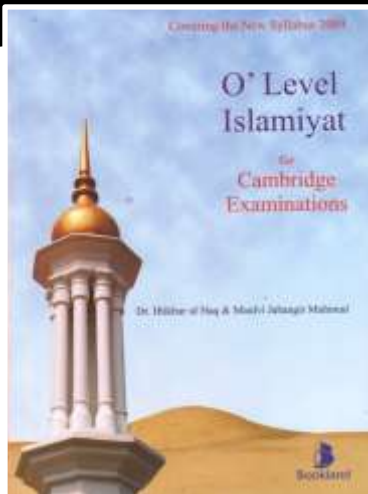


Handout Unit 2: Why Some Scholars Reject Qiyas? & Most Don't!



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Some of the Scholars such as Zahris & Shia reject Qiyas because of several reasons....

1. A verse of the Qur'an says: "O ye who believe! Put not yourselves forward before God and His Apostle...." [Qur'an 49 : 1)
These Scholars claim that Qiyas (analogy) means "putting yourself forward"
2. There are many sayings of the Companions in which they have condemned the use of *ra'i*/ (personal opinion), and analogy is personal opinion.
3. Analogy leads to discord among the Muslims, because it does not lead to exactly the same opinion when different jurists are exercising it and what leads to differences should be shunned.
4. It cannot be said that the *ahkam* of the *shari'ah* are based upon similarity and equality.

Arguments in favour of Qiyas

1. Quran repeatedly asks us to 'use our reason'
2. Hadith of Mu'adh ibn Jabal
3. There are many cases in which the Prophet gave answers in a form that was quite similar to analogy (eg Hajj on behalf of Mother)
4. The Companions used to settle cases by performing analogy & there are sayings of the Companions to this effect.
5. The cases in the texts of the Qur'an and the Sunnah are limited and the cases that are faced by human beings are unlimited, therefore there has to be some way of extending the law in these sources to cover new cases as well so that the new cases are settled according to Islamic legal norms.
6. New issues come forward that were unimaginable in the time of the Prophet

Practical Importance of Qiyas

1. The main point here is that the judge has to give relief to the litigants who come to him.
2. It is not possible for him to say to them that "I cannot find anything in the Qur'an and the Sunnah
3. to settle this case, therefore, I cannot help you."
4. The presumption is that a solution exists in the shari'ah and the judge has to adopt some method of legal reasoning to extend the law from the limited number of texts that he can employ
5. As long as he is required to do so, analogy is a good and strict method of legal reasoning that maximises the chances of the discovery of the intention of the
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