sows flesh and its fat. Ibn Hazm argues that Allah says in the same verse that "it is foul (filth)" and the suffix pronoun (in Arabic) which is represented in English by "it" is related to the

closet noun which is the swine itself (Khinzir) and not to its flesh only (Lahm). Because the swine itself is foul (filth) necessarily and logically, everything that comes from it is filthy and unclean. The Qur'anic verse which Ibn Hazm quotes in full reads as follows, "Say: I find not that which is revealed unto me ought prohibited to an eater that he eats thereof except it be carrion, of blood poured forth or swine flesh, for it is verily foul; or the abomination which was immolated to the name of other than Allah. But who so is compelled (thereto) neither crawing not transgressing (for him) Lo! Your Lord is forgiving, Merciful" (Q6:146). Ibn Hazm also reminds us that Muslims were asked to avoid unclean and filthy things in several verses of the Qur'an: he cites some of them. As for the prohibition related to the sow, Ibn Hazm maintains that this prohibition is included directly in the word swine, because the Arabic word used for swine (Khinzir) is a generic noun standing for the whole species which includes both male and female. [30].

In other passages, Ibn Hazm continues to refute the advocate of analogy by revealing their misinterpretations of the meaning of words, and their shortcomings in understanding the language.

The analogists used the following verses to support their claims in using analogy: "So learn a lesson, O ye who have eyes"! (Q59:2). Ibn Hazm proceed to refute them, and said that if what they understood was the real meaning of the verse, then that would imply an order for Muslims to destroy their own house as the disbelievers did, since this order embodied in the verse itabir (learn a lesson) which has occurred following Allah's saying "they ruined their houses with their own hands."

The complete verse reads as follows: “It is He who hath caused those people of the Scripture who disbelieved go forth, while they deemed that their strong holds would protect them from Allah. But Allah reached them from a place whereof they expected not, and cast terror in their hearts so that they ruined their houses with their own hands and the hands of the believers, so learn a lesson, O ye who have eyes!” (Q59:2). Ibn Hazm cites several other examples from the Qur’an where the same word, itabir or derivation from it is used only to mean “to learn a lesson”. This leads Ibn Hazm to consider a discussion of some aspects of the language in an attempt to prove the word “analogy” in the sense that analogists used it later on, that it did not exist either in pre-Islamic Arabic language or in the Qur’an and early Islamic period. [31]. In his attempt to refute the analogists and to prove that analogical deduction did not exist and was not recognized during the life time of the prophet and his companions, Ibn Hazm devoted a considerable number of pages to this question.

He started by mentioning the claims of some analogists that there was a consensus among the companions of the prophet in using analogy. To Ibn Hazm, this is a mere aggressive and ugly claim that has no basis in reality. He admits that they some times passed legal discussion using their personal opinion (ra’y), but never by using analogical deduction. He argues that none of them is known to have passed a legal decision according to analogy in the life time of prophet (SAW).

If analogy was something valid, the prophet would have not neglected it, and he would have explained it when and how it should be used and in what situations and circumstance it should be used. Since he

mentioned nothing about analogy. It is proven to be invalid, Ibn Hazm argues. [32].

In connection with his refutation and rejection of the existence of analogy in the time of the prophet's companions, Ibn Hazm recognized the only two sayings that have direct bearing on this question. The first is a letter attributed to the second Khalifah Umar Ibn Al-Khattab (634-644), which is believed to have been written by him to his governor Abu Musa Al-Ash'ari (d. 665). The letter translates: "Know the similarities between matters and use analogical deduction, then choose what is closer to the right and more acceptable by Allah, and use it to pass legal judgement." The second saying is attributed to the forth Khalifa 'Ali (656-661) in which he says: "for he who knows the prohibited and the permissible, analogy is the cure for the world (problems)." Ibn Hazm refuted this two saying by simple rejection that the authenticity of the persons mentioned in the chain of the transmitters is either unknown or their authority unrecognized.

In their attempt to prove that analogy was used and practiced during the prophet's and the companions time, the analogists cites the consensus of the Islamic ummah (community) to choose Abu Bakr (632-634) as the successor during the prophets (SAW) sickness which proceeded his death. They chose Abu Bakr (RA) as Khalifa based on analogy of leading Muslim in prayers during the sickness of prophet (SAW).

To Ibn Hazm, this is false and untrue; he proceeded to refute their claims, discussing the conditions that are required to qualify a person to be a religious and political leader of the Islamic community. [33]. On the other hand, Ibn Hazm delves deeply into legal questions concerning this

matter, concluding that the conditions required in leading the prayers are very different from those required for succession.

Ibn Hazm proceeded with his refutation of the analogists claims that the companions of the prophet practiced analogical deduction. He denotes ample space to this in his Ihkam! His approach to this question is almost identical to what we have already seen. He started by citing the analogists claims and examples. Then he proceeded to refute them on two bases: he either shows that the analogists' claims are lies and unauthenticated or he shows that they are not based on analogical deduction, but rather they represent misinterpretation on the part of the analogists. Ibn Hazm concludes then that the prophet's companion did not know or practice analogy; it was an innovation that was developed later in the second century of the Islamic era and became widespread in the following century. [34].

In his insistence to prove that analogical deduction did not exist during the early Islamic period, Ibn Hazm furthered his discussion concerning this question, and he cited examples attributed to some of the prophet's companions, their immediate followers and well-known Muslim legists such as Umar -RA (d. 644), Ibn Umar -RA (d. 692), Ibn Mas'ud -RA (d. 652), Mu'adh ibn Jabal -RA (d. 639), Ibn Abbas -RA (d. 687), Abu Hanifah (d. 767), Malik Ibn Anas (d. 795), and others. These examples are direct and clear and prove a rejection of analogy. Due to the exhaustive nature of these examples, only a sampling is attempted in the following paragraphs. [35].

Another method pursued by Ibn Hazm in his refutation is singling out specific example or saying of the analogists, then refuting them using his dialogical ability in disputation. Again only a few examples are

possible here. In one passage, the analogists argue that analogy is passing a judgement upon something absent (gha'ib) from the canonical law, according to some thing present (hadir) in it. Ibn Hazm replies that this is a false connotation because they talk about presence and the absence in canonical law, while every Muslim know that there is nothing in religion that is absent from the knowledge of Muslims.

It is for the purpose of clarifying and teaching the people religion that Allah sent his messengers. Allah says. "With clear proof and writing, we have revealed unto thee the remembrance that thou may explain to mankind that which hath been revealed for them and that haply they may reflect".

Ibn Hazm argues that there are only two possibilities in looking at the matter here: either that the messenger of Allah did not explain and clarify Allah's revelation to the Muslims, and who ever says this is an infidel according to the consensus of the whole Muslim community: or that the prophet (SAW) had explained and clarified to Muslims all the aspects of their religion as he was ordered and instanced by Allah, and there is no doubt that he did so. This being the case, where and what is the absence in religion that the analogists talk about?

Revealing the analogists contradiction and inconsistencies is another method through which Ibn Hazm approaches his refutation and rejection of analogy. He states that the analogists sometimes call it extracting (Istinbat), and then he proceeds to argue that extracting is some thing different from analogy.

This he also refutes on the basis of the Qur'anic verses. Concerning the analogist's inconsistency, Ibn Hazm says that they make expiation binding for intentionally eating on a fasting day during

Ramadan following the example of breaking a fast by intentionally having sexual intercourse. [36].

In another example, the analogists require that the same punishment should be inflicted upon he who had sexual intercourse with an animal as it is for an adulterer, while in both cases a prohibited form of intercourse was committed. [37].

Throughout this discussion of the different methods used by Ibn Hazm in his refutations of the analogists, there occurs a visible thread that makes it possible to summarize his proofs, done so in the following paragraphs.

The first proof is based on Ibn Hazm's belief that Allah revealed the canonical laws: what he ordered Muslims to do is an obligation that they must carry out: what He prohibited is unlawful and should be avoided; and what he did not prohibit is lawfully permissible. The Holy text has made clear everything that falls under the first categories; the rest are considered legally permissible. On the other hand, he who goes beyond that imposes an obligation on the basis of analogy or any other qiyas, is according to Ibn Hazm, an innovator who brings about something that Allah did not permit: on the other hand he who prohibit something without the solid ground of a text support is bringing about something that Allah did not mean. [38].

The second proof that there is no analogical deduction is that according to its advocates, it is needed where no direct text exists and not where one does exist. Those who claim that the sacred texts did not include and cover everything in religion are simply contradicting Allah's words, "This day have I perfected you religion for you, and completed

my honour on to you and have chosen for you as a religion al-Islam". (Q5:3).

This verse among other verses, that Ibn Hazm quotes are for him clear evidence that the texts have included everything, so there is no need for analogical deduction. [39].

The third proof is that deduction by analogy where there is no direct text is based upon the existence of a common motive or characteristic, which is considered the pretext of judging the new case according to the original.

This motive or characteristic has to have evidence to point to it: if this evidence is in the text itself, then the judgement passed upon the case under question is taken from it and this in turn is not reasoning by analogy. If the evidence is not taken from a text then how was it known? Ibn Hazm argues that the analogist's judgement in this case has no solid base and as a result is invalid. [40].

The fourth proof is based on the fact that the prophet (SAW) asked the believers to leave what Allah and Prophet have left to its origin when there is no given text. [41]. For this reason, Ibn Hazm argues, on the assumption that there is no direct text for a given question; human beings are not allowed to legislate passing permission or a prohibition upon such a question because that would mean that they are altering Allah's legislation. [42].

Finally, there are several Qur'anic verses that stand as direct evidence against analogical deduction. Ibn Hazm cites examples of these verses throughout his lengthy discussions.

Some of these examples have been mentioned in different passages of this research paper. Some additional examples follow: "Lo! We

revealed unto thee the scripture with the truth, that thou my judge between mankind by which Allah showeth thee. And be not a pleader for the treacherous" (Q4:105).

"We have neglected nothing in the book (of our decrees). Then unto their lord they will be gathered" (Q6:38).

"And follow not (O man!) of that which you have no knowledge! Lo! The hearing and the sight and the heart of each of these will be asked" (Q17:36). "Even as we have sent unto you a messenger from among you, who reciteth unto you our revelations and causeth you to grow, and teacheth you the scripture and wisdom and teacheth you that which ye knew not". (2:151). For Ibn Hazm these Qur'anic verses among others stand as evidence that in religion we do not know any thing except what Allah has taught us through his scriptures and messengers: analogy then is something invalid in religious matters because it does not come from Allah. [43].

4.4 Whether Qiyas is an Independent Source of Law

Before we proceed in answering the above question, it will be good to review some part of the definition of Qiyas as already analyzed in the foregoing pages of this work. These definitions, although they differ in phraseology; use synonymous term for the meaning. We find that some definitions use the words ("asl") for the original case and ("far'u") for the parallel case. Others employ "makis, makis alaihi". All these terms indicate the same meaning, namely a case which is already covered by text and the rule of law about this case is already known, and a case which is not covered directly by the text and the rule of law is not known about it. All that is required by the process of qiyas is to discover the rule

of law about this case. Both these cases are already known and each of them is the object of the rule of law.

The case covered by the text stands as the original case (asl or makis alayhi) for the parallel case about which the text is silent (far'u or makis).

Some definitions contain the "Ithtab" (to establish). It insinuates that the person who uses qiyas wants to establish the rule of law originally in the parallel case. Hence some jurists have used the word "Ithtab" (to establish).

Other definitions contain the "haml" (accord) which implies that the original and parallel case apply to be the one and the same thing. Further, it shows that the thing which is accorded and the thing with which it is accorded (mahmud alaihi) should be identical. The original case and the parallel case are two different entities but apply to each other by reason of their similarity.

A few definitions contain the words "ta'diyah' (exclusion), "radd" (return), "musawat" (equality or equation). All these terms show that the law of the original case extends to the parallel case by itself.

We find in some definitions the word "inda al-muthbit" in the opinion of the person who seeks to establish the law and "Inda Al-Mujtahid" in the eyes of the jurist. This addition is found in the definition enunciated by Al-Basri. This condition shows that the equality between the original and the parallel in respect of value (illah) depends on the opinion of the uses of qiyas and not in reality.

Some definitions add the word "illah" (the legal cause) not perceived by the mere knowledge of language. This condition was

imposed to draw a distinct between qiyas and "Dalalat Al-Nass" (textual indication).

This condition was added by Al-Basri and adopted later on by some jurists.

We will discuss the definition of qiyas from a different angle: Whether qiyas is an action of the Muj'tahid, or an independent source of law.

From the foregoing, it is obvious that before Al-Amidi and Ibn Al-Hajib, the jurists held that qiyas was the action of a mujtahid who derived the law from the original source by his effort. This is the reason why Al-Shafi'i considered qiyas as part of ijtihad and others "ra'y" opinion. It seems that the jurists could not separate the action of a muj'tahid from the similarity between the original and the parallel case which did not constitute qiyas, until a muj'tahid tempered with it and established the law by his effort. From the opinion of Al-Basri, we infer that he considered qiyas as an action of the muj'tahid.

The adversaries of qiyas confess it by saying that Qiyas is an action; it is not permissible to reach the public good (masalih) by our action. Al-Basri replies to them: Qiyas means to establish (ithtab) the rule of law of the original case for the parallel case because of their cause (illah). But there must be a sign (amarah) which indicate, that is signification (dalil) which point out to us the necessity (wujud) of forming "ijtihad" (the rule of law) of the original case with the parallel case in which the same cause of the law of the original case is found. And reflection on this indication or signification (Dalalah) and sign (amarah) is necessary. By their assertion that qiyas is an action, they mean that they establish the rule of law of the original case for the parallel case, that is also our belief (I'tiqaduna). If by their assertion, they mean an

indication or evidence which signified the necessity of joining the parallel case with the original case, or they mean the sign (amarah) which indicates the soundness of the cause, that is not our action.

This shows that the definition of qiyas was clear in the mind of the jurists before Al-Amidi and Ibn Al-Hajib. It was not evidence or a source of law (dalil) which led to public interest, but the investigation of the muj'tahid is the source of law. They were so much obsessed by this idea that some of them called it the action of the user of qiyas (Fili Al-Qais). But this was refuted by Al-Shiraji. He remarks that this definition is also not reasonable for if it were correct, then every act which the user of qiyas does, like walking and sitting would be necessarily part of qiyas, although no one hold such an opinion.

There is also different definition of qiyas on the part of Al-Amidi. We have seen that by defining qiyas as equation (istiwa), he considers it to be an independent source of Shari'ah. But in the beginning of his work, while enumerating the sources of Islamic law, he takes qiyas as a method of reasoning (istid-lal) on the basis of the original source. He remarks that as for qiyas and istid-lal they consequently go back to what is intelligible from the text (maqul al-nass). And the consensus (ijma) is the original basis of roots (asl) of law, and qiyas in his opinion is not an original basis or evidence (dalil) but adherence to the law. While dealing with the definition of qiyas, he criticized its definition as accord (haml) or to establish (ithtab) as enunciated by others. But while treating the sources of law in the beginning act of rule of law on the basis of the common link, the word accord (haml) indicates that earlier he did not consider qiyas as an independent source of law.

Some jurist also made an effort to justify qiyas as an independent source of law despite its being the action of mujtahid. He says that qiyas is like ijtihad in respect of being the action of a mujtahid. Hence nothing prevents it from being an independent authority. Criticizing him, Mustafa Jamal Al-Din remarks that ijtihad is not an independent authority like the Qur'an and the Sunnah. He thinks that ijtihad declares or disclose the original authority. In this opinion, ijtihad is closer to being an independent authority than qiyas for the rule is attributed to it after its establishment. In the case of qiyas, the rule is attributed to its original basis that is the Qur'an and the Sunnah.

In the foregoing, we have cited a number of definitions of qiyas and shown their development. As qiyas was developed by degrees, it became difficult for the jurists to be at one side in its definition, although they have almost agreed on its meaning and support: Abdul Malik Al-Jiwaini rightly says that the real definition of qiyas is impossible because it consists of various realities (haqqah) like the rule of law of the original case (hukum) which is eternal, while the original case and the parallel case are originated, and the common link (jami) is the ratio of legal cause (illah). Ibn Al-Manazzir who died in the year (682 A.H) also agrees with him on this view.

We should remember, as mentioned in this work, the stand of the Zahiris's and their spokesperson of Ibn Hazm, who rejected both the juristic and logical qiyas as a source of Islamic law, even if the legal cause is mentioned explicitly in the text.

But majority of the jurists (Al-Jumhur) considered qiyas to be a source of Islamic law although not like the Qur'an and the Sunnah which represents the primary source of Islamic law.

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CHAPTER FIVE

5.0 SUMMARY, OBSERVATION AND RECOMMENDATIONS

5.1 SUMMARY ON QIYAS

The word Qiyas simply means measurement. It means the comparison with a view to suggesting equality or similarity between two more things. Technically, it means the extension of the law from the original case (asl) to the new case (far'u) because the latter has the same effective cause (illah) as the former.

Muslim jurists unanimously agree that the Qur'an and Sunnah are the fundamental sources of Islamic Law, followed by Ijma (Consensus of opinion). Other sources include Qiyas (analogical deduction), Istihsan (equity in Islamic law), Maslaha-Mursalah (consideration of public interest), Sadd al-Zara'i (blocking the means), Urf (Custom), Fatwa Sahabi (the verdict of a companion), Shar'u man qablana (revealed laws preceding the laws before our generation), and Istishab (presumption of continuity).

In this research thesis, emphasis was placed on Qiyas as the 4th source of Islamic Law.

Qiyas has four fundamental pillars, namely:

(i) Asl (the original case)

(ii) Far'u (the new case)

(iii) Hukum (the law); and

(iv) Illah (the effective cause).

These pillars can be illustrated clearly with an example of wine and other intoxicants (such as cocaine, heroine, marijuana or Indian hemp). Wine is asl (the original case) while cocaine or heroine or Indian

hemp is the far'u (the new case). The Hukum (law) prohibits the two (both asl and far') because of illah (the common effective cause) which is intoxication.

There are two major opposing views as regards Qiyas being a source of Islamic Law – the 1st view accepting and proposing it, while the second view rejecting and opposing it.

Proponents of Qiyas as a source of Islamic law support their views with a number of verses from the Holy Qur'an, quotations from the Sunnah of the Holy Prophet Muhammad (SAW), the practices of the companions of the Holy Prophet (SAW) (i.e. the Sahabas), and by rational reasoning. And this is the view of the majority of the Sahabas (RA), the jurists of the four Sunni schools and the Mutazillites.

The opposers of Qiyas as a source of Islamic law are the Rawafids, some Najdat from the Khawarij and the Zahiri jurists. For their defence, they quote some Qur'anic verses, and some Ahadiths of the Holy Prophet (SAW).

5.2 OBSERVATION

1. Observation reveals that the views supporting Qiyas as a source of Islamic law is more sound and authentic than the views opposing it because of the following facts:

(i) Allah (SWT) has revealed the Holy Qur'an to serve as a source of law to humanity "for all times and generations". This can only be possible by extending its fundamental laws to similar cases and circumstances not directly mentioned in the Qur'an.

(ii) The numerous Ahadith of the Holy Prophet (SAW) is limited, in some cases, in its applicability in solving numerous human problems, and in

meeting the needs of humanity, considering the level of scientific development and human civilization about 1400 years ago and now. Hence, there is the need to extend similar cases to new ones by knowing the effective cause of the former.

2. It has also been observed that the opponent of Qiyas applied its even though they don't call it qiyas e.g are: -

(i) Payment of Zakkah (the third fundamental pillar of Islam) in all types of paper currencies (i.e. paper notes), rather than the original practice of paying it in gold pieces (dinar) and silver pieces (dirrhams). Were it not for Qiyas, Muslims could have lost a very important aspect of their religion i.e. payment of Zakkah using fiduciary notes or currencies.

(ii) Travelling to Mecca for Hajj by plane, ships, railways and motor cars, and all the other convenient modern methods of traveling, rather than riding on camels, donkeys and horse backs. This was made possible through Qiyas (analogical deductions).

The same can also be said of the use of modern scientific equipments and gadgets in the upliftment of human welfare and for purposes of religion e.g. the use of electronic fans and air-conditioners in mosques; the use of tape recorders, audio CD's and Video CD's in showing Islamic films and playing recorded tapes of the recitation of the Holy Qur'an; and the use of microphones in calling prayers (ADHAN) in the Mosques five times daily. The use of all these things by Muslims, it can be safely said, are products of Qiyas.

(iii) Also, the wiping of socks (made up of cotton, polyester or other materials) during ablution rather than removing them and

washing the feet directly is an application of Qiyas. Originally, Khuf (leather socks) were used by the Holy Prophet (SAW). The use of Qiyas has made it possible for this type of wiping of the feet to be applicable to all types of socks whether cotton, polyester or leather.

(iv) Another very important issue being raised in Qiyas by some Ulamah is the participation of Muslims in general elections involving both Muslims and non-Muslims under the parliamentary or presidential system of democracy (for the election of councilors, local government chairmen, governors, senators and president), in an unIslamic set-up.

In resolving this important issue, Muslim jurists have to resort to qiyas of what happened to the Holy Prophet (SAW) during the Treaty of Hudaibiyyah, when he commanded Ali (RA) to remove Muhammad, the Messenger of Allah from the treaty, and put in its place, Muhammad, son of Abdullahi. In the same way, Muslims participates in these elections so as to reduce the level of damages and corruption caused by non-Muslims. And by participating in these elections, Muslims, when they attain the position of power and authority, can demonstrate (by examples), the virtues of honesty, integrity and dedicated service.

(v) Also, another very important aspect of Muslim life that needs Qiyas for classification and verification is the use of modern weapons of warfare by Muslims and Muslim countries, in defending themselves from infidels.

Based on the above, it becomes compulsory upon Muslims to fight their enemies with all types of weapons, however, sophisticated, that

their enemies are fighting them with, even if the weapons are deadly and not humanic in nature. Such weapons could even be weapons of mass destruction (WMD) such as atomic bombs, nuclear bombs, and intercontinental ballistic missiles (IBM's), Allah knows best.

3. It has been observed that Muslims abandoned qiyas and believed that they were solving their legislative problems. In reality, however, all they succeeded in doing was crippling their own intellectual powers. Even so, there has never been a time when the call for Qiyas was entirely silenced, only that such calls were never enough to extricate the Ummah from the intellectual crisis in which it has become wired, and as a result, qiyas was left mainly to heretics and deceivers, and finally to orientalists. If a true believer (Muslim) were to articulate ideas to which people were unaccustomed to or to announce his readiness to practice qiyas, he would become an immediate target of ridicule and abuse by the supporters of taqlid.

   However, the Ummah must understand that Qiyas provides it with the fundamental means to recover its identity and to re-establish its place in the world.

4. It has also been observed that, Islamic thought and the prevailing intellectual environment are clearly disoriented, stagnant and completely non-productive, while division is all embracing.

   In some cases, this debate has gone far beyond the realms of logic and reality and led to a certain doctrinaire attitude which, evading the real issue of the time factor, insist that one has either to take Islam as a whole or leave it as a whole.

5. It has also been observed that qiyas was born as an essential and necessary by-product, to cope with new situations and challenges of life.

   The Holy prophet (SAW) himself trained and educated his companions on Qiyas, and would, on occasions, encourage them to practice it in his own presence. On other occasions, he would provide examples on how it should be exercised. For Qiyas means that the revealed law, teachings and judgements on jurisprudent matters should not be taken on their face value alone but rather ought to be understood in their proper perspectives. Then, Qiyas began to develop as a science in its own right, offering a new methodology based on the observations made in a realistic and objective world.

5.3 RECOMMENDATIONS:

Acquiring knowledge enables its possessor to distinguish right from wrong, it is our friend in the desert, our society in solitude, our companion when friendless; it guides us to happiness, it sustains us in misery, it is an ornament among friends and an amour against enemies.

1. One of the greatest essences of knowledge is the edification of the human race. For knowledge is meant to be applied in order to uplift the human spirit, and enable it tackle the numerous problems and challenges of life. And qiyas is one fertile area for the application of Islamic knowledge to suit the varying circumstances of life.

   Allah says, in Qur'an 34 verse 46: "Say (to them Oh Muhammad – SAW): 'I exhort you to one (thing) only, that you stand up for Allah's sake in pairs and singly, and reflect, there is no madness in your companion (Muhammad – SAW)'".

The Holy Prophet (SAW) said: "Allah has not created anything better and nobler than reason". For it is reason that distinguishes man from apes, and it is reason that qualifies man to be the Khalifah (representative, vicegerent) of Allah on earth.

Islam is indeed a global response to man's needs, a universal message capable of offering solutions to man's contemporary problems. Therefore, today's Ulama (scholars) must make conscientious efforts to understand and interpret the Qur'an and Sunnah in the light of today's modern life. The Ummah has to deal and interact with contemporary ideas and standards, some of which like banking and finance systems, are relatively new. Muslim thinkers therefore have to work within the mental, psychological, social and cultural framework of Islam to provide for the needs of their societies using qiyas, keeping in mind that the Qur'an contains all the fundamental vital principles and the guidance necessary for success.

2. Qiyas need to be studied as a distinct Islamic methodology which will produce a comprehensive and unique Islamic understanding of sociological phenomena, their agents, their essential elements and their relationships. It is through qiyas that Muslims will be able to construct a new specific methodological infrastructure capable of addressing the crisis of Islamic thought, and so propose alternatives for the many problems of the contemporary Muslim world.

3. International, National and local conferences, work shops, seminars should be organized for Imams, lecturers of Islamic law, teachers of Islamic studies, Qadis, Grand-Qadis scholars and intellectuals on Ijtihad generally and on qiyas specifically .

4. Arabic text books writen by past and contemporary jurist on ijtihad and qiyas in Arabic should be translated by dedicated competent scholars of Islam into different languages especially English, because most books on Ijtihad and qiyas in other languages are not properly presented.
5. Simple books should be written on the sources Islamic laws by competent Allah fearing scholars published out for Muslims and non-Muslims alike.

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