

القياس (2)

Analogical Reasoning (Qiyas)

I. Types of Qiyas أنواع القياس

There are three types of Qiyas:

1- Qiyas of higher order (al-Qiyas al-Awla): The effective cause in the parallel case is of higher order than the effective cause in the original case.

E.g.: saying 'uff' to parent (Original case)

Prohibition (Legal Ruling) (al-Isra':23)

Torment (Effective cause)

Cursing/Beating parent (Parallel case).

2- Qiyas of an equivalent order (al-Qiyas al-Musawi): The effective cause in parallel case is of the same strength with the effective cause in the original case.

E.g.: Consumption of orphan's property (Original Case)

Prohibition (Legal Ruling) (al-Nisa':10)

Destruction of orphan's property (Effective cause)

Damaging of orphan's property (Parallel case).

3- Qiyas of a lower order (al-Qiyas al-Adna): The effective cause in parallel case is of a lower order than the effective cause found in original case.

E.g.: Wine (Original case)

Prohibition (Legal Ruling) (al-Ma'idah:90)

Intoxication (Effective cause)

Toddy (Parallel case).

II. Justification of Qiyas as a source of Islamic law مشروعية القياس

The justification of Qiyas as a source of Islamic law is established by the Qur'an and Sunnah.

• **The Qur'an:** *"O ye who believe! Obey Allah and Obey the Messenger and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger..."* (al-Nisa':59)

• The argument is that Allah has commanded after that (i.e. after obeying Allah, His Messenger and those in authority) to refer the disputed matters to Him and His Messenger.

• Referring the disputes to Allah and His Messenger signifies referring them to the Qur'an and Sunnah. That will be by means of drawing conclusion from them by analogy.

• This is because analogy means referring the new case to the original case and applying to its rule. In other words, referring the disputed case i.e. a case for which no rule has been provided in the text to a case for which a rule has been provided in the text.

• **The Sunnah:** There are many cases in which the Messenger of Allah (peace be upon him) in response to queries أسئلة of the Companions tried to give answers in a

form that was supposed to train them in legal thinking and in many such cases the method is quite similar to analogy.

For example,

- A woman came to the Messenger of Allah (peace be upon him) requesting **تطلب/تسأل** him to give her legal opinion (fatwa). She said: Messenger of Allah my father has died and performance of hajj was due to him. May I perform the hajj on his behalf **نيابة عنه**? Allah's Messenger said: "Tell me if your father owed a debt **عليه دين** and you paid it, would that benefit him?" She replied: yes. The Messenger of Allah (peace be upon him) said: "Perform the hajj on his behalf, the debt due to Allah deserves most to be paid." (It is reported by al-Bukhari and al-Nasa'i).

- The Messenger of Allah (peace be upon him) said to Umar ibn al-Khattab when he asked him about kissing the wife by one who was fasting: "Tell me if you rinse your mouth with water then eject it, what will you do?" Umar said: It doesn't matter. The Messenger of Allah said: "It is all right." (It is reported by Abu Dawood).