

The eleventh lecture

The fifth Section: Approval

It is the preference of a hidden analogy over a clear analogy, or in another expression, it is the diligent person's deviation from the requirement of an obvious analogy to the requirement of a hidden analogy. There is another type of approval, which is the exception of a partial case from a general ruling, as it is known as "the

diligent person's deviation from the requirement of a clear analogy to the requirement of a hidden analogy." Its counterparts have a stronger face that requires abandoning the first.

Istihsan, in this sense, presupposes preferring an analogy over an analogy where there is no text in the incident, and its basis is the preference of interest, which makes the ruling required by the weighted analogy closer to achieving an interest or repelling a harm.

Istihsan finds its authority as a source of Shari'a ruling in the fact that it is in fact an analogy, and analogy, as previously mentioned, is an undoubted source for drawing the Shari'a ruling on the incident, due to the unity of the cause between the two events. Istihsan, in its essence, is an analogy whose conditions are met, and the diligent opinion sees its preference over another analogy whose conditions are also met because it is lower. To achieve the interest or more in agreement with the general rules of Sharia in this particular case.

Based on this, the validity of approval is derived from the validity of analogy, and it is of two types:

- **Giving preference to a hidden measurement over a clear measurement in the general topic:** An example of this is what the jurists of the Hanafi school of thought decided that if the seller and the buyer disagree about the amount of the price before delivering the sold item, then they agree to agree, whereas in the analogy the seller does not swear an oath.
- **Giving preference to a hidden analogy in part of the subject:** which means deciding to exclude this part from the rest of the details of the subject in terms of the ruling. An example of this is that the law has forbidden contracting on a non-existent property, and it is desirable to contract on leasing, farming, and istisna', all of which are contracts that apply to a non-existent person at the time of contracting. The reason for desirability is People's need for it and their familiarity with it.

There are four types of approval from its source:

- **The source of desirability is analogy:** which is what was detailed above.
- **Istihsan originates from the Sunnah:** It is assumed that it has been mentioned in the Sunnah from the introduction of the analogy where it occurs, and an example of this is the hadith "If the two parties to the sale disagree and the commodity is established by alliance and mutual consent." This also includes what was reported about the validity of fasting while eating food or drink by forgetting.
- **Desirability comes from consensus:** It is assumed that analogy is proposed in

a specific hypothesis due to the establishment of consensus other than what leads to it. An example of this is the establishment of consensus on the validity of the Istisna contract while it was invalid according to analogy due to its lack of validity at the time of the contract.

- **The source of desirability is necessity** : its support is the rule “necessities make forbidden things permissible” aiming to remove hardship and ward off hardship, in accordance with the Almighty’s saying: “And He has not placed upon you any difficulty in religion.”

The applications of desirability in the field of criminalization and punishment are many and varied, including, but not limited to, that if the accused inflicts a wound on the victim, the analogy is that retaliation is inflicted on the accused in form and meaning, meaning that he inflicts a similar wound on him.

Due to the difficulty of achieving this, it would be desirable to change retaliation to blood money. Discretionary punishment may be added. Likewise, if the accused hits the victim, causing him to be paralyzed in one of his limbs. Applying the analogy requires hitting the accused in such a way as to cause paralysis of his corresponding limb. However, due to the difficulty of achieving this in practice, it is desirable to impose blood money, and discretionary punishment may be added to it.

The sixth section: The sent interest

It is defined as the absolute interest that is devoid of any legal evidence that considers it, and is also absolute without evidence that excludes it. The transmitted interest is absolute without evidence of consideration or evidence of nullification, but what is established, nonetheless, is that it achieves an interest for all Muslims.

It can also be defined as: “the interests that were necessitated by necessities, needs, or improvements, for which no provisions were prescribed, and for which no legal witness testified to their status or abolition.” Imams Malik and Ahmad and their followers are considered to be at the forefront of those who spoke of the transmitted interest and defended it. Examples of these are the interests that required the establishment of prisons and the requirement of a month.

The contract transferring ownership of the property by registering it in order to produce its effect in transferring ownership, and requiring the formality of the marriage contract in order for the lawsuit to be heard.

There are three types of interests in Islamic jurisprudence:

- **Regarded interests**: These are the ones that the law took into account and decided its rulings on the basis of, including the interest in preserving life, on

the basis of which the rulings on retaliation were built, and the interest in preserving honor, the protection of which necessitated determining punishments for adultery, and an example of this is also the interests in preserving money, religion, and the mind.

- **Nullified interests:** These are those that legal evidence indicates are not valid because they violate a text, consensus, or analogy. An example of this is the interest in depriving the husband of the right to divorce, and the interest in equality between sons and daughters in inheritance.
- **Mursal interests:** They are in the position between the two positions, as there is no evidence of consideration for them and no evidence of cancellation.

The transmitted authority finds its authority as a source of legal rulings in the following:

- The texts are limited and limited, while the interests of the people are not limited, as they are renewed over time and different in different places. If we deny the transmitted interest as a source of legal rulings, it will result in the disruption of the interests of the people that are not governed by the texts, which results in people falling into severe embarrassment, which is not consistent with the objectives of Islamic law.

If the transmitted interests are in accordance with the provisions of Sharia and appropriate to the purposes of the Lawgiver, then adopting them would be in accordance with his purposes, and denying them would be neglecting his purposes, and neglecting the purposes of the Lawgiver is invalid in itself.

- The Companions, the Successors, and their followers approved of the mursal interests, and relied on them in the rulings they decided.

In contrast to this opinion, another opinion denied the validity of the transmitted interest as an independent source of legal rulings, based on the fact that the Sharia took into account all people's interests through the texts it contained and guided by analogy. Accordingly, all the interests considered according to this opinion were protected by text or analogy, so if it is not indicated. Text or analogy is not considered, but rather it is an imaginary interest on which judgments may not be based. This is because deriving rulings from interests that are not attested to by text or analogy opens the door to whims in legislation.

A third group believes that reconciliation between the two groups is achieved by stipulating conditions in the interest that guarantee its seriousness and that it does not contradict the purposes of the law, including that the interest be serious, real and general, meaning that it brings benefit or prevents harm for the general public or for a group of them, and that it does not contradict the ruling that is derived from the interest in text or form. Unanimously.

The Mursal Authority has applied it widely in criminal jurisprudence, and has derived several rulings that do not refer to a text or are based on analogy. Among the most important of these applications is Omar ibn al-Khattab's decision to spill adulterated milk to deter fraud, his decision to banish people of corruption and prostitution in order to prevent their danger, and his decision to permit the act of someone who kills a person. He surprised him and committed adultery with his wife on the condition that four witnesses prove the incident.