

## A critical analysis of *Zāhirī*'s arguments against the methodology of *Qiyās*

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### Abstract

*Although all major juristic schools and a vast majority of Muslim scholars accept the Qiyās as a lawful and valid source for the deduction of Shari'ah rulings and consider it to be the fourth major and fundamental source of the Islamic law after the Qur'ān, Sunnah and Ijmā', however, the Zāhirī school deny its validity and reject it to be adopted as a means to derive the Sharī'ah rulings. This article examines the underlying concepts and meanings of the Qiyās and highlights its significance and pivotal character in the process of Islamic legislation. Moreover, this article compares and critically analyses the arguments of both sides and affirms that the Qiyās is not only a lawful and legitimate source of deducing Sharī'ah rulings from its primary sources but also an integral and vital tool enabling the Qur'ān and Sunnah to be practicable for all times to come providing solutions to all newly arising issues.*

### Introduction

Like all other legal systems of the world, Islamic Law also has different sources of law by which rules and laws are deducted. These sources of Islamic Law are divided into primary and secondary sources. The primary sources of deducing legal rulings are; the Qur'ān and the *Sunnah* of the Prophet Muhammad (PBUH), while the *Ijmā'* (consensus of the scholars) and *Qiyās* (analogical reasoning) are considered to be the secondary sources for the deduction of the rules and laws of Islamic law. According to the principles of Islamic jurisprudence

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(*Usūl al-Fiqh*), *Qiyās* is the fourth source after *Qur'ān*, *Sunnah* and *Ijmā'*, for deriving *Sharī'ah* rulings and it comes in to practice only where there is no clear ruling in the *Qur'ān*, *Sunnah* or *Ijmā'* regarding a particular issue.

Although, all major juristic schools of Islam and vast majority of Muslim jurists consider *Qiyās* as a valid and legitimate source for the deduction of *Sharī'ah* rulings, there are scholars who do not accept it as a valid source to deduce legal rulings. The most prominent of them are *Zāhirīs* and some of the *Shī'ah* scholars. Both; opponents and supporters of *Qiyās* seem to have arguments and evidences in the favour of their viewpoint.

This paper aims to critically analyse the *Zāhirīs*' arguments against the methodology of *Qiyās* as a valid source for the deduction of *Sharī'ah* rulings in comparison with the arguments and evidences of their opponents on its validity. Also this paper discusses and examines the definition of *Qiyās*, its elements and conditions and authority of *Qiyās* with reference to the *Qur'ān*, *Sunnah* and *Ijmā'* and then finally analyse the arguments of both; *Zāhirīs* and their opponents regarding the validity and authenticity of *Qiyās* as a source of deriving *Sharī'ah* rulings.

### **Definition of *Qiyās* (Analogical Reasoning)**

Literally, the Arabic word '*Qiyās*', means 'measuring or comparison'.<sup>1</sup> Therefore, the Arabic statement, '*Qāsa al-Thawba bi al-mitr*' would mean that 'He measured the cloth with a yardstick' and the sentence '*Lā yuqāsu fulānun bi fulānin fī al-shujā'a*' would mean that 'He can not be compared with him in bravery'.<sup>2</sup>

As far as the technical meanings of *Qiyās* are concerned, it means 'the juristic reasoning by analogy'.<sup>3</sup> Kamali defines it as the '*Qiyās* is the extension of *Sharī'ah* value from an original case to a new case, because the new case has the same effective reason as that of the original one'.<sup>4</sup> While according to Al-Zarqā, the *Qiyās* is, 'To relate one thing to another in a *Sharī'ah* ruling because of the same effective reason ('*Illah*') found in the both'.<sup>5</sup> Furthermore, Khallaf defines *Qiyās* as 'To relate or attach an event which has no *Nass* regarding its ruling (*Hukm*) to the one which has a *Nass*, in the ruling (*Hukm*) for which the *Nass* has occurred, because of the equality of both events in the effective cause of that ruling'.<sup>6</sup>

It is evident from the above discourse regarding the lexicographical and technical meanings and definitions of the ‘*Qiyās* (analogical reasoning)’ that its core objective is to extend the *Sharī‘ah* ruling from the original case to the new case because of the new case bearing the same effective reason as that of the original one. The cited extension of the legal ruling from one case to another is carried out through a specific juristic process which comprises of the following four pillars;

### **Pillars of *Qiyās***

During the process of extending the legal ruling, the original case is categorised as the *Asl*, while the new case is termed as the *Far‘a*. The effective cause due to which a certain legal ruling is materialised is named as ‘*Illah*, while the ruling itself is called *Hukm*. These four; *Asl*, *Far‘a*, ‘*Illah* and *Hukm* are believed to be the four pillars of *Qiyās*.

The value or *Hukm* of the original case is based upon the effective cause in the original case. If a new case has the same effective cause as that of the original one, then the rule or *Hukm* contained by the original case will be extended to the new case. This whole process of extending the rule from an *Asl* to the *Far‘a* due to the same ‘*illah* (effective cause) in both; *Asl* and *Far‘a*, is known as *Qiyās*. For Instance,

One of the examples of *Qiyās* is the Prohibition of the drinking of wine. The Qur’ānic verse regarding the prohibition of the drinking of wine reads,

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطَانِ  
فَاجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

O believers! Wine and gambling and idols mounted (for worship) and divining arrows (for seeking luck—all) are filthy works of Satan. So turn away from them (completely) so that you may prosper.<sup>7</sup>

In light of the cited Qur’ānic verse, the drinking of wine is clearly prohibited. If this prohibition is to be extended to all other intoxicants or narcotic drugs then the whole process of *Qiyās* (analogy) will be as follows:

<i>Asl</i>	Drinking of wine
<i>Far‘a</i>	Other intoxicants or narcotic drugs
‘ <i>Illah</i>	Intoxicating effects
<i>Hukm</i>	Prohibition of intoxicants and narcotics

It is obvious that the reason for the prohibition of wine drinking is its intoxicating effects. Therefore, these intoxicating

effects will become the '*Illah* (effective cause) of this ruling of prohibition. As all other narcotic drugs also have the same intoxicating effects, thus the same rule will be extended and applied to all narcotic drugs as that of the wine-drinking, due to the common '*Illah* (intoxication) in between them. Hence the use of narcotic drugs would also be prohibited, in Islam, like wine drinking.

Another example of *Qiyās* could be the deprivation of the killer from inheritance of the victim. The Prophet Muhammad (PBUH) has said, '*Lā yarithu al-Qātil* (The killer shall not inherit (from his victim)).<sup>8</sup>

In light of the cited *Hadīth* of the Prophet (PBUH), the Killer is deprived of the right of inheritance from his victim. Muslim Jurists have extended this prohibition to bequests by using analogy, which would mean that the killer cannot benefit from the will of his victim. The whole process of analogy through which this ruling is deduced can be explained as:

<i>Asl</i>	Inheritance
<i>Far'a</i>	Will
<i>'Illah</i>	Try to take property before it is naturally due.
<i>Hukm</i>	Deprivation from the will.

The '*Illah* (effective cause) of the deprivation of the killer from inheritance, in the original case, is his try to become the inheritor of his victim (by killing him) before its natural time. Looking at the new case, we can easily conclude that the same '*Illah* is also present in the new case as well. Therefore, if anyone attempts to kill his will maker to take property earlier than its natural due time, he will also be deprived from the willed wealth or property because the new case has the same '*Illah* as that of the original one. Hence the same *Hukm* will be extended to the new case and the killer of his will maker will be deprived of the will.

### **Authority of *Qiyās* in the Qur'ān and *Sunnah***

The Muslim jurists who accept *Qiyās* as a valid source of Islamic Law, find its authority and validity in the Qur'ān, *Sunnah*, *Ijmā'* of the *Ummah* and also in the practices of the companions of the Holy Prophet (PBUH). For instance, to them, the following Qur'ānic verse is the one of the most authoritative evidences of the validity of *Qiyās*.

فَاعْتَبِرُوا يَا أُولِيَ الْبُصَارِ

So, learn a lesson (from it), O people of vision!<sup>9</sup>

Interpreting the cited Qur'ānic verse, Hallaq argues,

The imperative verb *I'tabirū* has been derived from the verbal noun '*Ubur* which signifies the meaning of 'crossing over' (as from one bank of river to another), or making a passage from one place to another. The imperative form in the verse was thus constructed to refer to 'crossing over' from the original case to the new, and to the transference of the rule from the former to the latter.<sup>10</sup>

Highlighting the underlying meaning of the quoted verse, Khallaf states,

O possessors of eyes! You compare yourself with them because you are also human being like them. If you do the same as they did, then the same would happen to you, which was happened to them.<sup>11</sup>

In light of the above statements, it can be concluded that in Hallaq's view, *I'tabirū* bears the meaning of crossing over or transferring the rule from original case to the latter one, while Khallaf describes *I'tabirū* as to compare one thing or situation with another. However in both of the interpretations, the concept of relating one thing to another is evident and that is what *Qiyas* is all about.

The following verse is also quoted as an evidence of the validity of *Qiyās* as a source of deducing Sharī'ah rulings, which reads,

وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَىٰ أُولِي الْأَمْرِ مِنْهُمْ لَعَلِمَ الَّذِينَ  
يَسْتَنْبِطُونَهُ مِنْهُمْ وَلَوْ لَا فَضْلَ اللَّهِ عَلَيْكُمْ وَرَحْمَتَهُ لَاتَّبَعْتُمُ الشَّيْطَانَ  
إِلَّا قَلِيلًا

Had they referred it to the Messenger (blessings and peace be upon him), or those of them who are in command (instead of making it public), then those amongst them who can draw conclusion from some matter would have found it (i.e., the truth of the news). Had there not been Allah's favour to you and His mercy, certainly you would (all) have followed Satan except only a few.<sup>12</sup>

In this verse the verb '*Yastanbisūnahū*' refers to the use of wisdom and reasoning to find out the truth and reality, and this is an indication of the validity of the use of *Qiyās* (analogical reasoning) to come up with the solution of any of

the problems having no clear answer in the Qur'ān, *Sunnah* or *Ijmā'*. Al-Ashqar<sup>13</sup> reports that the scholars have opined that the phrase '*Ūlī al-Amr*' in this verse refers to '*al-Ulamā*' (scholars) while '*al-Istinbāh*' means the *Qiyās*.

Moreover, in *Sūrah Al-Nisā*, it has been stated,

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ  
فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ  
بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

O believers! Obey Allah and obey the Messenger (blessings and peace be upon him) and those (men of truth) who hold command amongst you. Then if you disagree amongst yourselves over any issue, refer it to Allah and the Messenger ([blessings and peace be upon him] for final judgment), if you believe in Allah and the Last Day. That is best (for you) and best for the end result.<sup>14</sup>

Regarding this verse Imām Al-Shāfi'ī states that the matters or disputes arisen after the (PBUH) will be referred to the rulings of Allah and then to the rulings of the Prophet (PBUH) and where there is no clear ruling about any particular matter then they will be referred to them (Qur'ān and *Sunnah*) through the process of *Qiyās*.<sup>15</sup>

As far as the *Sunnah* of the Prophet (PBUH) is concerned, there are numerous prophetic *Ahādīth* which can be quoted to affirm the validity of *Qiyās* as an acceptable means for the inference of the *Shari'ah* rulings. For example, when Holy Prophet (PBUH) decided to send Mu'āz Ibn Jabal (RA) to Yemen, he (PBUH) asked him,

How will you decide if a matter is referred to you for judgement?' Mu'āz said, 'I will judge according to the Book of Allah (the Qur'ān)'. The Prophet asked, 'What if you find no solution in the Book of Allah?' Mu'āz said, 'Then I will judge according to the *Sunnah* of the Prophet'. The Prophet again asked, 'And what if you do not find in the *Sunnah* of the Prophet?' Mu'āz said, 'Then I will make *Ijtihād* (use of analogical reasoning) to formulate my own judgement.' The Prophet patted Mu'āz's chest and said, 'Praise be to Allah who has guided the messenger of His Messenger to that which pleases Him and His Messenger.'<sup>16</sup>

This *Hadīth* of the Prophet (PBUH) irrefutably asserts the validity and legitimacy of the use of analogical reasoning (*Qiyās*) to discover the solutions and answers to the newly arising matters having no apparent solution in the Qur'ān and the *Sunnah*.

There are several reports which confirm that the Prophet (PBUH) himself used the analogical reasoning on occasions when he did not receive a revelation on a particular matter. On one of such occasions, a woman called Khath'amiyyah came to him and said that her mother had died without performing the Hajj. Would it benefit him if she performed the *Hajj* on her mother's behalf? The Prophet asked her, 'Supposing your father had debt to pay and you pay it on his behalf, would this benefit him?' To this her reply was affirmative, and the Prophet said, 'The debt owed to God merits even greater consideration.'<sup>17</sup>

There is another example in which Holy Prophet (PBUH) used analogy to answer the question of Umar (RA). It is reported that Umar (RA) asked the Prophet (PBUH) about Kissing (the wife) while fasting. The Prophet (PBUH) asked him in return, 'What if you gargle while fasting?' Umar (RA) replied, 'it will not matter (it will not break the fast)', Holy Prophet then replied, 'then stop (arguing).'<sup>18</sup>

The above quoted report clearly asserts that the Holy Prophet (PBUH) used analogical reasoning to answer Umar's question that as gargling during fasting does not break the fast in the same way kissing the wife, during fasting, without discharge will also not affect the fast.

### **Evidence from the *Ijmā'* and practice of the Companions**

The Companions of the Prophet (PBUH) also considered *Qiyās* as a valid source of Islamic *Sharī'ah*. That is why they always used analogical reasoning by comparing the newly arising issues with those which had a clear ruling in the Qur'ān and *Sunnah* of the Prophet (PBUH), to find out the solution of the problems having no clear answers in the Qur'ān or the *Sunnah* of the Prophet (PBUH).

Did the companions of the Prophet (PBUH) practically use the methodology of *Qiyās* in deducing *Sharī'ah* rulings? Hallāq argues in this regard,

The Prophet's companions are viewed as the first class of Muslim jurists who resorted to the use of *Qiyās*, and universally agreed upon it as a legitimate method. And their consensus carries a

particularly significant weight, since they are presumed, having been so close to the Prophet himself, to have known what he thought about, and how he dealt with, the matters befalling the Muslim community. Thus, if the companions regularly resorted to *Qiyās* and none of them objected to this practice, then their consensus is binding on two counts: their consensus *qua* consensus, and their intimate and unparallel knowledge of the Prophet's behaviour and methods in dealing with legal matters.<sup>19</sup>

One of the many examples of the companion's *Qiyās* is the selection of Abū Bakr (RA) as a caliph of the Islamic state after the demise of the Prophet (PBUH). They compared the caliphate with the *Imāmat al-salāt* (leading the Prayer) and come up with the answer that because the Prophet chose Abū Bakr (RA) to lead the Prayer in his life, so he will be the most suitable person to lead the Islamic State after the demise of the Prophet (PBUH).<sup>20</sup>

Also when Abdullah Ibn Mas'ūd (RA) was asked about the dower of the woman whose husband married her without mentioning the amount of dower, he took one month to think about and then said, 'I use my analogical reasoning to find out the answer of the question asked. If I come up with the right answer, it would be from the God, and if not then it would be the fault of the son of *Umm 'Abd* (Ibn Mas'ūd)'. He then suggested that the dower of the woman would be '*Mahr al-Mithl*' i.e. the same as that of her relative women.<sup>21</sup>

All the above discourse regarding the *Qiyās* fairly affirms that it is an authentic and a valid source of deducing *Sharī'ah* rulings. It finds its roots in the Qur'ān, *Sunnah* and also in the practices of the Prophet (PBUH) and his companions (RA). It is also clear from the above discussion that it only comes in to practice where there is no clear and direct answer to any of the newly arising issues in the Qur'ān or the *Sunnah* of the Prophet (PBUH).

### **Analysis of *Zāhirī's* arguments against the methodology of *Qiyās***

It has been mentioned earlier that a very small number of the Muslim scholars do not accept the '*Qiyās*' as a valid source of deducing *Sharī'ah* laws. The *Zāhirī* juristic school is one of the most prominent opponent of the methodology of



*Qiyās*. In the following discussion, a critical analysis of their arguments will be made in light of the evidences of their opponents.

Ibn hazm, one of the great scholars of *Zāhirī* school, derives his opinion from the following verse of the Holy Qur'ān,

O believers! Obey Allah and obey the Messenger (blessings and peace be upon him) and those (men of truth) who hold command amongst you. Then if you disagree amongst yourselves over any issue, refer it to Allah and the Messenger ([blessings and peace be upon him] for final judgment), if you believe in Allah and the Last Day. That is best (for you) and best for the end result.<sup>22</sup>

According to the above verse, Iban hazm argues, we are ordained to refer, in the case of any disputes, only to Allah and the Prophet (PBUH). And referring to some one else apart from Allah and the Prophet (PBUH) is forbidden (*Harām*) because whoever refers to the opinion of anyone else other than the Prophet (PBUH), in fact, he disobeys the order of Allah of referring any disputes only to Him and the Prophet.<sup>23</sup>

In interpretation of the cited verse Al-Jawzī states,

There is consensus of the Muslims upon the fact that only Allah (the Book of Allah) and the Prophet (PBUH) (he himself in his life and his *Sunnah* after his demise), can be referred to in the occurrence of any disputes. As the *Qiyās* is neither the Qur'ān nor the *Sunnah*, so it can never be referred to in any situation.<sup>24</sup>

The cited argument of Ibn Hazm and Al-Jawzī in the opposition of *Qiyās* does not seem to bear any logical base as the rebuttal of their argument is present in the very same verse. The first part of the verse is 'Obey Allah and obey the Messenger and those who hold command amongst you'. The phrase 'who hold command amongst you (أولي الأمر منكم)' in this verse, also includes the jurists and well-learned scholars of Islam. Therefore, Ibn Kathīr has interpreted this part of the verse by saying,

Ali bin Abī Talha has reported from Ibn 'Abbās that 'those who hold command amongst you' in this verse means 'the jurists and the scholars of Islam (*Ahl al-Fiqh wa al-Dīn*).<sup>25</sup>

Furthermore, referring to the methodology of *Qiyās* cannot be, in any way, perceived to be the disobedience of the order of Allah of referring any disputes to Him and the Prophet (PBUH). To carry out the *Qiyās*, first of all we have to find out a *Nass* from the Qur'ān or the *Sunnah* containing a legal ruling regarding a particular matter. In other words, a *Qiyās* has to be based upon a *Nass* from the Qur'ān or the *Sunnah*. If a *Qiyās* is based upon a *Nass*, how can it be considered in contradiction with the order of Allah? Hence, referring to *Qiyās*, in any of the issues, is in fact referring to Allah and the Prophet (PBUH) but in a different and indirect manner.

Ibn Hazm further argues that the *Nusūs* (plural of *Nass*) of the Qur'ān and *Sunnah* are provided for each and every matter and nothing is left unattended or unexplained in the Qur'ān and the *Sunnah*. Therefore, there is no need to refer to the *Qiyās* or the opinion of any individual. To support this argument of him, he has quoted several verses from the Qur'ān which include;

مَا فَرَطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ

We have not omitted anything (which is not given symbolic or elaborate details) in the Book.<sup>26</sup>

الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتَمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيْتُ لَكُمُ الْإِسْلَامَ دِينًا

Today I have perfected your *Dīn* (Religion) for you, and have completed My Blessing upon you, and have chosen for you Islam (as) *Dīn* (a complete code of life).<sup>27</sup>

وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ

And, (O Glorious Messenger) We have revealed to you the Glorious Reminder (the Qur'ān) so that you may explain clearly to people (the message and the commandments) that have been sent down to them and that they may meditate.<sup>28</sup>

وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ تِبْيَانًا لِكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَىٰ لِلْمُسْلِمِينَ

And We have revealed to you that Glorious Book which is a clear exposition of everything and is guidance, mercy and glad tidings for the believers.<sup>29</sup>

According to Ibn Hazm, all quoted verses clearly condemn the use of *Qiyās* or analogical reasoning and personal opinion in the matters of *Dīn*. Furthermore, he argues that even the supporters of the *Qiyās* are of the opinion that it can only

come into practice where there is no *Nass* of the Qur'ān and the *Sunnah* about any particular issue. As it is evident from the numerous verses of the Qur'ān that the *Nasūs* of the Qur'ān have not omitted anything, and that the Messenger of Allah (PBUH) has made clear to mankind what has been sent to them, and also that the *Dīn* has been completed and perfected for them. Therefore, in the presence of this level of clarity, explanation and perfection, there remains no need of referring to the *Qiyās* or someone's individual opinion.<sup>30</sup>

On the other hand, highlighting the counter arguments of the supporters of the *Qiyās* against Ibn Hazm's viewpoint, Tallāq reports,

The advocates of *Qiyās* agree that religion has been perfected in the Qur'ān, but they do not see how the use of this method is rendered superfluous. For to have recourse to *Qiyās* amounts in essence to having recourse to the Qur'ān. Similarly, when *Qiyās* appeals to the Prophetic *Sunnah* or to consensus, it ultimately appeals to the Qur'ān, since reference to the *Sunnah* is enjoined by the Qur'ān, and the authoritativeness of consensus is attested by both the Qur'ān and the *Sunnah*. Furthermore, it is argued, *Qiyās* is an integral part of what has been called 'perfection of religion', because the Qur'ān, together with the *Sunnah* and the consensus it sanctions, confirms the need for it, Resorting to *Qiyās* is thus no less legitimate than employing solitary reports or any other method or narrative that engenders probable knowledge.<sup>31</sup>

Khallāf also argues in this regard by saying,

The *Nusūs* of the Qur'ān and the *Sunnah* are limited while events and problems to happen in human life are unlimited and countless. Therefore, it seems logically impracticable for limited *Nusūs* to serve as a sole legal source for deducting *Sharī'ah* rulings for unlimited and countless events and issues. Hence, it is only the *Qiyās* which can be used as a legal source for the deduction of the *Sharī'ah* rulings for newly arising matters.<sup>32</sup>

Another argument of the opponents of *Qiyās* is that the *Qiyās* is based on conjecture or speculation, while Allah has forbidden conjecture, as it is clear from the following verse of the Qur'ān,

إِن يَبْعُونَ إِلَّا الظَّنَّ وَإِنَّ الظَّنَّ لَا يُغْنِي مِنَ الْحَقِّ شَيْئًا

They follow only assumption, and surely assumption serves no purpose in comparison with certitude.<sup>33</sup>

Also they quote that the Prophet (PBUH) has disliked conjecture as it is clear from the following of his *Hadīth* in which he has been reported to have said,

إياكم و الظن فإن الظن أكذب الحديث

Abstain from conjecture; certainly conjecture is the biggest lie.<sup>34</sup>

In light of the stated verse and prophetic *Hadīth*, they argue that *Qiyās* is also one of the conjectures; therefore, it is forbidden and must be rejected and avoided as well.<sup>35</sup>

Countering the above mentioned argument of the opponents of the *Qiyās*, Kamali states,

With reference to some of the Qur'ānic passages that the opponents of *Qiyās* have quoted, especially on the use of speculative evidence in law, it is contended that the *Āyāt* in question forbid recourse to speculation (*Zann*) in matters of belief only. As for the practical rules of *Fiqh*, most of them partake of *Zann*, and great deals of the *Nusūs* are themselves speculative in their purport and implication (*Zanni al-Dalālah*). But this does not necessarily mean that acting upon them must be suspended. On the contrary, a measure of diversity and variation in the practical rules of the *Sharī'ah* is not only tolerated, it is considered a sign of the bounty of Almighty God, and the essence of flexibility in *Sharī'ah*.<sup>36</sup>

One further argument of the opponents of *Qiyās* is that the companions of the Prophet (PBUH) condemned the use of personal opinion in *Ahkām* of *Sharī'ah*. To support this argument, they have reported some statements of the companions of the Prophet (PBUH) in which the use of individual opinion is condemned. For example;

Umar (RA) said, 'Abstain from people of opinion (*Assāb al-ra'i*), certainly they are enemies of the *Sunnah*. I wish them remember (learn and understand) *Ahādīth* (of the Prophet), but on the contrary, they express their personal

opinions. In fact, they are misguided and they misguide others as well.<sup>37</sup>

Also Imām Zuhrī has reported that Muhammad bin Jubair Bin Muh'am used to say that once, with the delegation of Quraish, he met Mu'āwiyah (RA). While addressing the people, he said,

It has come to my knowledge that some of you speak of that which is neither in the Qur'ān nor in the *Sunnah* of the Prophet (PBUH). Those who do so are the most ignorant (*Juhalā'ukum*) amongst you. Be sure, *Qiyās* is excluded from the both (the Qur'ān and the *Sunnah*).<sup>38</sup>

Khallāf has countered such kind of reports by saying,

Although these reports are not authentic, they do not mean, here, the rejection of *Qiyās* or the rejection of its validity as a source of deriving *Sharī'ah* laws. Actually, all reports of this kind mean to abstain from following own whims, impulses and desires, and to follow that opinion which has no base or root in the *Nusūs* (of the Qur'ān and the *Sunnah*).<sup>39</sup>

Also, there are very many reports that can be quoted to establish that the companions of the Prophet (PBUH) considered the methodology of *Qiyās* as a valid source of Islamic *Sharī'ah*, and they themselves used this method to give their verdicts about matters that had no clear answers in the Qur'ān or the *Sunnah*. The following statement of Umar bin al-Khattāb (RA), which is quoted by Khallaf, is a good example of this in which he advised Abū Mūsā Al-'Ash'arī (RA), during his caliphate, by saying,

Thoroughly understand what you know (from the *Nusūs*) and what is referred to you having no ruling of the Qur'ān and the *Sunnah* about it. Then compare (*Qāyis*) these cases (original and new) and try to discover the similarities in between the two. And then rely on the opinion which is, in your view, more acceptable to Allah and closer to the truth.<sup>40</sup>

This report of Umar Ibn Khattāb (RA) clearly approves the use of *Qiyās* by the companions of the Prophet (PBUH) as valid and legitimate method for the deduction of the *Sharī'ah* laws and rulings where the Qur'ān and the *Sunnah* had been silent.

In the light of the above discourse, the main arguments of the *Zāhirī* School and others against the methodology of *Qiyās* can be listed as:

- We are ordained to refer only to the Qur'ān or the *Sunnah*, in all matters, and referring to someone else other than the Qur'ān or the *Sunnah* will amount to be a clear disobedience of the order of Allah.
- The Qur'ān and the *Sunnah* have comprehended everything. Nothing is left unattended or unexplained. The *Dīn* of Islam is completed and perfected; therefore, there remains no need to turn to the methodology of *Qiyās* to find out the solution of any newly arising matters. As it would be an unnecessary addition to the *Nusūs* which is not permissible.
- The Prophet (PBUH) and his companions disliked and condemned the use of *Qiyās* and individual opinions in the matters of *Dīn*. How can it be considered a source of *Sharī'ah* laws when the Prophet (PBUH) and his companions disliked it?
- Allah and the Prophet (PBUH) have ordered to abstain from conjecture (*Zann*) and speculation. As *Qiyās* is also one of conjectures or speculations, it must be forbidden and cannot be accepted as a legal source of deriving *Sharī'ah* laws and rulings.

On the other hand, the arguments and evidences of the supporters of *Qiyās* can be listed as follows:

- There are numerous verses and *Ahādīth* of the Prophet (PBUH) which approve the validity of *Qiyās* as a legal and acceptable source for the deduction of *Sharī'ah* rulings.
- *Qiyās* is not an addition or superimposition on the *Nusūs*, but is their logical extension from an original case to the new case.
- Referring to *Qiyās* in any matter is not contrary to Allah's order of referring to Him and His Prophet (PBUH) because *Qiyās* itself is a mean of returning to Allah and the Prophet (PBUH) but through an indirect manner.
- The Prophet (PBUH) considered *Qiyās* as a valid method of deducting *Sharī'ah* rulings and that is very much clear from the well-known *Hadīth* of Mu'āz Ibn Jabal (RA). Also there are several *sahīh* reports that affirm that on many occasions the Prophet (PBUH)

himself used *Qiyās* in the matters where there was no indication in the revelation, some examples of which have already been mentioned in the earlier discussions.

- Numerous statements and practices of the companions of the Prophet (PBUH) also establish that they considered *Qiyās* as a valid source and they themselves used this methodology on occasions for the solutions of different matters in which the Qur'ān and the *Sunnah* were silent.
- The *Zann* or conjectures that is disliked and forbidden by Allah and the Prophet (PBUH) include mere opinions, whims, impulses and desires. *Qiyās* does not fall in that category because it is neither a mere opinion nor a personal desire. Instead, it is a methodology of deriving rules and laws of *Sharī'ah*, and it has to be based upon the *Nusūs* of the Qur'ān or the *Sunnah*.

Analysing the above arguments of *Zāhirī* School and other opponents of *Qiyās* in comparison with the arguments and evidences of the supporters of *Qiyās*, it can be concluded that the arguments of *Zāhirīs* and their allies, in this regard, do not possess much strength in them. On the other hand, arguments and evidences forwarded by the supporters of the *Qiyās* seem to be more authentic, powerful and logical than that of *Zāhirīs* and others.

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