

The Relationship Between the Purposes of the Law and Legal Reasoning

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Abstract: It is argued that since qiyas presents a mechanism for the derivation of rulings from the textual sources of the law in the light of its purposes, the existence of a relation between qiyas and the purposes of the law can be visualized. For, it is in the light of the consideration of the purposes that the rational of a given text is extended to the cases that do not come under its preview. This study therefore, attempts to highlight and analyze the relation between the purposes of the law and qiyas. It also investigates the literal and technical meanings of qiyas and purposes of the law and evaluates their relation in the light of latter providing justification for the former in respect of extension and restriction of legal rulings. The researchers, using descriptive and analytical approach, conclude that the purposes of the law by virtue of their potential role in qiyas (legal reasoning) equip the jurist with the ability and insight in how to apply the rulings strictly and when to mitigate them, a fact underscoring the existence of a strong relation between the two.

Key words: Qiyas, legal reasoning, purposes of law, general principles, Islamic law, Malaysia

INTRODUCTION

Comprehension of the nature of the existing relation between the purposes of the law and legal reasoning, to a great extent, depends on the understanding of the the meaning and definition of qiya and the purposes of the law. The relationship that exist between qiyas and the purposes of the law is clear from the fact that the former presents a mechanism for the derivation of rulings from the textual sources of the law in the light of its purposes, which at times contained explicitly in the texts of Quran and the Sunnah (prophetic traditions) while at other times brought to light by means of independent reasoning. It is presumed that every legal ruling has a function it performs and an aim which it realizes a cause and intentions which it seeks to fulfill.

All of this is meant to secure human being welfare and ward off harm and corruption. This underscores the significance of the purposes and their far bearing influence in the whole process of legislation.

MATERIALS AND METHODS

This study basically, uses library research method. The relevant data and information, gathered from primary and secondary literature is reviewed an analyzed and

conclusions are drawn based on the existing literatures with some novel ideas based on researchers initiative and insights.

Meaning and definition of qiyas: Literally, qiyas means measuring or ascertaining the length, weight or quality of something that is why the scales are called miqyas. The Arabic expression, qasat al-thawb bi'l-dhira means that the cloth was measured by the yardstick. Qiyas also signifies comparison with a view that suggesting equality or similarity between two things. Therefore, the expression, Zayd yuqasu ila Khalid fi a'qlihi wa nasabihi, means that Zayd compares with Khalid in respect of intelligence and lineage. Technically, qiyas is defined as the extension of a legal ruling from an original case or asl to a new case through the same effective cause. Hence, the commonality of the effective cause to both original and the new case constitute the ground based on which the application of qiyas can be justified.

Therefore, it is only in cases that are not covered by textual sources of the law and Ijma that ruling can be deduced from any of these sources through the application of analogical reasoning (Kamali, 2009). If the new case could be covered by the explicit meaning of the text of the law, it is futile to resort to the application of the qiyas, analogy. The difference between analogical

deduction and interpretation is that the former mainly deals with the extension of the rational of a given text to case that do not come under its purview in terms of its language. In this sense, qiyas is a step beyond the scope of interpretation which is strictly confined to the literal meaning of the text.

Certainly, identification of the effective cause, requires intellectual exertion due to involving, not only, the semantic meaning of a given text but also the understanding of the general objective of the law (Kamali, 2009). Thus, the purposes of the law constitute the main reason for jurist's resort to qiyas. This is based on their assumption of the rules of shari'ah embodying certain purposes which are in harmony with the reason. Based on this assumption, a rational approach to the discovery and identification of the purposes of the law giver can be adopted.

Thus, adoption of such approach necessitates recourse to human intellect and judgment in evaluation of the ahkam, rulings. It is on the ground of propriety or otherwise of adopting an inquisitive approach to the injunctions of the law giver that qiyas has come under attack by Mu'tazilah the Zahiris, the Shi'ah and some jurists of Hanbali School.

Zahiris reject analogy and in-depth inquiry into the underlying reason of the text of the law. Hence did not entertain the idea of adopting an investigative approach to the objectives and the purposes of the law, thus putting aside the tendency of understanding its text in terms of its underlying meaning and objectives.

Doing so, they narrowed down the meaning of the text of the law to the area within the scope of its literal implication, hence failed to have a full grasp of its underlying meanings and purposes. In fact, the extension of the existing law to new case through the process of qiyas is not considered as establishment of a new law, the reason of its rejection but rather it is discovering by jurists. Therefore, qiyas is a means of discovering and perhaps of developing the existing law (Kamali, 2009).

Definition of the purposes of the law: Al-Risuni provides two definitions for the purposes of the law. The first definition, he provides is that of Ibn Ashur in which the purposes of the law are divided into two categories, the general ones and the specific ones. The former being defined as the hidden meanings and wisdom beside the legal rulings which the law-giver intended for his servants in most cases.

This consists of the attributes of the law, its objectives and the covert meaning relating to the sphere of legislation while the latter being defined as the undertaking of individual conduct in certain ways that are

conducive to the preservation of public interest and the achievement of useful aims. This also includes all the intended wisdom behind the legislation of law, related to peoples' conduct. For instance, mortgage is meant to create confidence between the parties involved, the contract of marriage is meant to establish an orderly and integrated family life and the legislation of divorce is meant to avert the continual harm of deteriorated relation between the spouse.

The other definition provided by al-Risuni is that of al-Fasi which combines both general and specific purposes in a concise manner as it states. The purposes of the law mean the objectives and underlying meaning of each legal ruling. Al-Risuni elaborating on al-Fasi's definition proceeds saying the objectives of the law refer to the general purposes while the remaining part of definition according to him refer to specific purposes. From the definitions given, it can be concluded that the purposes of the law are its objectives for which the rulings are legislated so as to enhance and secure human beings welfare and interest.

Consequently, the identification of the purposes of the law is possible through the process of reasoning and the general principles based on *malahah*. The mechanism used for this purposes consists mainly of two methods; reasoning based on general principles and from the circumstantial evidences. Circumstantial evidence is defined by jurist as a visible fact linked to an invisible fact in issue. However, this visible fact cannot be considered sufficient evidence unless it leaves no shadow of doubt or any material gap or possibility of any other reasonable inference (Al-Sid, 1995).

The bifurcation of the method of discovering the purposes of the law is due to the levels of the clarity of the text, meaning that if the text is obvious in its implication then knowledge of the basic rules of the language will be sufficient to discover the objective of the law behind the ruling which is contained in the text. On the other hand if the text is not obvious in its implication, resort to the circumstantial evidence will help unveil the underlying purpose of the ruling in the text.

From the preceding discussion, it can be concluded that there is a strong connection between the purposes of the law and legal reasoning. For, the latter is the process and the former as the material sources provider. As such, the purposes of the law play an extremely important role in derivation of legal rulings through determination of their underlying reason for legislation. It is for this reason that they loom large in the discussion of all jurists on the method of reasoning. In addition, they also play an important role in respect of extension of legal rulings and restricting their scope. In order to elaborate on their role

in legal reasoning, it is relevant to throw some light on general principles for they are used as the starting point of legal reasoning.

RESULTS AND DISCUSSION

General principles: Basically, general principles can be divided into three types; the first type is that which is stated directly in the text. An example of this type is the prohibition of *riba*, based on the Quranic text which states: God has permitted trade and forbidden usury. And its supplementary principles stated in the traditions. Another example of this type is the general principle of eligibility for profit, based on corresponding liability for bearing loss, based on the following tradition of the prophet (PBUH) which states: Eligibility is based on the corresponding liability.

This type of principles are called *muthtahir munasib*, effective, suitable, due to being mentioned directly in the text and their causes being in conformity with the purposes of the law (Nyazee, 1994).

The second type of general principle is that which is derived from the text. Al-Ghazali calls this type of general principle *mulaim* for; it is normally supported with a specific case. The criterion used in its derivation is that the genus, the higher *illah* must be drivable directly from a lower category mentioned in the text or be related to it through a chain of general (Nyazee, 1994). This type of general principle is derived through a gradual generalization of the cause of a ruling to include higher categories. As this generalization goes up, it reaches to the principle of necessity. Hence in this way, generalization of specific cause gradually produces a flexible general principle.

In fact, the determination of the cause of a ruling in itself is a process of generalization. For in *qiyas al-illah*, a ruling is extended through the determination of its underlying cause. Hence, the cause or *illah* of the *hukm* or ruling act as a genus for all the cases to which the *hukm* is extended. For example, the text of the law requires the minor boy to be subjected to the *hukm* of *willayah* (guardianship).

To extend this *hukm* to a minor girl, it requires the determination of its underlying cause which is *sighr* (minority). Thus, the minority in this case, constitutes a genus and hence covers both, minor boy and girl now as far as the *hukm* of *wilayah* is concerned. The determined *illah*, in this case has two characteristics; first, it is always mentioned in or indicated by the text and is stable. It does not change regardless of change in time and circumstances. Second, its generalization involves a single level of generalization (Nyazee, 1994).

On the contrary, the derived principle called *mulaim* differs in both its characteristics from *illah* for its generalization is not confined to a single level. It is generalized at a higher level than that of *illah*. For instance, it does not consider minority, as mentioned in the previous case, as the real cause or reason for the extension of the *hukm* (ruling) of *wilayah* (guardianship) to the minor girl. It rather identifies the inability of the minor in giving legally valid consent as the *illah* for such an extension.

It therefore, moves up a level higher in determining inability to consent as the cause in establishing the right of guardianship over a minor. The second difference is that the generalization made at this level is based on the *hikmah* (wisdom) of the *illah* called *mulaim* in this case. This implies that there is a strong relation between the *illah* and the *hikmah* of the *hukm* for the later provides an explanation to the former.

Thus, the *hikmah* of the *hukm* in this case is the attribute of inability to consent which takes place a level higher than minority in the chain of general. Despite, the explanatory role of *hikmah* for *illah*, it is avoided in strict analogy due to its instability in certain cases. In al-Ghazali view, the binding force of the derived general principles, based on *hikmah* can be restored when it fulfills two conditions:

- They conform to the purposes of the law
- They maintain compatibility and consistency with the general propositions of the law

The third type of general principle even though is not derived from the text, its validity is confirmed through its consistency with the purposes of the law and its general propositions. Al-Ghazali, calls this type of general principle *mursal* and stipulate the following conditions for its validity:

- It should not be *gharib* (strange: lacking evidence for its support)
- It should not be in conflict with the text
- It should not change or alter the general propositions of the law or the implication of the text (Nyazee, 1994)

By stipulating these conditions, for the validity of this type of general principle, he wanted to make sure that cases which are not provided for in the text can be solved in the light of the purposes of the law. This means that the rulings can be extended or restricted according to their potential role in realization of their purposes and in according to their consistency with spirit of the law in general.

Justification of rulings based purposes: As became clear from the preceding discussion, the realization of the purposes of the law constitutes the underlying reason for justification of new rulings. Most of the jurists agree on the fact that legal rulings have certain purposes to be fulfilled (Bagby, 1986).

It is this notion that dominates the whole process of interpretation of the law, hence providing guidelines for introduction of new rulings. This notion is also considered as the underlying reason for justification of exemption in certain cases. For, it provides an explanation as to the question of why the rulings that fail to realize their purposes are exempted.

It is through the consideration of the purposes of the law that a mechanism for the extension of existing rulings is drawn. As such, the new rulings may not have the direct support of the text but they still can be justified on the ground of their conduciveness to the realization of the purposes of the law. For example, hanafi's use of istihsan in legal reasoning in making exemption to a legal ruling is based on such consideration (Bagby, 1986).

However, some jurists of Shafi'i School do not accept the exemption based on istihsan. Their rejection, it is believed to be due to its unconvincing definition. Otherwise if such an exemption is made based on consideration *maslahah mursalah* which is defined as the derivation of a ruling based on a general type of purpose or utility that is confirmed by the law, it is acceptable to all jurists (Bagby, 1986).

Here again the centrality of the purposes of the law to jurists method can be observed for they abandoned strict application of legal rulings due to their failure in realizing their intended purposes. Even though, they use a different name for their method, the notion of the realization of the purposes of the law remains as their main focus.

However in some cases, al-Shafi'i accept certain type of istihsan if it has the support of an established case or is close in its meaning to the illah of an established case, otherwise it is rejected. To see this through al-Ghazali wordings istihsan is rejected if it is based on reason (*aqal*) without reference to legal proofs or it is a proof that sounds so but whose explanation is impossible.

Basically, it is the underlying presumption of each legal ruling to realize its purposes which is *maslahah*. However in certain cases, some legal rulings are void of such characteristic as they fail to realize their purposes. To overcome such shortcomings in the context of realization of the purposes, resort can be made to exemption as an exit strategy. The exit strategy through resort to exemption is applicable in two situations; firstly, in a situation where the total failure of a ruling in realizing

its purpose is detected, secondly in a situation where a strict application of a ruling results in more harm than benefit (Bagby, 1986). Exemption in these two situations is justified on the basis of the consideration of purposes. Hence from the two given situations, it can be concluded that the purposes of the law equip the jurist with the ability and insight in how to apply a ruling strictly and when to mitigate it. It also can be concluded that the failure of the ruling in actualizing its purposes and the harm caused as a result of its strict application, justifies resort to exemption as exit strategy.

Evidently, the realization of the purposes of the law cannot occur at the same level, there is a hierarchy of position as regards to their realization. Hence, the degree of the realization of the purpose of the law can be divided into five levels. An awareness of these five levels of the realization of the purposes of the law is extremely important. For, it enables one to identify the situation where an exemption to a legal ruling can be made. These five levels are:

- The level where the realization of the purposes is certain
- The level where the realization of the purposes is most probable
- The level where the realization of the purposes and its non-realization is equally presumed
- The level where their realization is unlikely but logically possible
- The level where their realization is not possible at all

The example of the first level is that of commercial transaction, for its purpose which is the possession and entitlement to the property is of immediate effect upon the conclusion of the contract. The example of the second level is the capital punishment which deters murder.

Thus, the rule which requires the execution of murderer has a purpose to be realized that is deterrence of murderer. So, deterring murderer secures the purpose of safety of life. However, the realization of the purpose in this case is most probable.

The example of the third level is the punishment of wine drinking whose deterrence force is not very effective. Therefore, the realization of its purposes and its non-realization is equally presumed. The example of the fourth level is the marriage of *asiyah* (a woman of menopausal age). Since, procreation is one of the primary purposes of the marriage in this case, it is a distant possibility. For, it is highly unlikely that a woman who has experienced menopause will give birth. The example of the fifth level is the waiting period of a slave girl when she is sold, in order to determine whether she is pregnant or not.

If her master sells her and immediately after the conclusion of the contract, he buys her back at the same setting her waiting period is nullified for it is impossible that the buyer could have had sex with her. Since, the purposes of the ruling that require iddah (waiting period) is to ascertain womb freedom from any fetus and this is impossible in this case, therefore the iddah in this specific case is nullified for there is no ground for realization of its purpose.

Subsequently in the case of the first four levels, no exemption can be made. The rulings have to be applied as far as the possibility of realizing their purposes is there. But in the case of the fifth level where the realization of the purpose of the ruling is not possible, exemption can be made.

Thus, al-Amidi is of the view that the smallest possibility of the realization of the purpose of the ruling is insufficient for its application and no exemption is permitted in this case. Thus, mere assumption of the realization of the purpose does not provide a sufficient ground to make an exemption to a ruling. However if it is definite that it will not realize its purpose then exemption can be made. Because the validity of the illah is mainly drawn on the base of the hikmah which represents the purpose of the ruling and it provides an explanation to the illah of the ruling.

The absence of hikmah which here stands for the purpose of the ruling, nullifies the illah of the ruling. The reason why the illah in this case is nullified is due to the lack of the characteristic of non-relativeness and specification as a result of the absence of the hikmah. However, Malikis do not permit the marriage of a woman of menopausal age which mentioned earlier as an example for the fourth level, not due to the unlikelihood of procreation as the purposes but because of the suspicion of wrong-doing and the possible harm to the heir. Here again, it is noticed that the purposes of the law take centre stage in validity of ruling. Thus, Malikis too make exemption to rulings in case of their failure in realizing their purposes.

CONCLUSION

The wide spread use of the terms munasabah by jurists in their discussion of analogy indicates the existence of a strong relation between the purposes of the law and the legal reasoning. This is due to the fact that legal reasoning as a method of determining the illah (cause) of the legal rulings, focuses mainly on its ability in realizing its purposes. Therefore, it can be said that the theory of purposes of the law as a determining factor, play an important role in the whole process of analogy, hence is strongly related to it. In addition, it provides an extremely useful criterion by means of which legitimacy of a ruling and its scope of operation can be verified. It is the underlying presumption of each legal ruling to realize its purposes, however in certain cases it fail to do so. In such a situation, resort to exemption as an exit strategy can help overcoming such shortcomings. Thus, exemption can be made in two situations, firstly in a situation where the total failure of a ruling in realizing its purpose is detected, secondly, in a situation where a strict application of a ruling results in more harm than benefit. This is justifiable on the basis of the consideration of purposes.

Therefore, it can be said that the purposes of the law equip the jurist with the ability and insight in how to apply a ruling strictly and when to mitigate it, a fact underscoring its relation and relevance to process of legal reasoning.

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