

The tenth lecture

The third Section: Consensus

It is the agreement between all the jurists in an era that followed the era of the Messenger of God, may God bless him and grant him peace, on a legal ruling regarding a fact or a group of facts. This is because in his time - may God bless him and grant him peace - he alone was the legislative authority and his opinion was conclusive and there was no room for debate about it. Or contradict it, then the consensus becomes a source of the Sharia ruling upon which there has been consensus, and it comes in order after the Qur'an and the Sunnah.

Once the ruling is confirmed by consensus, it is considered definitively established, and it is not permissible for it to be a subject of ijtihad later on. It is not acceptable or valid for any diligent person to deny this ruling after it was made a subject of consensus or placed it a subject of controversy, discussion and research. After the Messenger of God, may God bless him and grant him peace, moved to the Supreme Comrade. There are many opinions among the jurists, and if they all agree on a ruling,

then consensus is established by their agreement.

The subject of consensus is not limited to the legal rulings related to the facts only, but it may also be the subject of interpreting the text or the reason for the ruling it decides or stating its description.

The consensus of the diligent scholars does not arise out of thin air, but rather it depends on a legal support of text or analogy, or whatever is from the Sharia. If the diligent scholar says a ruling, his ruling must have a legal support, whether it is a text in the Qur'an or the Sunnah, and it may be an analogy, so the consensus of the diligent scholars on a ruling is in fact, there is consensus on the existence of a definitive legal basis for this ruling. Consensus must also exist between a number of diligent scholars. Consensus cannot be imagined in an era devoid of diligent scholars or in which there is only one diligent scholar.

The conditions for diligence are established in the science of the principles of jurisprudence. If an agreement is concluded between a number of Among the scholars or researchers in Islamic law who do not have the qualifications of a mujtahid, so consensus cannot be achieved by their agreement, just as consensus must be held by the agreement of mujtahids from different regions.

Accordingly, there is no consensus by the agreement of the mujtahids of one country, as it is possible for the opinion of the other country to be the correct one. It is also required that the consensus be achieved by the agreement of all the mujtahids on the legal ruling on the incident, and from this came the name consensus, meaning all the mujtahids and not the overwhelming majority, so if the ruling is presented There is only one person, so there is no consensus, since it is possible that the opinion of that one person is correct.

The consensus is divided into two parts:

- **Explicit consensus:** in which every mujtahid expresses his opinion on the matter explicitly, whether in the form of a fatwa or a ruling, and their agreement is proven after that in the opinion, and there is no disagreement or controversy over the validity of this type of consensus, because all of its elements are present with certainty, and it is a definitive indication of its ruling. There is no doubt about its verification, and based on that, it may not be a subject for subsequent diligence.
- **Silent consensus:** in which one of the diligent scholars expresses his opinion, and the rest of the diligent scholars do not object to it, which is expressed as an implicit agreement with him in opinion, and the authority of this consensus is lower than its explicit counterpart. Indeed, considering it as a consensus is a matter of controversy among fundamentalists, as the majority went to deny its authority, justifying this by the fact that it is permissible for the reasons for

silence to be other than consent, such as not studying the issue adequately.

Or the fear of danger in the event of opposition. The basic principle among them is that “one who is silent should not be attributed with a statement.” Otherwise, Hanafi jurists acknowledge the validity of silent consensus, considering the religious and scientific responsibility that falls on the mujtahid and which imposes on him the necessity of expressing his opinion when he is asked to state the legal ruling on the incident. If he remains silent about expressing his opposition without it being proven that there is an obstacle preventing him from expressing this opposition, then his silence must be interpreted as approval of this opinion in a way that provides the pillars of diligence.

The consensus finds its support in the Book in the Almighty’s saying: “O you who have believed, obey God and obey the Messenger and those in authority among you.” Part of it means “those in authority among you” are diligent scholars, for they are those in authority in the religion. God Almighty also says: “And if they returned it to The Messenger and to those in authority among them, because of His knowledge, those who derive it from them.” Which means that the ruling must be returned to the person in authority, after the command to return it to the Messenger of God, may God bless him and grant him peace.

Thus, the consensus of the jurists on a specific legal matter is obligatory to obey, and God Almighty has threatened those who oppose each other. The Messenger and follows other than the path of the believers. God Almighty said: “And whoever opposes the Messenger after guidance has become clear to him and follows other than the path of the believers - We will give him what he has taken and will plunge him into Hell, and what an evil destination” is the Noble Verse, where the Noble Verse equates the one who follows other than the path of the believers and the one who opposes the Messenger.

Consensus also finds its support in the noble Sunnah, where several hadiths were reported from the Messenger of God, may God bless him and grant him peace, stating that infallibility from error is attributed to the nation. My nation is upon misguidance.” He also says: “Whatever Muslims see as good is good in the sight of God.”

The fourth Section: Measurement

It is the joining of an incident for which there is no ruling in a text to an event for which there is a ruling regarding which there is a text due to the similarity of the two incidents in terms of the reason for the ruling.

In analogy, it is assumed that there is a ruling in the Qur’an or Sunnah regarding a

certain event, the cause of which is verified in another event, so the mujtahid determines the same ruling for it by analogy with the first event. This is because analogy is an application of the law of similarity, which requires that similar matters have one ruling, because the union of the two actions in the cause requires that Their ruling is the same.

Most jurisprudence goes to recognize analogy as a fourth source after the Qur'an, Sunnah, and consensus, as only a limited number of jurists have denied it.

One of the most prominent examples of analogy in the field of criminalization and punishment is the imposition of the punishment of eighty lashes for drinking alcohol, by analogy with the punishment for slander, in order to establish the reason in both cases, which is slander, according to the words of Imam Ali, may God bless his face: "When the drinker drinks, he is drunk, and when he is drunk, he is delirious, and if he is delirious, he is slandering."

Another example of it is the prohibition of every intoxicant, by analogy with the prohibition of alcohol, because they share the reason, which is intoxication. Another example is establishing the rule that killing the testator for whom the testator necessitates depriving him of the will, by analogy with the heir killing his legatee, which necessitates preventing him from inheritance, because they share the reason, which is the urgency of the matter before His time comes, and his intention is repaid by depriving him of what he sought before his time.

Analogy finds its authority as a source of legal ruling in the texts of the Qur'an and Sunnah. In the Holy Qur'an, many verses are mentioned that establish the validity of analogy, including the Almighty's saying: "O you who have believed, obey God and obey the Messenger and those in authority among you," where God Almighty commands the believers in this noble verse if they disagree in a matter for which there is no ruling in the Qur'an or the Sunnah or in what those in authority have decided to refer the ruling on that to God and His Messenger, and it is considered a response to the matter in this manner by attaching what there is no text in to what a text has stated in it, because they are similar in the reason for the ruling in the text, so the reference for analogy here is To the text, and then the analogy in its reality is a response of the matter to God and His Messenger.

The validity of the analogy also appears in the Almighty's saying: "It is He who expelled those who disbelieved among the People of the Book from their homes at the first of the gathering. You did not think that they would go out, and they thought that their fortresses would protect them from God, so God came to them from where they had not expected and cast terror into their hearts. They are destroying their homes with their own hands and the hands of the believers. So, consider, O possessors of insight. Then God Almighty said: "So consider, O you who have insight."

That is, compare yourselves with what happened to the disbelievers among the People of the Book about whom the verse was mentioned. If the reason for God's wrath upon them is present among you, it will befall you just as it befell them, because what necessitated God's wrath is the reason for the punishment He sent down.

The validity of the analogy also appears in the Almighty's saying: "And He gave us an example and forgot His creation. He said, 'Who will give life to the bones when they are rotten?' Say, 'He who created them the first time will give them life, and He is All-Knowing of all creation.'" The Lord Almighty and Majestic is similar in this verse to resurrecting the dead to create people the first time, so whoever is able On creation for the first time, he is able, and more importantly, to raise the dead. Indeed, it is easier for him.

In the Sunnah of the Prophet, the Messenger of God, may God's prayers and peace be upon him, approved analogy as a source of legal ruling in his previously mentioned hadith to Muadh bin Jabal when he appointed him as the judge of Yemen. The Messenger of God, may God's prayers and peace be upon him, approved of Muadh to exert his own opinion if he did not find a text in the Qur'an or the Sunnah, and ijtiḥad includes Analogy.

The approval of ijtiḥad is an approval of analogy, because the Messenger of God's approval of ijtiḥad was absolute and he did not limit it to a specific type of ijtiḥad in particular, just as the Messenger of God, may God bless him and grant him peace, used to measure some issues of unknown ruling over other issues of known ruling. An example of this is His saying, peace and blessings be upon him, is that it is permissible for a son to perform Hajj on behalf of his father after his death by analogy with the son paying the debt of his deceased father, and by analogy with the fasting person's qiblah without rinsing his mouth and without swallowing water in terms of not breaking the fast.

This approach to deriving the ruling is not specific to the Messenger, may God's prayers and peace be upon him, only, as there is no evidence that he is specific to it. Therefore, it is a general legislative approach that scholars have the right to adopt, following the example of his Sunnah, may God's prayers and peace be upon him.

The analogy is only valid if its four pillars are present, which are, in brief:

- **The original:** It is what is stated in the ruling in a text, and its ruling may be decided unanimously.
- **The branch:** which is what no text or consensus has stated in its ruling.

Ruling: It is the legal ruling stated in the text, consensus, or analogy.

- **The reason:** It is the description upon which the original ruling is based and its availability in the branch is proven.

Although there was consensus on the permissibility of analogy in matters for which there is no legal ruling in the Qur'an or Sunnah, then disagreement and controversy arose between jurisprudence over whether or not it is permissible to adopt analogy in punishment crimes, retaliation, and blood money, as an opinion went to the permissibility of analogy in the field of punishments, retaliation, and blood money, based on the fact that Analogy is one of the evidences of Sharia law, that is, it is evidence for deducing Sharia rulings, and there has been no rule from the text or consensus to limit its validity to specific areas of Sharia law, and therefore its validity must be general, as it is permissible to invoke it in all of its fields, including the prescribed penalties.

As for the opinion that it is not permissible to make analogy in this area, it is based on the fact that punishments for hudud, retaliation, and blood money are legal requirements and their cause is not known through diligence.

The texts that established these crimes and determined the punishments for them have been formulated in a way of specificity and limitation in which there is no room for analogy. As for discretionary crimes that pursue one There are two methods: either authorizing the judge to determine the acts and their punishments, or for the guardian to undertake that himself in an independent penal code that he issues for this purpose. In both cases, there is no escape from resorting to analogy, whereby he measures the acts for which there is no text in the Qur'an or the Sunnah against the acts for which there is a text. In this regard, penalties of the same type as the penalty prescribed for punishment shall be prescribed for her.

He measures sodomy or lesbianism and measures acts that affect the honor of the victim or violates his modesty without canceling the amount of adultery. He measures this against adultery and determines the punishment for it of flogging without the punishment for adultery. He may also measure fraud, breach of trust, and usurpation by threatening theft and determine a punishment for them other than amputation, which may be Flogging or imprisonment.