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Qiyas in Islamic Law – A Brief Introduction

Jurisprudence [1]
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Short Content:
What is the ruling when the guardian of the orphan's estate burns all the orphan's property? - The answer can be deduced by qiyas.
Body:
Qiyâs is a method that uses analogy – comparison – to derive Islamic legal rulings for new developments.

Qiyâs can be defined as taking an established ruling from Islamic Law and applying it to a new case, in virtue of the fact that the new case shares the same essential reason for which the original ruling was applied.

Qiyâs, therefore, is a method that Muslim jurists use to derive a ruling for new situations that are not addressed by the Qur'ân and Sunnah, like many new developments of our age and like the customs of people not encountered in Arabia during the time of the Prophet (peace be upon him). By way of qiyâs, these issues can be referred back to those that are explicitly mentioned in the sacred texts.

When we know the reason why something in Islamic Law is obligatory, preferred, permitted, disliked, or forbidden, then if something else shares the same reason, it can be given the same legal ruling.

Categories of Qiyâs:

There are two major categories of qiyâs with respect to its strength as evidence: overt and obscure.

A. Obvious Comparison (*qiyâs jaliyy*):

This is where the new situation being investigated is clearly no different in its essentials from a matter that Islamic Law has a clear and established ruling for.

This is especially the case where the sacred texts clearly spell out the reason for the original ruling or where there is unanimous agreement among Muslims as to what that reason is.

In such cases, there is no need for the jurist to try to deduce a quality in the new situation that he can use to make a comparison with some precedent in Islamic Law. Everything is clear and up-front.

Consider the following examples:

1. What is the ruling when the guardian of the orphan's estate burns all the orphan's property?

Though there is no direct textual evidence that discusses burning the orphan's property, the ruling is patently clear. It takes the same ruling as when the guardian squanders the orphan's wealth on himself.

Allah says: "Lo! Those who devour the wealth of orphans wrongfully, they do but swallow fire into their bellies, and they will be exposed to burning flame." [*Sûrah al-Nisâ'*: 10]

It is prohibited for the guardian of the orphan's estate to wrongfully spend the orphan's wealth on himself. The reason for this ruling is obvious – it brings loss to the orphan's property.

This is precisely what would happen if the guardian burns the orphan's property. The orphan will suffer the loss. There is no material difference between the two cases. Since the two cases share the reason for the ruling, they share the same ruling. It is unquestionably prohibited for the guardian to burn or otherwise vandalize the orphan's property.

2. What is the ruling on giving one's parents a good smack?

We will not find any text in our scriptures that directly addresses this question. However, we are in no doubt that it is absolutely prohibited and sinful to do so.

We find in the Qur'ân that it is sinful to even mutter "ugh" or "uff" to our parents in exasperation when they ask us to do something for them.

Allah says: "And your Lord has commanded that you shall not worship any but Him, and that you show kindness to your parents. If either or both of them reach old age with you, say not to them so much as "ugh" nor chide them, but speak to them a generous word." [*Sûrah al-Isrâ'*: 23]

We are prohibited to say "ugh" to our parents, because it is abusive behavior. At the very least, it hurts their feelings. We can have no doubt that shoving them or smacking them is even more abusive and hurtful. Since the reason for prohibition is even more evident here, we can be certain that smacking our parents is unlawful and very sinful.

From these examples, there should be no question that qiyâs should be accepted as a legal means for establishing Islamic legislation whenever the comparison is overt and clear.

Some scholars do not consider these examples to even fall under the heading of qiyâs, due to how clear and obvious they are, but consider such rulings to constitute part of what the texts themselves communicate.

B. Obscure Comparison (*qiyâs khafiyy*):

This is where the new situation being investigated is not so overtly similar in its essentials to the established matter in Islamic Law that it is being compared to.

This is especially the case where the sacred texts do not spell out the reason for the original ruling or where there is disagreement among Muslims as to what that reason is.

Scholars cite as an example that the criminal liability for murder with a bludgeon is the same as that for murder with a knife, since in both cases there is "an intentional and hostile act of killing".

The difference here to the examples above is that the shared reason for the ruling is one that has been deduced by the jurists from the ruling prohibiting murder. The formula "an intentional and hostile act of killing" is a legal construct developed by legal theorists to define when a killing is legally an act of murder. It is not something that is explicitly stated in the texts, but rather something that is deduced from them.

In such cases, there is a greater burden upon the jurist, who is required to extrapolate and explain the cause of the established ruling and then explain how that cause is also present in the new matter under investigation.

All scholars agree on calling this kind of reasoning by the name qiyâs.

Areas of Scholarly Agreement Regarding the Validity of Qiyâs as a Form of Reasoning:

Muslims are all agreed that qiyâs is a valid approach to reasoning in the following areas of inquiry:

1. Worldly matters: for instance, comparing one medicine to another or pricing one product on the basis of the price of similar products in the market.

2. Any qiyâs that was carried out by the Prophet (peace be upon him): since its consideration become certain on account of its taking place in a context of certainty.

The scholars of Ahl al-Sunnah are also in agreement that qiyâs cannot be applied to certain matters. It cannot be used to answer essential questions of belief or to investigate matters relating to Allah's nature and attributes if it leads to comparing Allah to His creation. Qiyâs can only be validly applied in these matters to extent of demonstrating that Allah is superior and transcendent to created things. Otherwise, the use of qiyâs will lead to the mistake of considering both Creator and His creation equally under the aegis of more general concepts. It will also lead to considering Allah as being similar to created things.

Allah says: "To Allah applies the highest similitude: for He is the Exalted in Power, full of Wisdom." [*Sûrah al-Nahl*: 60]

Allah says: "There is none like unto Him, and He is the All-Hearing, the All-Seeing." [*Sûrah al-Shûrâ*: 11]

As Muslims, we must believe that Allah is free from every deficiency that exists in created beings. By contrast, every aspect of perfection applies more to the Creator than it can to anything in creation.

These matters are agreed upon.

Areas of Scholarly Disagreement Regarding the Validity of Qiyâs:

Scholars disagree regarding the applicability of the second type of qiyâs (*qiyâs khafiyy*) in matters of Islamic Law. The discussion that follows will be dealing specifically with this second type.

All of the leading scholars from among the Prophet's Companions, as well as the Islamic legal scholars from all the major schools of thought agree that qiyâs is a source of Islamic legislation. It can be used as evidence to establish Islamic legal rulings on matters that are not directly addressed by the sacred texts. Ahmad b. Hanbal said: "No one can entirely dispense with qiyâs."

Some legal theorists of the Mu`tazilî persuasion denied the validity of qiyâs. The leading proponent of this line of thinking was al-Nazzâm, who was followed by Ja`far b. Harb, Ka`far b. Mubashshir, and Muhammad b. `Abd Allah al-Iskâfî.

This line of thinking was also adopted by some scholars of Ahl al-Sunnah, most notably Dâwûd al-Zâhirî.

These scholars, in turn, differed among themselves regarding the reasons why they dismissed qiyâs. Some of them argued that qiyâs is contrary to reason. One argument given in this light was that: "Delving into this method is intellectually repugnant in its own right". Another argument was: "Islamic legal rulings are based on human well-being, and no one knows human well-being except the One who gave us the sacred law. Therefore, the only way we can know the sacred law is from the revelation."

Other scholars said that qiyâs is not contrary to reason, but prohibited by the sacred law itself. There were two schools of though that propounded this general idea.

1. The first was that of Ibn Hazm, the most prominent scholar of the Zâhirî school of law. He argued that the Qur'ân and Sunnah came with everything that is needed, so there is no need for qiyâs.

2. A second school of thought considered it a sin to even acknowledge the validity of qiyâs.

The Hanafî jurist Abû Zayd al-Dâbûsî summarizes the opinions of those who reject qiyâs as follows:

> Those who reject qiyâs are four groups. First, there are those who reject all rational evidence, and reject qiyâs because it is based on reason. Then there are those who hold that the only valid source of knowledge is that which is founded in rational necessity, and they argue that qiyâs is not founded on rational necessity.
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> Then there are those who do not regard qiyâs as a valid source of evidence for matters of Islamic Law.
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> Finally, there are those who argue that qiyâs would only a valid source of evidence for matters of Islamic Law in cases of necessity. However, there is never a need to resort to qiyâs, because in the absence of direct textual evidence, the default legal ruling is one of permissibility.

The truth is that qiyâs is a valid source of Islamic Law. The disagreements that developed regarding its validity came about after the Companions agreed unanimously that it is a valid approach, and after the Successors – the students of the Companions – applied qiyâs and endorsed it without hesitation.. This means that the disagreement came about after it had been a matter of consensus (*ijmâ'*).

General Rules for the Valid Application of Qiyâs:

There are a number of guidelines that must be observed for qiyâs to be correctly applied. We will mention these in a very brief and summarized form:

1. Qiyâs can never be used to establish a ruling that contravenes a ruling or legal principle established by direct scriptural evidence. This is because qiyâs is not to be resorted to in a matter where we have a text that gives a ruling.

2. The person who engages in deriving a ruling through qiyâs must have the qualifications to engage in independent juristic reasoning (*ijtihâd*).

3. The qiyâs itself must be reasoned through properly. It must comply with all of the considerations that Islamic legal theorists have discussed in the books of jurisprudence.

Otherwise, the qiyâs will not be valid. It will be of the type that the earliest scholars condemned. However, they did not ever categorically condemn qiyâs.

Al-Ghazâlî writes: "Whoever rejects qiyâs in principle is certainly mistaken in his thinking, and should be deemed as sinful."

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