

## **The role of the mind in the extraction of the sharee'ah 'illah**

### **Introduction: Defining the sources of revelation**

We worship Allah by following the wahy, hence in understanding the revelation one must make sure the mind is used only to understand text and not to give judgment. One of the areas in which this point is extra significant is in the extraction of the 'illah, since we live in an age where the western culture has had such an impact on some Muslims that they have began to change their Deen in order to make it fit with the new reality. And they did this all under the pretext of what their mind perceived as maSlaHa (benefit). Thus, it is important to clarify the confusion that exists regarding this subject by starting with the roots of this confusion amongst the classical scholars. Then to demonstrate how their understanding has been used and abused by some modern day scholars who make the reality the source of their thinking and not the object of their thinking. And finally to explain the correct way to look at this subject and to elaborate the rules regulating the extraction of the 'illah.

### **Section I: The classical confusion**

#### **The Maqaasid of the Sharee'ah**

One of the classical confusions regarding the subject of 'illah is the claim that the maqaasid (aims) of the Sharee'ah are the reasons ('illah) for the ahkams. This stems from the view that the Sharee'ah has come for the benefit (maslahah) of man. This benefit then is categorized into the five maqaasids or aims of the Sharee'ah which are; the protection of: Deen, life, mind, lineage and property. So if the Sharee'h as a whole seeks these aims then, it is concluded, that they must be the 'illah of the individual ahkaams. This is also established from a scrutiny (istiqraa) of the ahkams themselves which show that they seek these aims. So upon scrutiny one can see this from the results of the ahkams, the hikmahs and 'illahs contained within the text that these aims are sought. Thus it is concluded that aims or maSlaHa of the Sharee'ah are the 'illah of ahkaam. Those who followed this method of ascribing 'illahs to ahkams put conditions for this process. ie giving 'illahs to ahkams because they either contained a hikmah or a maslahah consistent with the maqaasid. They said the Sharee'ah must either acknowledge the maSlaHa or a text must not explicitly cancel it or there should be no text which stops us from considering its benefit. Hence they divided the benefits (maSaaliH) into three types:

- i. Maslaha mulgha
- i i. Maslaha mu'tabarah
- iii. Maslaha murslaha

The first category is where the maSlaHa is canceled by the text itself. So when the text ordered jihad, for example, naturally this entailed the loss of life which contradicts the aim or maSlaHa of preserving life, but this maSlaHa is cancelled because of the text. However actions which have ahkams that do not explicitly cancel the maSlaHa fall under the second category of mu'tabarah where, it is claimed, their benefit is acknowledged by

the Sharee'ah. So for example the maSlaHa or aim in the prohibition of drinking alcohol is acknowledged (mu'tabar) because it's prohibition has a daleel. As for what that maslaha is, that is determined by the maqaasid. One of the maqaasid is the preservation of the mind so that becomes the maSlaHa of prohibiting alcohol and intoxication becomes its 'illah because it realizes the aim of preserving the mind. Naturally, this 'illah is extended to prohibit things other than alcohol which also intoxicate the mind. As for the third category; maSaaliH mursalah, this is where there is no specific daleel for the action so we cannot say its benefit has been canceled or that it has been acknowledged. However this action will come under the comprehensive daleel (daleel kulli), which they say are the five aims of the sharee'h. So if it realizes one of the aims of the Sharee'h then that is the maSlaHa of the action and on that basis the action would be legitimized. This is because the aims are treated as 'ilahs, so if an action fulfils the aim then it is legitimate. Advocates of this view cite the example of when the Sahabah compiled the Qur'an. Here they say there is no specific daleel for that action but the action fulfils the maSlaHa of preserving the Deen and hence the action is obligatory. This is because the action fulfils the 'illah, which is the preservation of the Deen. Since the maqaasid have been arrived at through istiqraa ie scrutiny of the texts then they serve as the comprehensive evidence (dalil kulli) for actions which lack a specific daleel.

Thus, the above method is treated by some scholars as one of the ways (maslak) of identifying the 'illah. However if we examine the arguments we find their understanding is mistaken for the following reasons:

i. The maqaasid are aims of the sharee'ah as a whole and not the aims of the individual ahkams

The premise that the aims (maqaasid) are the aims of individual ahkaams is not correct. This is because the benefit of man is the ghaayh or aim of the Sharee'ah not the 'illah. For example: when Allah (saw) says:

wa maa arsalnaaka illa rahmatallil 'aalameen

'We have not sent you except as a mercy'

Here the mercy is a description of the message as a whole or in other words the Sharee'ah as a whole has come for the maSlaHa or good of man. However this does not mean the individual ahkaams have come as maslahah because there is no indication in the text which gave any consideration to the subject of benefit in harm. Rather, the ahkaams have come regardless of what the benefit or harm is. So man has to fight jihad even though he may lose his life and the hand of the thief is cut even though he may not be able earn his own living.

ii. maqaasid are results of ahkaam and not their 'illah

As for the five maqaasids they are the results of certain ahkam and not the 'illah of these ahkams. For example Islam permitted polygamy without providing an 'illah. However the reality of applying the hukm of polygamy is that certain problems are solved. For example if the wife cannot bear children or the number of women in society is greater than men; these problems can be solved as result of applying the rule of polygamy. Hence the hukm of polygamy brings certain results but these are not the 'illah of the hukm. The same goes for the rest of the ahkaams from which the maqaasid are extracted.

iii. The Hikmah are the aims sought by the lawgiver and not the 'illah of ahkaam

This is because the hikmah is the result desired by the Lawgiver and not the Lawgiver's reason for legislation of the rule. So when Allah (swt) said:

liyash hadu manaafi' a lahum.

'That they may witness things that are of benefit to them' [22:28]

The benefits here are the results sought after the rule of hajj has been legislated. They are not the reason why hajj has been legislated otherwise hajj would not be necessary after the benefits have been acquired, which is absurd.

It is worth pointing out that the results and hikmah of ahkaam have nothing to do with the process of legislation and extraction of ahkaam as they come after the legislation of the rule. Only the 'illah is of significance because it is what causes the legislation to come into existence. Thus, the subject of hikmah and maqaasid are irrelevant when it comes to legislating rules.

iv. Finally, the maqaasid are not daleel kulli which can serve as illah's for actions which lack a specific daleel.

As for the argument of istiqrāa ie because the maqaasid have been taken from a scrutiny of the texts and hence this is a daleel kulli (comprehensive rule) to cover actions which do not have a specific daleel. This is wrong from two perspectives. Firstly, the maqaasid are merely a description of the reality of the ahkams and not the dalil kulli. Secondly, the dalil kulli is not a description of the reality of ahkams but a principle contained in a single or collection of daleels. So the principle of hiring is taken from the ayah about suckling. This is not the same for the maqaasid. They are the results and aims of the specific ahkaams from which they have been deduced, these results and aims cannot be used as evidences for other actions because the hukm shar'i is taken from a daleel or collection of daleels but not from the results and aims of daleels. So the fact that drugs like cocaine and heroin are Haraam is taken from the daleel

*'kullu miskar khamar wa kullu khamr haraam'*

**Every intoxicant is khamr and every khamr is Haraam.**

The daleel for their prohibition is not the aim of protecting the mind, which is merely a result of certain ahkaam and hence cannot serve as a daleel.

## **2. as-Sabr wat taqseem or tanqeeh al manaat**

Another erroneous means of extracting the ‘illah is the process known as sabr wt taqseem (examination and isolation of the attributes) or tanqeeh al-manaat (isolating the ‘illah). This is when the mujtahid examines, isolates and then eliminates those attributes (awsaaf) which could serve as ‘illah for the hukm. For example khamar has a number of attributes; grape juice, it is a liquid and it can intoxicate. So the mujtahid like a detective tries to isolate the attribute (wasf) which best fits the conditions of the ‘illah. He dismisses the first attribute because it is not extendable i.e. it cannot be applied to other things. As for being a liquid this cannot be the ‘illah because it is not mu’atthirah ie it does not effect the hukm ie there is no rational link between the prohibition and the fact that it is a liquid. In the end he will go for the last attribute ‘intoxicant’ because it is munaasib ie agrees with the aim (maqсад) of preserving the mind. This process is wrong for the following reasons: Khamar is a noun and not an attribute and so to isolate the attributes that khamar has without the text indicating their consideration is incorrect. The text did not indicate whether explicitly or implicitly that intoxication is the ‘illah for prohibition. As for the maqaasid, as we said above they are but results and aims of certain ahkaam and cannot be used to determine whether a certain attribute is an ‘illah or not. The only way to do this is if the text itself gives an attribute which has a causal link to the hukm. Otherwise, one would be merely shooting in the dark and the result would be arbitrary.

## **Section II: Contemporary confusion:**

Some contemporary scholars who have either been influenced by the western ideas and ways of thinking or they are loyal employees of certain corrupt rulers have sought to justify stances and positions based on an erroneous expansion of the above principles. We find them mutilating the Deen of Allah all in the name of maSlaHa. So Ibn Baz<sup>1</sup> once believed peace with the Jews was allowed because it is a maSlaHa whilst working to change the rulers is an evil if it entails bloodshed. Fahmi Huwaydi reckons we should change the Khaleefah every so-many years because the text, he claims, is silent on this matter and the highest Maslahah of the Ummah would be neglected if we did not do so. Whilst Qardawi thinks participation in a kufr government is allowed because it is a way of removing harm. Mawdudi on the other hand surmised that ruler should be bound by all the decisions of the shura because past Khulafah were dictatorial but it is okay to vote for a woman leader if it is the lesser of two evils. In all of this the criteria is unrestricted benefit (maSlaHa) which contradicted the understanding of the classical scholars in two fundamental ways:

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<sup>1</sup> Though reportedly he later retracted the opinion.

a) The classical scholars only considered the maSlaHa which did not contradict the known text while the above scholars ignored the text. So peace with the Jews, participation in kufr government etc are Haraam due to clear text and would have come under the cancelled maslahas (mulgha) if we follow the classical criteria.

b) Whenever a new issue or problem came up the classical scholars would study the Qur'an, Sunnah, Ijma' and Qiyas. If they did not find the daleel they would make recourse to maSaaliH mursalah. Thus, maSaaliH mursalah would be the last resort. But for the above scholars it is the first resort as if they are applying the Usul backwards. So the first thing they would consider is the maSlaHa whilst the evidences from the primary sources are either interpreted away or ignored.

The above type of thinking is a disease which has affected the legislative thinking of the Muslims. It has opened the floodgate to kufr thoughts and solutions. Thus, it is important to understand the correct methodology for extracting the 'illah.

## **Section II: The correct methodology for extracting the Sharee'ah 'illah**

The purpose of extracting the 'illah is so that one can make analogy to it in order to extract new ahkaams. So before we go into the discussion of the means of extracting the 'illah it is worth discussing what qiyaas is and the key questions surrounding it.

### **1. What is Qiyas?**

Qiyas is the extension of a rule to new matters by analogy based on a shared 'illah. So the hukm of the old matter is extended to a new matter when the new matter shares the same 'illah as the hukm of the old matter. Thus qiyaas is always built on the following four pillars:

- i. Asl (old matter)
- ii. fari' (new matter)
- iii. Hukm (rule)
- iv. 'illah (effective cause)

To make sense of this let us look at the following example:

*Iza nudiya lis salati min yawmil jum'ah fas'aw ila zikrillah wa zarul bay' [62:9]*

**'O you who believe! When the call is proclaimed for the Salah (prayer) on the Day of Friday (jummah prayer) come to the remembrance of Allah and leave trade.'**

Here the asl (old matter) is trade. The hukm is to leave trade when the azaan has been called. And the 'illah is distraction from the salaah. If we suppose the new matter is studying then we can see it will take the same hukm as the old matter because it shares

the same 'illah, which is that studying will distract from the salah and hence it will take the same rule. So studying when the azan is called is Haraam due to Qiyaas.

## 2. What is the proof of Qiyas?

The daleel for qiyaas is the daleel which contains the 'illah. The presence of an 'illah entails that we follow the rational of the text (ma'qool an-nass) since the rational is not from the mind but the text itself. So if the rational of the text extends to a new matter then we are obliged to extend it, otherwise we would not have followed the text which is an obligation. So missing Jummah under the pretext that ones is studying will cause that person to be sinful because 'illah extends to studying and hence it must take the same rule. Since the 'illah is mentioned in the Kitab, Sunnah and Ijma' ie the definite sources then Qiyas itself is definite. Of course there are other evidences for Qiyas but this point alone is sufficient to validate its existence.

Those who rejected Qiyas like the Zahiris did not actually reject the principle of Qiyas because they accepted it when it came from the manTooq (uttered meaning). Being Zahiris i.e. literalists they did not take the 'illahs that were derived from the mafhoom for this would be following speculation and not certainty. And as for the 'illah taken from the mantuq they did not call this qiyaas because they considered it as simply following the literal (Zaahir) meaning of the text whilst qiyaas for them was a term used to mean a speculative (zanni) process in legislation which they found unacceptable. That is why they rejected the term Qiyas and some of its forms though in reality they accepted it in principle.

## 3. Why is Qiyas a Source ?

Something is defined as a source in Usul when it serves as a source for new ahkams. Qiyas is a source because we can extract new hukms from it. By extending the original rule to new realities via a shared 'illah produces new hukms for new realities and hence Qiyas is a source. This is one of the reasons why we say Islam is applicable for all times and places since new hukms can be deduced for new realities and problems.

For example Allah (swt) said::

*Wa a'iddu lahum mastata'tum min quwwa wa min ribatil khayl turhiboona bihi 'aduwallah*

**'And make ready against them all you can of power including horses to threaten the enemy of Allah' [8:60]**

The hukm is to prepare. The old matter is horses. The 'illah is to terrify the enemy of Allah. As for the new matter; it is anything that will realize the illah of the preparation, which is to terrify the enemy. So these days it would be obligatory to have tanks, fighter

planes, and aircraft carriers since they terrify the enemy. Not only that, the ‘illah obliges the Islamic state prepare in the following areas:

- a) The arms development and war industry must be the strongest of its age if it is to fulfill the ‘illah of terrifying the enemy
- b) The state cannot depend on others for its sources of power and hence it has to strive to develop its own weapons and armaments
- c) It should have secret sophisticated weapons which will strike fear in the hearts of the kuffar. Like the American’s stealth bombers and daisy cutters. Similarly state should have weapons the people never heard of before in order to terrify the enemy.

These are new ahkams which did not exist before but exist now in our time. We were able to extract these new hukms because the Qiyas serves as a source for new ahkaam.

#### **4. why does the ‘illah have to be shar’i and not ‘aqli?**

This is because the ‘illah is the daleel which allowed the extension of the rule to the new matter. For this rule to be a hukm shar’I ie a valid ruling of the Sharee’ah it must be taken from the speech (Khitaab) of the legislator since the definition of hukm sha’I is the speech of the legislator relating to man’s actions. Any rule which is not from the speech of the legislator is rejected because it is not wahy and we are ordered only to follow the wahy in our actions. Thus, since it is the ‘illah which allows the extension of the hukm to a new matter it must be from the text and not from the mind. If it is from the mind then it is the speech of the mind and this is not the source of Hukm shar’i. To extend the rule without a textual ‘illah would be like extending the prohibition of alcohol to vinegar just because vinegar comes from alcohol. Alcohol is one reality and vinegar is another. One cannot arbitrarily extend the hukm without the text allowing such an extension. If the text allows it via an ‘illah then this is a valid hukm shar’I, if not then it is a rational judgment which has no value in the Sharee’ah.

This is notwithstanding the fact that man is unable to give judgment on that which he cannot sense. If the Creator did not provide us the reason (‘illah) for the legislation of the rule then how can man judge. Thus, not only is the rational ‘illah rejected from the viewpoint of hukm shar’I but it is practically impossible for man to give such a judgment in the first place.

Furthermore, the fact that the mind cannot make analogy without a shar’I ‘illah is aptly demonstrated by the reality of the Sharee’ah rules themselves. For example, we find similar realities are given different hukms while different realities are given the same hukm. The mind can normally make analogy between similar things but the text contradicts this principle: So in the absence of water, of all things dust is sufficient to make wudu even though they are two different things. Mizi (seminal fluid) is impure but sperm is not. If a baby girl urinates on clothes then the clothes must be washed but if a baby boy does the same then it is sufficient just to sprinkle some water on it. Thus, similarity does not mean the same hukm just as dissimilarity does not mean a different

hukm. So how can the mind make analogy for the sake of new hukms when even the existing ahkaams cannot be rationalized without a shar'I 'illah?

### **5. Why do we say 'illah is only to be found in the mu'amalaat?**

We say no 'illah exists in the asl (origin) of food, clothing, morals and 'ibaadaat for two reasons:

a) by a scrutiny of the texts we found that they do not contain 'illah.

b) the primary motive for these actions is worship and hence there are no tangible results that we seek since the results are in the Hereafter. So worship is the only reason for doing these actions which is why no other 'illah's are sought. So we pray not for the sake of exercise, fast because it is good for our health, speak the truth so people will say what good morals we have and refrain from pork because it might contain salmonella. We do not do these actions for any of these reasons, rather it is purely for the sake of worship. That is the prime motive for doing these actions.

However in the furu' of worship 'illah's may exist if certain tangible results are sought. For example; Jihad is worship but its performance entails certain tangible results and hence there is a propensity for 'illah's to exist. So preparation for jihad is a tangible result which is sought and it does contain an 'illah which is to terrify the enemy.

As for the mu'amalaat because they generally entail tangible results, they are open to be reasoned i.e. contain 'illahs. For example, Allah ordered the Messenger (saw) to distribute the spoils of war amongst the orphans and the poor. This is a tangible result sought by the hukm which is open to having an 'illah. Even though the hukm is fulfilled for Allah's sake the result is still tangible which means that there may be a reason or secondary aim why the poor should receive the booty. The reason here of course is stated in the text: 'so that the booty does not become a commodity only between the rich among you.' [59:7]

Thus, the 'ibaadaat do not contain 'illahs because the primary aim is worship. Whilst the mu'amalaat have a propensity to have 'illahs due to the tangible results which can have secondary aims.

### **6. The means of extracting the 'illah:**

After discussing the incorrect sources and ways of extracting the 'illah from the text, what remains is to briefly outline the correct textual sources from which we can acquire an 'illah such that we can say the 'illah is a sha'I illah and not 'aqli. These sources are four: saraahatan, dalaalatan, istinbaatan and qiyaas.

#### **i. Saraahatan (extraction of the 'illah from an explicit utterance)**

Saraahatan refers to a sareeh or explicit indication of the text. What we mean by explicit indication is that the reasoning (ta'leel) is in the manTooq or the pronounced meaning of the text as opposed to the mafhoom, which is the inferred meaning of the text. This we

can see in the use of certain expressions and prepositions that denote reasoning. For example the expression ‘min ajl’ in Arabic which means ‘because of/ in order to’ is an explicit indication of causality and not something that is inferred or derived from the text.

For instance the Messenger (saw) said:

*Innamal isti`zaanu min ajlil basar*

**‘Indeed, permission has been made obligatory because of (min ajl) sight’<sup>2</sup>**

Here, the reasoning is explicitly pronounced in the text by saying ‘because of’. Thus, the reason for legislating the rule of asking permission before one enters another persons house is because (min ajl) one might see that which is not lawful to see, such as a non-mahram woman whose ‘awrah is not completely covered because she is in her private space. The same goes for the following saying of (saw):

*In kuntum thalaatha falaa yantaaja ithnaan doonath thaalith min ajl an zaalika yuhzinuhu*

**If there are three of you, two should not whisper to each other in front of the third because (min ajl) that will upset him.’<sup>3</sup>**

So the reason (‘illah) for not whispering between two people while a third is present is because that might cause the third to become upset.

## **ii. Dalaalatan (extraction from the implicit meaning)**

To understand the extraction of this type of ‘illah one must have some background understanding of dalalaatul lafaaz (textual indications) since it is from the indications (dalaalah) that the ‘illah is extracted. The sharee’ah text has two levels of meaning. One is the Mantuq which is the understanding one gets directly from the expression (lafz) used. For example: Do not say Uff. So saying ‘Uff’ is prohibited because ‘Uff’ is from the mantuq (pronounced or uttered meaning). But what about beating ones parents? Clearly this is not uttered in the text since the word ‘beating’ is not mentioned. The prohibition of such an action is understood from the implicit meaning or the indication (dalalah) of the text. Ie that meaning is acquired from the indication of the expression (madlul al-lafz) and not from the expression itself. So beating is prohibited bay greater reason.

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<sup>2</sup> Bukhari 5772.

<sup>3</sup> Ahmad: 1/375

There are many types of dalaalat (textual indications) but the one which concerns us here in terms of extracting the 'illah is the dalaatul imaa wat tanbeeh (the indication of notification). This is where the implicit meaning notifies (tanbeeh) us of an 'illah.

Generally, this happens in two ways:

1. When the hukm is linked to a causal attribute (wasf mufhim) such that it has a mafhum mukhalafah (divergent meaning) or mafhoom muwaafaqah (congruent meaning). In other words the text mentions an attribute which rationally has a link to the hukm it has mentioned. What this linkage is not uttered but understood from the text. For example:

*'fil ghanam as-saaimah zakaah'*

The Messenger (saw) said: **'On the grazing sheep zakah is payable'** The attribute which brings the hukm into existence is grazing. Naturally one might ask; what is it about grazing that obliges Zakah? If we think about the meaning of grazing we understand that it means to let the animals graze from the open pastures which are public property. Since this is taking from the public resources then one should pay it back by paying zakat ie give back to the public. Hence the one who feeds his livestock in a pen, he has not used the public resources and therefore Zakah is not payable. This causality (ta'leel) between the attribute and the hukm is not explicitly stated and hence it is not from the category of sareeh. But since it is understood from the meaning of the word grazing and its linkage to the hukm then we can say this is an 'illah extracted from the indication of the text i.e. this 'illah is notified (tanbeeh) by the implied meaning (mafhoom) and not from the uttered expression (manTooq).

Let us look at another example:

*'Innaha lysat binajas innaha min at tawaafeena 'alaykum wa tawwafaat'*

**'The saliva of the cat is not impure (najas) because it is constantly around you (ie domesticated)'**

Here the hukm of impurity or purity of the cat's saliva is linked to whether it is domesticated or not. So if the cat is domesticated then the saliva is pure and if not the saliva is impure. Here the text did not say explicitly that the reason for cat's saliva being pure is because it is domesticated. Rather we understand this from the indication (dalaalah) of the word 'domesticated' and its linkage to the presence or absence of the hukm. Ie when the cat is around the house it is not going to eat najas and hence its saliva is pure, but if it is wild then it is likely to eat whatever it finds outside and so its saliva will not be pure. This 'illah is not stated but understood or notified from the meaning of domestication and hence the 'illah is extracted from the indication (dalalaah) of the attribute. Thus, we call this 'illah an implicit 'illah.

2. The second category of the implicit 'illah is taken from the usage of particles (adawaat) which linguistically in origin do not give the meaning of 'illah but it is taken from the meaning implied by their usage. In total there are five ways in which this can take place but for sake of brevity we shall give one;

He (saw) said: *'man ahya ardan fahiya lahu'*

**'whosoever revives a land, it belongs to him'**

Here the fa of consequence (fa at-ta'qeeb) is used to say that a land belongs as a consequence to the one who revives it. Hence one can deduce an 'illah from it because what came after the faa was a consequence of what came before it. However the faa in the Arabic language is not in origin used to mean consequence but has other usages as well. Eg it may be used as a conjunction (like a waw) or it may be used to indicate emphasis

For example: Allah (saw) says: **failayna marji'ukum** [10:46]

'And (faa) unto Us is the return.'

Here the fa means 'and'.

Or it may mean a period of time as understood from the word 'afterwards' For example:

'inni laghaffarun liman taaba wa aama wa 'amila saalihan thummahtada '[20:82]

'Verily I am forgiving to him who repents, believes and does good deed; and afterwards remains constant'

However from the usage of faa in the hadith we can see it does not mean 'and' or 'certain time period' rather the context indicates consequence which gives the meaning of justification or 'illa. Ie the land belongs to him because he revived it. So again the 'llaha here is not explicitly stated but understood from the indication (dalaalah) of the particle faa. Hence this is another example of an implicit 'illah.

One might ask what is the difference between faa and laam at-ta'leel which is considered to be explicit? The difference is that whilst laam at-ta'leel in origin gives the meaning of causality unless the qaraa`in indicate otherwise, the faa however does not give such a meaning. Rather what it means has to be indicated and understood from the context and therefore it is implicit and not an explicit 'illah.

**iii. Istinbaatan (extraction by way of inference)**

This ‘illah is not taken from any explicit prepositions or particles and nor is it taken from the indication (dalaalah) of the uttered expression, rather it is inferred from the structure or a scrutiny of one or more texts.

For example:

When ‘Umar b. al-Khattab came to the Messenger (saw) inquiring if he’s fast was still valid after kissing his wife: the Messenger (saw) said:

If you had gargled would your fast had been broken? He (‘Umar) said : No The Messenger (saw) replied: then the same goes for kissing.

Here the ‘illah is not explicitly stated and nor is there an indication (dalaalah) from the wording as no attribute was mentioned. Rather a comparison is made between gargling and kissing. And it is from this comparison that we deduce the attribute or ‘illah. We know in gargling the fast is broken when the water goes through so that must be the attribute common to kissing aswell. Thus, the ‘illah deduced is inzaal ie when the water goes through.

Let us take another example:

*Al-muslimoona shurakaa fi thalaatha: al-maa, wal-kila wan naar*

**‘The Muslims are partners in three: in water, herbage and fire’**

This text indicates partnership of the Muslims is only in the above three things but it does not give the reason for this. However, since the Messenger (saw) allowed the private ownership of water in Ta`if. This indicates that the water must have an attribute which allows its ownership in one situation but prohibits it in another. When we look at the example of the water owned in Ta`if we find that it has a certain attribute: which is that it was used for the purpose of watering gardens. Thus the water was not needed by the community as a whole but used by some people. From this we can infer that the ‘illah for prohibiting ownership of water is the communities need for it as a whole. This is because the first text prohibited the private ownership and then second text permitted it in a situation where it is not needed by the whole community. This means it is the communities need which determines whether the water can be owned or not. Hence the ‘illah here is a derived ‘illah (‘illah istinbaatiyyah) because it is inferred through the scrutiny of texts and not through an explicit meaning or an implied meaning of expressions.

#### iv. Qiyaasan (extraction through analogy)

This is when a new ‘illah is extracted from an existing implicit ‘illah by way of analogy to the effective link that both share. To help us grasp this let us look at the following road safety instruction:

Do not drive when tired

The effective link between tiredness and driving is that driving when tired may cause us to have an accident. Hence, the attribute of tiredness is obviously the ‘illah for the instruction not to drive. However, because there is an effective link between the original attribute and the hukm then it is possible to make analogy between the existing attribute and any new attribute which shares the same effective link. Hence driving when stressed is analogous to tiredness because it shares the same effective link which is that it may cause an accident and hence this would be an example of a new ‘illah extracted through Qiyas. So driving when stressed would also violate the instruction just like tiredness.

Now let us apply the same principle to the following hadeeth:

*laa yaqdi al qaadi wa huwa ghadbaan.*

#### **‘The judge should not pass judgment in a state of anger’**

Here the implicit ‘illah for not passing judgment is anger because anger will effect the judgment. So the effective link between the attribute of anger and the rule is disruption to objective thinking. Due to the existence of an effective link we can make analogy between anger and other new attributes which share the same effective link and extract a new ‘illah through qiyas. For example hunger is analogous to anger because it shares the same effective link, which is that it will effect objectivity. Hence hunger is a new ‘illah derived through analogy.

One might say what is the difference between the implicit ‘illah (‘illatu dalaalah) and the ‘illah of analogy (‘illah qiyaasiyyah) with regards to the extension of the original rule? Are they not the same? The answer is that the implicit ‘illah is a causal attribute (wasf mufhim) and the extension of the rule is achieved if the new matter shares that causal attribute. However in the illah of analogy the new matter does not come under the causal attribute. Rather the extension of the rule is through the extraction of a new ‘illah and not through extension of the causal attribute to new matters.

For example:

**‘On the grazing sheep zakah is payable’**

Here the ‘illah or causal attribute is ‘grazing’ for the rule of paying zakat. New ahkams are derived when the new matter has the same attribute as the old matter. So Zakah needs to be paid for example on **grazing camels** because it has the same attribute of grazing as

the old matter. This is different to the 'illah qiyaasiyyah because the new matter does not come under the old matter. So the attribute of hunger is different to that of anger. Hunger effects the hukm not because it comes under the original attribute but because it shares the effective link of the old attribute. So the difference really is that in the implicit 'illah new hukms are derived by extending the original attribute to new matters while in the analogous 'illah new hukms are derived by extracting new attributes which share the same effective link.

## 7. The shuruut of 'Illah

In order to insure that an 'illah is truly wahy (revelation) and not the product of the mind the following conditions have been stipulated:

a) The attribute should be understood to be the baa'ith or cause of legislating the rule and not what introduces (mu'arrifan) its presence; otherwise this will be a sabab. For example:

sumu li ru`yatihi

Fast when you see the moon, is a sign of the existence of the rule and not cause or baa'ith of the legislating the rule. There is no rational link between the moon and fasting and hence the mind cannot understand any causation from this. So the sabab shows the presence of a legislated rule while the 'illah shows the reason for legislation.

b) The attribute must be effective (mu`athirah). This is because an attribute cannot be the 'illah of the hukm if the attribute did not effect the hukm. If the hukm continues regardless of what the attribute is then that attribute is not an 'illah. For example: liyash hadu manaafi'a lahum. 'That they may witness things that are of benefit to them' [22:28] Whether one sees something beneficial or not does not effect the hukm of Hajj. So the hukm of hajj remains regardless of what benefit one may or may not obtain.

c) The attribute must be a causal attribute (wasf mufhim) ie it is an attribute which is Zaahir (evident in meaning) and mundabit (stable in its application) and have a proper relationship (munaasib) to the hukm. When it fulfils these criteria we can say it is a causal attribute. The reason it must be evident in meaning is because the 'illah needs to be extended to new realities. This cannot be done if the 'illah itself is obscure (khafi). As for mundabit; it means the 'illah is constant and not subject to differences in person, time and place. For example: if someone says: 'a good curry is when it has plenty of chilli' hot cannot be a constant and stable reason why a curry is good because it differs from person to person and hence cannot be extended to other foods. Similarly the 'illah must be stable and constant otherwise it cannot be applied to new realities. As for munaasib, this means

one can intellectually see a rational link between the ‘illah and the hukm. So not judging when in a state of anger for example is munaasib because there is a rational link, without a rational link one cannot judge if an attribute is the cause of the hukm or just a sign of its presence.

d) The attribute must be muttaridah. This means there must be a cause effect relationship between the attribute and the hukm. So the illah not only effects the hukm but its absence entails the absence of the hukm and its presence entails the presence of the hukm. This is the reality of a true cause, which is that the effect is always dependent on the existence of the cause, and so in the same manner the hukm is always dependent on the existence of the ‘illah.

For example:

*Yaa ayyuhannabi qul li azwaajika wa banaatika wa nisaa'il mu`mineen yudneena 'alayhinna min jalaabeebihinn zaalika adnaa an yu'rafna falaa yu`zany*

**‘O Prophet! Tell your wives and your daughters ad the women of the believers to draw their cloaks (Jilbaab) all over their bodies. That will be better, that they should be known and not be molested.’ [33:59]**

Although this ayah has come in the form (seegha) of an ‘illah it cannot be considered as such because the attribute is not muttarida. Ie the hukm of jilbab remained in the time of the Messenger (saw) regardless of whether the women were molested or not. So molestation cannot be the cause of the rule because there is no cause-effect relationship between molestation and wearing the Jilbaab.

e) the attribute must be muta’addiyah ie extendible to new realities otherwise Qiyas cannot take place. So:

*as-saariqu was-saariqatu faqta’u aydiya huma .*

**cut the hand of the male and female thief,**

contains an ‘illah which is theft. However, because the ‘illah cannot be extended to new matters it is qaasira (deficient and non-extendible). Hence it is termed a sabab because it merely serves as a sign for the presence of the rule.

f) The ‘illah should not be confused with the hikmah. ‘Illah is the reason for legislating the rule while the hikmah is the result sought from the hukm. For example:

*kutiba ‘alaykumus siyaam kamaa kutiba ‘alalazina min qablihim la’allakum tattaqoon*

**‘Fasting has been written for you as it was written for those before you so that you may gain Taqwa’** Here Taqwa is a result sought from the fasting and not the reason for its legislation. If it was the reason that would mean fasting is no longer obligatory on the one who has attained God-fearing and piety.

g) And finally the attribute should not contradict another text from the Qur’an, Sunnah or ijma’ Sahabah.

These are the valid ways and conditions to extract the Sharee’h ‘illah. They insure that the role of the mind in extracting the Sharee’ah ‘illah is restricted only to understanding the text and not to give judgments of its own accord.