

UNRESTRICTED ANALOGICAL REASONING (AL-QIYĀS AL-WĀSI‘), ITS OBJECTIVES AND METHODOLOGIES, AND ITS CONTEMPORARY APPLICATION: A CASE STUDY OF IMĀM AL-GHAZĀLĪ AND AL-SHĀṬIBĪ

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Abstract

This paper studies the characteristics of unrestricted analogy among the ancient jurists and its contemporary applications in light of the shariah objectives: Imam Al-Ghazali and Al-Shatibi as a case study. It takes into account the application of unrestricted analogy in the Islamic legal reality, considering all the emerging problems or issues in the lives of Muslims. It also highlights the importance of unrestricted analogy in Islamic jurisprudence and the motives that arose in the Islamic reality to seek legal solutions. The paper emphasizes the foundations and theories from which analogy was derived in its broadest concept, which distinguishes it from other sources of legislation. It focuses on the nature of unrestricted analogy and the face of its contemporary applications in light of the shariah objective, and explains the prophecy of unrestricted analogy from the ordinary as its basic structure from which it is launched; which indicates the validity and logic of expanding analogy from the ordinary to the advanced according to the principles of Islamic jurisprudence. This paper also contributes to the role of contemporary Muslim scholars in explaining the broad analogy after its concept was created and its features were revealed through the writings of the two great imams, namely Imam Al-Ghazali and Al-Shatibi, in addition to establishing a theory and methodology in deducing the rulings of new developments that occur in the reality of Muslims and for which there is no text, so that it would be valid for all places and times, and a scientific methodology for students and researchers. In conclusion, the paper presents some methodological and applied proposals, through which it is possible to address the dilemmas that have arisen in the reality of Muslims, offers some solutions to the thorny jurisprudential reality, and expands the scope of analogy.

Keywords: *Unrestricted analogy, Islamic Law, Al-Ghazali, Al-Shatibi, Contemporary Application.*

INTRODUCTION

Islamic law, rooted in the Qur'an and Sunnah, is characterized by its adaptability to address human needs across times and places. However, as emerging issues continue to challenge classical frameworks, the need for innovative jurisprudential methods becomes evident. One such method is unrestricted and advanced analogy (*al-Qiyās al-Wāsi'*), a dynamic tool that extends traditional analogy to address unprecedented issues while maintaining fidelity to the objectives of *Shari'ah* (*Maqāṣid al-Shari'ah*). Despite its theoretical importance, the methodologies and contemporary applications of unrestricted analogy remain underexplored, particularly in addressing modern societal dilemmas.

This study focuses on the contributions of Imam al-Ghazali and al-Shatibi to the theory and application of unrestricted analogy, analyzing their methodologies to establish its relevance for contemporary jurisprudence. By examining their writings, this paper seeks to bridge the gap between classical juristic methods and modern legal challenges, offering a critical evaluation of unrestricted analogy's potential in solving issues like bioethics, economic regulations, and technological advancements. Furthermore, the study aims to provide a methodological framework that can guide scholars in applying unrestricted analogy to contemporary contexts, aligning with the broader objectives of Islamic law.

METHODOLOGY

This study employs a qualitative and analytical research design to explore the concept of unrestricted analogy (*al-Qiyās al-Wāsi'*) and its application in Islamic jurisprudence. The research focuses on two primary case studies: the contributions of Imam al-Ghazali and al-Shatibi. Their works were selected due to their foundational role in shaping the theoretical and methodological underpinnings of unrestricted analogy and their relevance to contemporary jurisprudential discourse.

The study involves a critical textual analysis of al-Ghazali's *al-Mustasfā* and al-Shatibi's *al-Muwāfaqāt*, with particular attention to their discussions on analogy, objectives of *Shari'ah* (*Maqāṣid al-Shari'ah*), and jurisprudential methodologies. These texts are examined in light of the following analytical framework:

1. Theoretical Foundations: Identifying the principles and structures of unrestricted analogy as conceptualized by the two scholars.
2. Methodological Innovations: Evaluating their approaches to extending classical analogy to address new issues.
3. Contemporary Applications: Assessing the relevance of these methodologies for solving emerging challenges, such as bioethics, economic regulations, and technological advancements.

To ensure the contemporary relevance of the analysis, the study applies the framework of *Maqāṣid al-Shari'ah*, focusing on how unrestricted analogy can align with the preservation of religion, life, intellect, lineage, and wealth. By bridging classical methodologies with modern needs, this paper aims to demonstrate the applicability of unrestricted analogy in addressing novel jurisprudential issues.

DEFINITION OF TERMS

Al-Qiyās Al-Wāsi'

Al-Qiyās (analogy): from the root word *qāsa yaqīs*, and the meaning of *qāsa* something *bi-shay'* is to make it similar to it. The word *qiyās* may be derived from the root *qāsa yaqiyās qiyāsuhu* and *qiyās*. Islamic analogy is called *ijtihād* because it is what makes an effort to find the similar that becomes analogy. The meaning of analogy in Islamic law and language is the same; because it is establishing something like the ruling of the original in another

form for a matter that they have in common, as in Islamic law.¹

Al-Wāsi': from *wasa'a*, *wasa'a 'ala*, like a wide area, meaning wide in scope, and the passive participle is encyclopedia for the transitive. And *wasa'a* something if he expanded it, like expanding the circle of knowledge, if he developed it. Accordingly, expansion is growth and prosperity, and it is the extension of penetration to wider areas.² The relationship of such a concept to *ijtihād* and deduction is: using the word to denote more than what it was established for, which indicates a broad understanding of the language's meaning and the explanation of its terms. This is linguistically. As for the fundamentalists, it is: the expansion in analogy through the ruling, reasons, appropriate meanings, and indications of the general texts on the particulars, so that we consider a group of texts and deduce from their entirety a specific purpose of the purposes of religion or a specific interest, then we seek that purpose wherever it is in the new circumstances, knowing that the texts are few and the new developments are endless, and because the texts came in the form of general principles and general rulings.³

Accordingly, it is concluded from the above that the Advanced/broad analogy is: expanding the analogy of the cause and deviating from it from the text when it is absent in it by analogy of the new branch to the necessary objectives, based on the appropriate meaning of the law of the ruling based on the intent of the Lawgiver, due to the absence of the new cause in the original, considering that the objectives are among the origins, and thus their ability to be analogized to the new branches.

Al-Taṭbīqāt Al-Mu'āṣirah (Contemporary applications)

Al-Taṭbīqāt (Applications): The collection of application, also called conformity and equivalence, which is to combine opposites while taking into account the contrast, such as not coming, for example, with a noun with a verb or a verb with a noun⁴ such as Allah says: "So let them laugh a little: much will they weep" (al-Quran. At-Tawbah: 82) and technically it is: applying something to something: i.e. making it conform to it, so that what is true.⁵

The researcher means by the significance of the applications of unrestricted analogy in light of the objectives of Islamic law several things, the first of which is: the conformity of unrestricted analogy in its application with the types of objectives, which are: interest and compatibility, which is the entry of the meaning of the new objective under a meaning of the meanings of the necessary objectives by analogy in application, and some may call it the absolute compatibility because it is based on the objectives and interests attached to it, absolute or considered, as will be explained, and it has been called the objective *ijtihād*, and sometimes the interest-based *ijtihād*. Second: taking unrestricted analogy into account when applying the types of clear *ijtihād* by considering its pillars as they are the basic and standard structure in *ijtihād* by unrestricted analogy without going beyond its scope as they are the principles of analogy. Third: Matching the concept to the applied reality as it was created by its proponents and based on the applied examples provided by them to be the light in illuminating the path for *ijtihād* with it (unrestricted analogy) by focusing on the new objectives as they are often represented in the application of unrestricted analogy in the matter of collecting the *Qur'an*.

¹ Mahmoud bin Abdul Rahman. (1406 AH), *Bayan Al-Mukhtasar Sharh Mukhtasar Ibn Al-Hajeb* (Saudi Arabia: Dar Al-Madani, first edition, vol. 3, p. 260.

² *Mu'jam Al-Ma'any Al-Jami*, <https://www.almaany-ar> viewed on June 27, 2022. See: Abu Bishr, Al-Yaman bin Abi Al-Yaman Al-Bandaniji, *Al-Taḥfiyyah fi Al-Lughah*, edited by: Dr. Khalil Ibrahim Al-Atiyah (Baghdad: Matba'at Al-Ani 1976 (Vol. 1, p. 707.)

³ Al-Raysuni, *nazhariyat al maqasid inda al imam al shatibi* (The Theory of Objectives according to imam shatibi) Vol. 1, p. 350

⁴ al-Jurjani, Ali bin Muhammad (1983), *Kitab al-Ta'rifat : edited and corrected by a group of scholars under the supervision of the publisher*, (Beirut: Dar al-Kutub al-Ilmiyyah, Edition: First p. 61

⁵ al-Kafwi, Ayoub bn Musa, *Al-Kulliyat, (Dictionary of Linguistic Terms and Differences)*, investigation: Adnan Darwish - Muhammad al-Masri, (Beirut: Dar al-Risala) p. 313

Al-Mu'āshirah (Contemporary)

The opposite of this is the word 'new' from the root word '*jaddid*' which means 'new' and it is the opposite of 'old'. The word '*istajdahu*' means to make something new. Technically : What is new in the social, economic, political and technical reality, such that the jurisprudential opinions are selected that are compatible with the requirements and necessities of investment in this era, unless there is a blatant contradiction in those opinions to the meaning of a clear, explicit, definitive *Shari'ah* text, or a confiscation of the meaning of a valid jurisprudential rule. New jurisprudential opinions are also generated that are capable of properly directing these issues in the light of reality.⁶ It can be concluded from the above that the new issue is: the new case or incident, which needs to be clarified by the legal ruling of the jurists.

Maqāsid al-Sharī'ah (Objectives of Shari'ah)

Maqāsid: Plural of *Maqṣid*: a word derived from the weight of *Maf'al* and *Maf'il*, knowing that the noun of time and place are derived from the simple trilateral verb that is on the weight of *Maf'al* and *Maf'il*, i.e. with the opening of the '*ayn* and its *kasra*. And *Maqṣid* is singular, its plural is: (*Maqāsid*) and it is a noun of *Mim* derived from the verb *Qaṣṣad*, *Qaṣṣad ilā*, *Qassad fī*, *Qaṣṣad li*: and it is *Qaṣṣad* and direction, like my direction to Mecca is my purpose, and also *Maqṣid* with the breaking of the *sad*, the plural of which is: *Maqāsid*.⁷

The objective: is the straightness of the path, and from it the *āyah*: "*And upon Allah is the direction of the (right) path*" (al-Quran. al-Nahl: 19) The purposes or objectives according to the scholars of *Shari'ah* are: "the goals, and considering it as a specific science or art" they are: the goals for which the *Shari'ah* was established to achieve for the benefit of servants.⁸

Al-Sharī'ah: The linguistic meanings of the term *Shari'ah* include religion, creed, Sunnah, and method. Technically: what God has prescribed of religion and commanded, i.e. what He has prescribed of rulings of what is obligatory, recommended, permissible, forbidden, and disliked.⁹ Technically: what God has prescribed of rulings through a prophet¹⁰ if the term *maqasid* is associated with *Shari'ah*, it is: the meanings and objectives noted in the *Shari'ah* in all or most of its rulings, or they are the goals of *Shari'ah* and the secrets, wisdom, and appropriate meanings that the Lawgiver has placed in each of his rulings, which constitute the spirit of the *Shari'ah*.¹¹

Definition Of Unrestricted Analogy, Both Comprehensive and Exclusive

The concept of unrestricted analogy can be summarized in the following sentence, and then expanded to obtain an accurate definition by listing the most important points of its concept, and by extrapolating the precise points extrapolated from the vocabulary that constitutes the spirit of unrestricted analogy, then arriving through them at the most accurate definition.

Accordingly, unrestricted analogy is the expanded purposive analogy, based on the intent of the Lawgiver, considering the interests and harms related to the rulings, when dealing with their comprehensive causes, their wisdom, their appropriate and suitable meanings, and the reasons for the facts in the law of the ruling, according to the general principles of the *Shari'ah*, its purposes, its rules, and the basic and subsidiary sources hovering around new issues whose rulings and causes are not stipulated in the original pillar.

⁶ Organization of the Islamic Conference in Jeddah, (1439) *Majallatu maj'ma al-fiqh al-islami` al-tabia` li-munazhamat al-mu'tamar al-islami* (Jeddah: Majma' al-fiqhi, Issue 19, Vol. 19).

⁷ Ahmed Mukhtar (2008), *Mu'jam al-luga al-arabiya al-muasira* (Publisher: Alam Al-Kutub, Vol. 3 p. 1820

⁸ Al-Raysuni, *Maqasid al-sharia wa ahdafuha wa kaifiyat tafiliha fil-manahij*, (Magazine) www.asmarya.edu.ly p. 174

⁹ Ibrahim bin Abdullah Al-Mutlaq, *At-tadarruj fid a'wati an-nabiy*, Ministry of Islamic Affairs, Endowments, and Call, Vol. 1, p. 42].

¹⁰ Abdul Karim Zaydan, *Usul Al-dawa*, Vol. 1, p. 11]

¹¹ Wahba al-Zuhayli (2013), *Usul al-fiqh al-islami*, (Beirut: Dar al-Fikr al-Mu'asir, 1st ed.,), vol. 1, p. 307.

According to this comprehensive definition of the analogy, let us now reveal the precise definition of the broad analogy by limit and separation through the prohibitive and comprehensive points in the next section. These precise concepts can be extracted from the previous definition.

The unrestricted analogy in its precise sense is: attaching a new subsidiary issue to a necessary general purpose of the purposes of the Lawgiver with the commonality of the relationship of the purpose of the Lawgiver with the appropriate and suitable meanings, the ruling and the reasons. According to its most precise meaning, it is concluded that attaching a new subsidiary issue that is not originally mentioned in a text to a necessary general purpose from among the five purposes requires interest, because its meaning is appropriate and based on the type of interest, is suitable for the law of the ruling.

The Objection and The Commonality In The Previous Comprehensive Definition

The expanded analogy: meaning the unrestricted analogy as a dividing line and a special concept for it, to exclude the analogy of the cause described by the apparent and controlled description, meaning the analogy of the obvious.

The objectives: meaning the five necessary objectives and what enters into their meaning from the generalities of the *Shari`ah*, because they are considered principles of the principles of legislation that can be analogized based on the new branches with causes, rulings, meanings, reasons, suitability and appropriateness, as their comprehensive causes are suitable for the law of the ruling in terms of meaning.

Based on the intention of the legislator: to exclude the type of cause in the analogy of the obvious that is related to the original case, for the sake of deviation from it because it does not exist in the original, and the analogy to the objectives instead, considering the appropriateness. It is only a verbal difference, as the cause, the objective; the wisdom and the reason are intertwined meanings.

Considering the interests and harms related to the rulings when dealing with their comprehensive causes: to draw attention to the fact that the cause and its wisdom are not separate, and that the wisdom is an expression of what results from the legislation of the ruling of bringing about an interest and warding off an evil on the provided that the cause is appropriate to the type of interest, the necessary objective, when the *mujtahid* is most likely to think of its appropriateness if it is suitable for the legislation of the ruling.

THE JURISPRUDENTIAL PROCESS AND FUNCTIONALISM OF AL-QIYĀS (ANALOGY)

Al-Qiyās (Analogy) literally talking, is a comparative analytical study based on the process of comparing two cases in order to justify the compatibility between the new case called (*Al-far'u*) and the original case called (*Al-Aṣl*). However, to be accurate on the above mentioned, we can conclude that *Al-qiyās* is an analogical study aiming at comparing between a new case contemporary to an original case already existing, in order to know whether the reason that led to the original decision (*Al-'Illah*) -also called causality- applies to the new case, if it does so, the new case will have the same judgment (law) as the original one.

An exemplary explanation of the above mentioned is the case of the prohibition of drugs (new case) and alcohol (Original case) compared, as drugs having the same cause and effect of that of wine (*Al-'Illah*) that lead to its prohibition, drug will therefore have the same ruling as that of alcohol, which is a Prohibition knowing that alcohol was prohibited because of its toxicity which of course applies to drugs too, beer, wine and similar alcoholic drinks.

The Four Main Pillars of Ordinary Analogy in Islamic Jurisprudence and its Jurisdiction

1. *Al-Asl* (original case): The original case is the case on which the Noble Quran has mentioned the ruling pertaining to it, such as alcohol, in other words, it is the case which has a law or a textual written proof, meaning the Noble *Qur'an*, thus, the text of the original case will be a general ruling and a general principle on which all new cases will be based in terms of comparison by analogical reasoning, in order to see if they have the same reason or cause that lead to the original case's ruling.
2. *Hukm al-Asl* (The law related to the original case): it is the *shari'ah* law or the rule of the original case, such as the ruling of alcohol, which is haram (prohibition), however this ruling will be applied to every new case which has the same reason and causality¹².
3. *Al-'Illah* (The reason or cause leading to the rule): It is the existing reason behind the the judicial decision of a particular matter, such as intoxication by alcohol (initial case and original reason), drugs, wine and whiskey (the new cases having the same reason and cause as the original. However, the *'Illah* denotes cause and effect.
4. *Al-Far'u* (The New Case): The new case is the contemporary case to the original case, which seeks to determine whether it is compatible with the original case in having the same reason that led to the rule of the original one, before being attributed the same ruling or law of that of the original one.

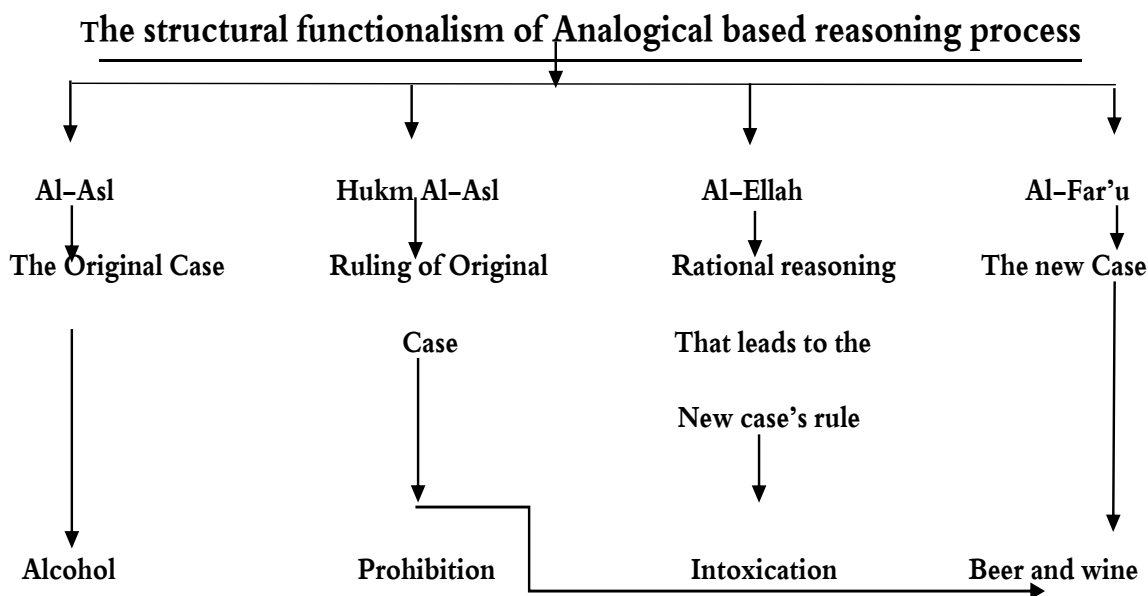


Figure 1: Structure of Analogical reasoning

¹²- The Arabic word *hukm* in its literal meaning means a "command", and in its technical meaning means a "rule", that is why the legal rule is called *hukm shari*. Muslim jurists give us a definition of *hukm shar'i* when they try to answer the question: What is Islamic law? They define it as: "As a locution or communication from the Lawgiver concerning the conduct of the *mukallaf* (person in full possession of his faculties) which consists of a requirement, an option or a text". Or "A communication from Allah Almighty related to the acts of the subjects through a request, an option or a statement. The communication is related to the acts of the subjects. a requirement to do something and its omission results in punishment. *Wajeb*: means a requirement to do something which is binding and failure to do it will attract punishment. *Mandub* means a requirement to do something which is not binding. The complement of the request deserves a spiritual reward, but no punishment for failure to perform or an order to do something is in a speculative authority. *Haram*: is a binding command to abandon something, and committing a *haram* is punishable and omitting is rewarded. *Makruh* is a requirement to avoid something, but not in strictly prohibitive terms. It is the opposite of *Mandub*, omitting is preferable to committing. *Mubah* is a command that gives the option to do or not to do. It can be a clear statement or a declaration that certain acts will not result in sin.

Comparative Analytical Study between Restricted and Unrestricted analogy

The original case in Unrestricted Analogy: is the general interest extrapolated from the five main ends that the *shariah* aims to preserve, also called general purpose (*Al-Maqṣad al-Kullī*) or general interest (*Al-Maṣlaḥat al-Āmmah*) that represents evidence for the specific interest -the new case- called general principle of Islamic law, with the inclusiveness of primary and secondary source of legislation in line with the judicial and jurisprudential maxims that forms the spirit of Islamic law.

1. The new case in Unrestricted analogy: is the specific interest, also called: *Al-Maqṣad Al-Juz'ī* (specific purpose) or *Al-Maṣlaḥat Al-Juz'īyyah* (specific interest). its procedure is to attach its ruling to the ruling of the original case, by including its meaning under the general meaning of the five main objectives that the shari'ah seeks to achieve, such as the issue of compilation of the *Qur'an*, which falls under the meaning of the necessary objectives in terms of achieving the objective of the preservation of the religion.
2. The cause in Unrestricted analogy: in its purposive concept, it results from arranging the ruling base on its precise purposive meaning that is initially the interest pertaining to it. The cause is the description that defines the ruling and leads to it, whether it is an interest or wisdom, or a reason, or a meaning pertaining to the new case, that is appropriate or suitable for the law of the ruling, such as intoxication, as it leads to prohibition for the benefit of preserving the mind and money from being clouded losing its capacity of reasoning properly
3. The ruling of original case in Unrestricted analogy: is the legal ruling, and that ruling will take place if the reason leading to it participates in preserving one of the five main necessary interest or goals that the Shari'ah aims at preserving, if so, its ruling is = to obligatory, in the contrary case, if it doesn't preserve them, its ruling is = to prohibition. So, compiling the *Qur'an*, for instance, is an activity leading to an obligatory rule, because it achieves a necessary objective, which is the objective of preserving the religion, and not compiling it takes the ruling of prohibition, because of the corruption and the harm that results from not compiling it, which is the loss of the religion through its teachings and its written laws.

Concept of Causal Reasoning in Unrestricted Analogy

A quality attributed to the new case determined by whether it affirms or denies class inclusion in the original cases, provided that it is semantically compatible with the five necessary goals of the *shari'ah*, thus each analogy put forward is either affirmative in quality or negative in quality through the comparison process between new and original case.

An Exemplary Applicational Case

For instance, the compilation of the Noble *Quran* during the caliphate of *Abubakr* was a new case that occurred at that time, and the rule was not mentioned in the Holy *Quran*. Therefore, when *Umar* suggested to compile the Holy *Qur'an* due to the many deaths of the companions who memorized the Holy *Qur'an*, during the battle of apostasy in *al-Yamamah*, at first, after *Umar's* suggestion, *Abubakr* considered the compilation as an innovation (*al-Bid'a*) in religion out of its box, as the Prophet did not do it during his lifetime, but *Umar* perceived the issue of the compilation of the *Qur'an* as a capital interest based on *Sharia's* main objectives. *Umar* understood that the compilation will play a pivotal role in preserving the Holy *Quran* and its contents which includes its entire religious rules and principles, knowing that many of its memorizers and masters passed away during the battle against the apostasies who refused to pay the *zakat*, one of the main pillars that constitutes Islam in its entire legal rulings.

As mentioned above, the compilation in accordance with the five objectives of the *Sharia` (al-Maqāṣid)* is compatible in terms of meaning legality and wisdom, and this compatibility is that it will secure and preserve the goal of the *Dīn* (religion) by compiling

the *Quran*.

The hypothesis of the analogical reasoning in matter under discussion is as follows: Does the compilation of the Noble *Quran* participate in the preservation of one of the five objectives of the Islamic *Shari'ah*? The answer is yes. So, in which class of the five objectives (*Al-Maqasid*) is it classified? The answer is the class of the *Din* (Religion), so the quality and meaning attributed to the new case which is the "Compilation preserving the end of religion" affirms the inclusion of class in the original cases, and is compatible with the single class of the *Din* (Religion), one of the main five objectives of the *Shari'ah*, so in general we can conclude that each analogy put forward is either affirmative in quality or negative in quality, but the case of the *Qur'an* compilation affirms the inclusion of class in quality in the original case.

BRIEF HISTORY OF IMAM AL-GHAZALI AND HIS INTELLECTUAL CONTRIBUTIONS IN LIGHT OF THE UNRESTRICTED ANALOGY

Name, personality, birth and death

He is Abu Hamid Muhammad bin Muhammad Al-Ghazali, originally from *Ghazala*, a village in Tus, and his father used to spin wool and sell it¹³ He was born in the era of the beginning of the stagnation of jurisprudence, as it was a stage of jurisprudence's prosperity at the beginning of the fourth century, and he was in a stage considered one of the most important stages in the history of the principles of Islamic jurisprudence, and he died in the year five hundred and fifty (550)AH.

His works

Al-Ghazali left a legacy of books and many writings, and he is considered one of the most prolific scholars in terms of writing and classification, compared to the years of his era, which did not exceed (55) years. It was reported that: Al-Ghazali books was counted, and they were distributed throughout his era, and every day he devoted four notebooks. The books and letters that were attributed to him was (457). Among his works is the book '*Nihayat al-Matlab fi Dirayat al-Madhhab*' about which *al-Subki* said: "Nothing like it has been written in the doctrine, as far as I am certain". Likewise, the book *Al-Wasit and Lujaz*: It is a famous printed book, and it has about seventy commentaries.¹⁴

His intellectual contributions to the science of the principles of jurisprudence in light of analogy

In order for the discussion to remain focused on the subject of unrestricted analogy and its features in Imam Al-Ghazali, the parties to the discussion will be exchanged about his most important works that have a direct or indirect relationship to the subject of analogy in general and unrestricted analogy in particular, as will be explained in the following paragraphs.

Al-Ghazali is also considered a philosopher of the principles of jurisprudence and a jurist among the great jurists, and among his most important and prominent works in the *Shafi'i* school and in the science of the principles of jurisprudence was his book *Al-Mustasfa*. In it, he compared the principles of jurisprudence to a tree in arranging its topics, making the fruitful evidence and the fruit the rulings. He arranged his discussions into four poles. In the first pole, he discussed the four pillars of rulings: the ruler, the ruled upon, and the ruling itself. As for the second pole, he discussed the evidence for rulings. In the third pole, he explained how to invest rulings from the fruits of the principles, as it included an introduction, a beginning, and three arts. Among what he discussed in the explanation was how to deduce evidence from the formula in terms of language, and he

¹³ Muhammad bin Salem Jamal Al-Din (1957), *Mufrij Al-Kurub fi Akhbar Bani Ayyub*: (Cairo: Al-Amiriya Press) Vol. 1, p. 212.].

¹⁴ Uthman bin Abdul Rahman bin al-Salah (2011), *Shar Mushkil al-Wasit*, (Saudi Arabia: Dar Kunuz Ghashabiya for Publishing and Distribution) p. 29.

explicitly discussed the establishment of linguistic names by analogy and the methods of understanding the intended meaning of the speech. The fourth pole, he talked about the ruling on *ijtihad* and examining its pillars and rulings, i.e. the *mujtahid*, the *mujtahad fihi*, and the *ijtihad* itself.¹⁵

Imam Al-gahzali also explained that the totality of the principles of jurisprudence is four poles. The other matter, apart from the arrangement of the topics of the principles of jurisprudence, is that he began his book *Al-Mustasfā* with a logical introduction for the first time in the history of the science of the principles of jurisprudence without forgetting that analogy is essentially from logic, so he made the introduction to his book *al-Mustasfā* an introduction to logic to highlight the relationship of the science of the principles of jurisprudence to it. So he began it with definition and proof, and through it he touched on talking about the six laws in the definition first, because the definition scientifically is what teaches you how to define something. One of the glimpses of the relationship between the definition and the principles of jurisprudence is that if you want to define the meaning of a sign, for example, with a scientific definition, the definition must adhere to the principles of definition by being comprehensive and prohibitive. The function of the prohibition is to help you exclude everything that is not related to a subject as a precaution, and the comprehension helps in how to collect everything that is related to the subject as a precaution from what is not related to it. This is what is called the definition and separation in the science of logic. He also spoke about proof, which means inference according to the scholars of the principles of jurisprudence, knowing that the subject of the science of the principles of jurisprudence is evidence.

Imam Al-Ghazali benefited from logic in the Greek Aristotelian analogy, to ask: Why did Muslim scholars come and apply only one type of analogy? He was not satisfied with analogy of resemblance, that is, based on analogy of a branch to a root with the commonality of the stated cause, but rather he expanded his understanding by reconsidering the patterns of the basic structure of the pillars of analogy from the root, branch, cause and ruling by amending the ruling of the root to a general rule suitable for analogizing new details, especially those for which there is no text in the root, according to the evidence of public interest and desirability, Imam Al-Ghazali also considered logic as an operational aspect in the science of legislation and drew our attention to it.

One of his important contributions to expanding the scope of analogy is that he understood the reasoning by adding the ruling to the appropriate description¹⁶ such as Allah says: *“And as to the thief, male or female, cut off their hands as a recompense for what they have earned, an exemplary punishment from Allah. And Allah is Exalted in Might and Wise”* (al-Quran. al-Ma`idah: 38). And as He says: *“The adulterer and the adulteress, flog each of them with a hundred stripes: let not compassion move you in their case, if you believe in Allah and the Last Day, and let a party of the believers witness their punishment”* (al-Quran. al-Qasas: 2).

For as he understood the obligation of cutting off and flogging for the thief and the adulterer, which is what is stated, he understood that theft and adultery are the reason for the ruling, and that it is a reason that is not stated, but the meaning of the address precedes the understanding, and this is what is called *fahwa al-khitab* (the meaning of the speech). Imam Al-Ghazali mentioned another type of relevance, which is understanding the unspoken from the spoken by the indication of the context of the speech and its intended meaning, such as understanding the prohibition of cursing, beating and killing from the *āyahh*: *“So say no to them a word of contempt, nor repel them, but speak to them a generous word”* (al-Quran. al-Isra: 23) And understanding the prohibition of the orphan's money and burning and destroying it from the *āyahh*: *“Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire, and they will burn in a Blaze”* (al-Quran. An-Nisa: 10).

¹⁵ Al-Ghazali (2010), *Al-Mustasfa*, (Cairo: Al-Tawfiqiya Library) p. 119,144&332

¹⁶ Al-Ghazali, *Al-Mustasfa*, (Beirut: Dar Al-Kutub Al-Ilmiyyah) Vol. 1, p. 246

And just as understanding the unspoken from the spoken by the indication of the context of the speech and its intended meaning, so he did not separate the context from the intended meaning of the Lawgiver, which is: "The role of objectives in analogy will be formed in what we do not stipulate".¹⁷ He devoted the fourth principle to the arrangement of his book *Al-Mustasfā* for reform, which is to consider the public interest as a source and a basis for deriving rulings, and the meaning of interest according to him, i.e. objectives and the interests of the servants that are connected to them. Therefore, the interest considered by *Imam Al-Ghazali* is in the first rank and its result goes back to analogy, then he followed it with the interest that the *Shari'ah* has witnessed its invalidity, i.e. the unconsidered interest, and he made the third section the public/absolute interest, i.e. that which the *Shari'ah* has not witnessed its consideration or invalidity and forms the principles of suitability and on which the broad analogy is based according to him, as it is like a cause according to him in the sense of an appropriate meaning in the *Shari'ah* of the ruling when it is compatible with the actions of the legislator. As follows in detail, what is striking is that he linked the interest to the objectives as a single structure in meaning, as he divided them into necessities, needs and improvements, and he confirms that the legitimate interest is preserving the intent of the Lawgiver and that the intent of the Law is five things:

- Preservation of religion
- Preservation of life (Including mental based emotional health)
- Preservation of mind (Intellect)
- Preservation of lineage (Progeny)
- Preservation of money (Wealth)

Imam Al-Ghazali laid down the principles of interest and defined it as bringing benefit and repelling harm, which is what Imam Al-Shatibi called wisdom as will be explained. Likewise, the features of unrestricted analogy are clear in Imam Al-Ghazali's perspectives.

BIOGRAPHY OF IMAM AL-SHATIBI AND HIS INTELLECTUAL CONTRIBUTIONS TO THE SCIENCE OF THE PRINCIPLES OF JURISPRUDENCE IN LIGHT OF ANALOGY

Name, Personality, Birth and Death

His name is Abu Al-Qasim bin Fira bin Khalaf bin Ahmed Al-Rahini Al-Shatibi, in reference to *Shatiba* where he was born, which is a village in the Andalusian Peninsula. He died on Tuesday of the month of *Shaban* in the year 790 AH, and he was an imam in the sciences of the *Qur'an*, a copyist of the Book of God Almighty, a master of the principles of Arabic, a journey in *Hadith*, the copies of the two *Sahih*s are controlled from his words, the height of intelligence, skilled in interpreting dreams, excellent in poetry, humble to God Almighty, a model of righteousness, with clear insight, and *Karamat* were evident from him¹⁸

His writings

He wrote useful books, about which *Al-Tanbakti* said in *Nail Al-Ibtihaj*: "He wrote valuable compositions, which included corrections of the rules and investigations of important benefits. Some of these books are printed, some are not printed, and some of them we do not know anything about."¹⁹

As for his printed books, they are: *Al-Muwāfaqāt fi Uṣūl Al-Sharī'ah*: This book is one of the best books written by Imam Ash-Shatibi, in fact one of the best books written on its subject, and it is on the principles of jurisprudence. He focused in it on the objectives of the *Shari'ah* and the secrets of obligation, so it came out distinct from the books that

¹⁷ *Ibid.*

¹⁸ Al-Shatibi, *Al-I'tisam*, (Saudi Arabia: Ibn Al-Jawzi Publishing and Distribution House) Vol. 1, p. 766

¹⁹: *Ibid* p.27

preceded it on this subject.

Al-Ifādāt and *Al-Inshādāt*: It is a collection of useful and interesting benefits and songs that *Imam Ash-Shatibi* transmitted from some of his sheikhs, and from some of those he met from Scholars. As well as explaining the poem of *Ibn Malik in Al-Nahw Al-Alfiyah*.²⁰

His Intellectual Contributions to the Science of the Principles of Jurisprudence in Light of Unrestricted Analogy

As previously mentioned, *Imam Al-Shatibi* was born in Granada, which is known today as Isfahan, so in Granada he became known as *Imam Al-Shatibi*, and he had many works as previously mentioned, but he was most famous for his book *Al-Muwāfaqāt* in the principles of jurisprudence. The path to this achievement was illuminated by inspiration from God that he saw in a dream that a person asked him to reconcile between the schools of thought because of the differences in them, and being a *Maliki* in doctrine, he wanted to reconcile between the schools of thought of the *Malikiyyah* and the *Hanafiyyah* in priority. *Al-Muwāfaqāt* is considered one of the most important works written in the science of the principles of jurisprudence, and it was written according to a doctrine of the principles of jurisprudence, not the jurisprudential one, by way of the theologians, i.e. the method of *Imam Al-Shafi'i*, and the method of the *Hanafiyyah*.

Imam Al-Shatibi came and established his new method, which was called the *Shatibiyya* method, based on the objectives of Islamic law, in terms of *ijtihād* based on the consideration of the relationship between the topics of the principles of jurisprudence and their objectives. To clarify this, we assume that the *ijtihād* of the one who is based on the rule of the command of obligation, for example, by abstracting it thus, does not search for the objectives, and the rules of analogy, on their independence, are hardly touched by the objectives of Islamic law. Therefore, *Imam Al-Shatibi* came and composed the science of the principles of jurisprudence by explaining its relationship to the objectives of the law, that is, by explaining the relationship between the topics of the sciences of jurisprudence and their objectives. He devoted the second part of his book to the objectives, and he was the first to classify and devote a special chapter to that.

It is however important to note that he is not the first to talk about the science of objectives, as he was preceded by the likes of *Imam Al-Juwayni*, *Imam Al-Ghazali*, *Ibn Taymiyyah*, and their likes. Among his achievements that complemented his book *Al-Muwāfaqāt* and *al-Maqasid*, which is based on reconciling the branches of jurisprudence and their origins in terms of deriving branches and origins in light of the objectives of the texts, is his book *Al-I'tisam*, with the aim of explaining the objectives of beliefs and the way to derive them from their origins. Among the reasons for this second achievement and the circumstances that led to it were the spread of Christian beliefs in Andalusia at that time, i.e. Granada, on the one hand, and the spread of innovation in religion on the other hand. In short, the reason for writing *Al-Muwāfaqāt* and the book *Al-I'tisam* is that the science of the principles of jurisprudence is far from the objectives of the Lawgiver and the spread of innovation in society, and he saw it as an increase in religion and thus a departure from the objectives of the *Sharia*. Based on the above, it can be concluded in brief that one of the most important contributions of *Imam al-Shatibi* in expanding the scope of analogy is his starting point in studying new developments according to the interests associated with the objectives of the Lawgiver, and as *Maliki that he is*, this is not surprising, knowing that *Imam Malik* is one of the most committed to the interests of the public in derivation of rulings, and it is indeed one of the sources of legislation in his school of thought. Therefore, the merit of the achievements of *Imam al-Ghazali* and *al-Shatibi* in their intellectual achievements in the field of analogy is due to *Imam Malik* and the founder of the school of the majority, that is, *Imam al-Shafi'i*, who classified the science of principles according to priority, then established its rules and made *ijtihād* according to it, starting from the generalities to the details of new developments, meaning that the rules, in his view, govern

²⁰ Ibid: p. 29

the branches, which made his method of derivation flexible, easy, and broad in scope.

COMPARISON BETWEEN THE METHODS OF IMAM AL-GHAZALI AND AL-SHATIBI IN DEDUCTION IN LIGHT OF UNRESTRICTED ANALOGY

Imam al-Ghazali's Method

There are generally two methods in *ijtihad* (Jurisprudential method of law interpretation), the main methods and the secondary methods, but our discussion here is about one of the main methods because Imam al-Ghazali belonged to the school that he pioneered, and it was the most famous, and a group of *uṣūliyyīn* (fundamentalists) belonged to it, which is: the *Shafi'i and Hanafi* method. *Imam al-Ghazali's* method did not differ significantly from the approach of the school to which he belonged, i.e. the school of the majority, although he was an independent mujtahid and did not stray far from the principles of the predecessors in *ijtihad*.

The *Shafi'i* method - that is, the majority - to which *Imam al-Ghazali* belongs - tends towards the scholars of *Shafi'i*, and *Malikis*, and others theologians, so it was called the method of the majority and sometimes the method of *Shafi'is* and sometimes the method of the theologians who belonged to it from the *Ash'aris and Mu'tazilites*, because it is compatible with their rational tendencies for deductive reasoning and their theoretical methods, and it is basically the mother school of the science of the principles of jurisprudence, and their research is not limited only to the rules of deriving rulings, but rather theological and rational issues are among their discussions, such as the discussion of improving and degrading of the mind.

The characteristics of this method are that it is based on the principles of jurisprudence without being affected by the branches of jurisprudence, and thus it was distinguished by the direction of comprehensive consideration and discussion, and this is an established fact, knowing that the pioneer of this school, that is, *Imam al-Shafi'i*, first established his doctrine of jurisprudence before his jurisprudence, and his approach in studying issues was from the perspective of comprehensive consideration.

Accordingly, the rules in the methodology of this school govern the branches of jurisprudence, and if its owners mention the branches, it is only to the extent of clarifying the rule, as an example.²¹

Likewise, *Al-Ghazali* was able to adapt to the overall view of the rules and then create concepts that meet the need for deduction through the evidence of the general principles, as he created the concept of the idea of unrestricted analogy through the evidence of the source of the absolute interest and the absolute appropriateness, and he was distinguished by that and reached this tremendous intellectual brilliance that God bestowed upon him.

Imam Al-Shatibi's Methodology

The Shatibi School and its Methodology: After establishing the oral jurisprudential school of the public, and the jurisprudential school of the Hanafi jurists, Abu Ishaq Al-Shatibi Al-Maliki (d. 780) came in the eighth century AH with a new method in the science of the principles of jurisprudence, through his book *Al-Muwāfaqāt* in the principles of *Sharia*. Imam Al-Shatibi was interested in explaining the secrets of *Shari'ah* and clarifying its objectives in his book *Al-Muwāfaqāt*, so he showed that *Shari'ah* is based on warding off corruption and achieving interest, and thus it was a new method in the principles. And for deriving rulings, he had two elements:²²

²¹ Muhammad Fuad Muhammad Suwari (2010), *Madkhal ila dirasat usul al-fiqh*, (Malaysia: International Islamic University (iium Press), Vol. 1, p. 45.

²² Al-Shatibi, *Al-Muwāfaqat*, (1997), (Dar Ibn Affan,) Vol. 1, p. 20

1. The rules of the Arabic language, intended to understand the texts, i.e. the meanings of words from the Qur'an and Sunnah, and deriving rulings from them as well as interpreting them.²³
2. The science of the objectives of the Shari'ah and its secrets, in order to understand the issues whose rulings are not stipulated and then clarify the purpose of the Lawgiver (*Allah*) in legislating the rulings, on the idea that the *Shari'ah* is basically based on taking care of interests: bringing benefit and repelling corruption. Scholars before him had addressed the study of the first element for centuries, ignoring the second element except for indications that came in the chapter of analogy, and God also prepared Imam al-Shatibi until he realized this aspect, i.e. the objectives of the Lawgiver based on the secrets of the *Shari'ah*, and then it was called the philosophy of legislation and the broadest method of deduction, especially in the chapter of analogy.²⁴

UNRESTRICTED ANALOGY ACCORDING TO AL-GHAZALI AND AL-SHATIBI

Before reviewing the features of Unrestricted analogy according to Imam Al-Ghazali and Al-Shatibi, it is worth noting that the analogy of the cause is the basic building block on which unrestricted analogy is built, as it is the basis of causal thought in Islamic jurisprudence based on the texts of the Shari'ah and its general principles. There is no unrestricted analogy without a cause, but its cause is not limited to a controlled apparent description, but rather includes appropriate meanings provided that they are appropriate to the actions of the Lawgiver. Through studying the cause in general, one reaches the conclusion that there is a strong relationship between the analogy of the cause and unrestricted analogy, and that all the pillars of the analogy of the cause are available in unrestricted analogy except in the cause in terms of the breadth of its meaning and evidence. The concept of unrestricted analogy emerged through the writings of Imam Al-Ghazali and Al-Shatibi in terms of their expansion in studying the significance of the cause by investigating its meaning in light of unrestricted analogy. They did not stop at the limit of the meaning of the cause described as the apparent cause controlled in the analogy of the cause only, but rather what is in its meaning in terms of suitability, appropriateness, wisdom and reason.

Imam Al-Ghazali

He expanded the scope of the cause and its circle in applying the analogy from the aspect of its evidence, and this method was the basis for revealing the principle of suitability and appropriateness in reasoning with him, and this was when he inducted the scholars' many definitions according to the extracted meanings and connotations. He said: "The jurists have given the name 'cause' to three different meanings. Whoever does not know their differences will be confused about most of the rulings on causes." This is because the one who is not familiar with them remains in a narrow circle when dealing with the element of cause in the process of reasoning". In his details of these three semantic meanings, he said: "One of them: calling it the motives and motivations for the action, which is called appropriate in their language, so the appropriateness is built upon it, and in this estimation it is not far - in the matter of reason - the motives and their synonymy are considered to be one thing, this is from the perspective of rational permissibility, like someone who gives to the poor because of his poverty, and a relative may also give because of his kinship, so each one has a motive for giving and a caller to it."²⁵

²³ Issued by the Organization of the Islamic Conference in Jeddah, *Majallat Al-fiqh Al-islami Al-tabi' li-munazamat Al-mu'tamar Al-islami Jeddah*, Issue 13, Publication in Shamilah: 8 Dhu al-Hijjah 1431, Vol. 9, p. 30

²⁴ Ibid: Vol. 9, p. 30

²⁵ Al-Ghazali, *Shifa' al-Ghaleel*, p. 515

The second one: The identifying sign that does not suit and we do not call for, even if it is conceivable that it includes an appropriateness that we do not know, so this the jurist may call a cause, meaning that the ruling appears in the right of the worshipper with its existence...

The third source of the cause: That the thing is a cause, like adultery for stoning, murder for retaliation, theft for amputation, and other reasons that are rational. The *Shari'ah* made them obligatory and they were not understood in the rulings themselves separately, but rather they were understood as obligating the causes and the causes as obligating them."²⁶

Dr. Ayman took Imam Al-Ghazali's divisions into three types of causes as follows: First: The motive cause, which he called the purposeful cause, such as repelling intoxication in relation to the prohibition of alcohol. Second: The defined cause, which is two types of causes: One is the causal if it is not appropriate to the *Shari'ah* ruling, such as the obligation of the noon prayer in relation to the decline of the sun. Second, is the cause in its meaning and it is the description that guarantees in terms of its lack of appropriateness, and it represents the price and the taste in relation to the prohibition of usury of excess. Third: The obligatory cause if it is appropriate, which is the appropriate causal, such as the obligation of retaliation in relation to murder.

The Appropriateness (*Al-Munāsabah*) is the Basis of Unrestricted Analogy According to Al-Ghazali

The appropriateness is that through which the ruling becomes logical and just, and Imam Al-Ghazali expanded the knowledge of the cause to include the apparent description and what is possible behind the rulings of purposes and meanings. The Imam emphasized the condition of working with the appropriate to achieve the intended interest and that is with conditions, he said: that the interest resulting from working with it be necessary, definitive and comprehensive and from the point of theoretical reading be realistic and objective. His statement can be detailed as thus: necessary, that is, the five necessary purposes, and what is included in their meaning from the public interest, the condition of which is that it be general, such as giving priority to the life of the group over the individual in the issue of preservation of life, as mentioned in the story of *Yunus*(pbuh) and the drawing of lots in the ship.

As for his statement: 'definitive', meaning the definitiveness of the necessary objectives in that they were proven by induction, and therefore they are definitive and valid principles to be used as an analogy for new specific objectives in explaining the absolute appropriateness, i.e. public interest. In the story of *Yunus* (pbuh), for example, there is a principle in the permissibility of drawing lots in the context of preserving the majority of souls over the minority, and this is a statement of the theory of giving preference to the specific objective over the general by giving precedence to the general interest over the specific - and at the same time it is evidence in comparing new specific objectives that have no basis to the general objectives with examples and similarities, and in terms of reasoning and analogy and preference between objectives and their degrees according to the interest. The story of *yunus*, as mentioned, has a basis and evidence from the context of the texts that came, even if the texts of drawing lots are conjectural in meaning.

As for the realistic aspect, Al-Ghazali gave an example of this, saying: "If the infidels barricaded themselves in a fortress with a Muslim, since it is not permissible to throw a shield, then we would turn away from it since we are not certain that we can seize it. This does not have the same meaning as a group in a ship, if they threw one of them, they would be saved, otherwise all of them would drown, because it is not a totality that results in the destruction of a limited number, and it is not like the extermination of all Muslims, and because it is not determined by one person to drown unless it is determined by lots, and

²⁶ Ibid

there is no basis for it.”²⁷

At this point, Imam Al-Ghazali points out the relationship between the two sites in light of the preference between specific and general objectives, by an advanced, appropriate, and suitable analogy of public interest, represented in the Battle of the Citadel and the drawing of lots in the Ship of Yunus, for example. The Battle of the Citadel was about a partial objective, and the incident of lots drawing in the Ship was about a general objective. Accordingly, he points out the reasoning by an unrestricted analogy with objectives, which is that in the Battle of the Citadel, he sees the shooting at the hands of the Muslim individual or a small group within it, as protection for the public interest, and because leaving the shooting at the infidels disrupts the achievement of the goal of war and what results from it in terms of corruption and subsequent harm to the entire House of Islam and its system. But in such an incident, there was no evidence except through the texts mentioned about the lots in the story of *Yunus* and *Maryam*, where its context suggests taking into account the public interest in accordance with the principle of the necessity of preserving lives and giving priority to general objectives over particular ones, and this is what is called the absolute evidence through appropriate meanings in terms of suitability.

From the above mentioned, it is crystal clear that this is mere acting in the interest of the public without citing a specific principle or evidence and the reason being that when the infidels barricade with one or more Muslims with intention to making them a shield between them and the arrows of the Muslims, knowing that if Muslims were to leave the infidels alone, they would seize control of Muslims and kill them sooner or later and kill them -God forbid-, and if Muslims threw arrow, perhaps they would hit a Muslim or some of them but with such shooting there is no doubt that the infidels are defeated and then the majority of Muslims are saved and thus shooting at the barricaded soldiers is permissible even if that results in the killing of some Muslims.²⁸

The Idea of Unrestricted Analogy According to Imam al-Shatibi

This is based on his consideration of the appropriate description in the sense of wisdom. His consideration of the appropriate in the sense of wisdom only is from the perspective of the approach he chose to study the issue, explaining the idea of unrestricted analogy, since wisdom by consensus is nothing but the interest resulting from the ruling in terms of warding off corruption and bringing about interest, preserving the interest. The issue is related to the same approach of *Imam al-Ghazali* in terms of interest and what he stipulated for it as previously mentioned. However, the word wisdom (*Al-Hikmah*) is a small word, *Imam al-Shatibi* realized its significance as it is great in its meanings, because of its great impact on the one who understands its meanings in terms of expanding the circle of analogy, and because it constitutes a method for explaining rulings by following the meanings, rulings, and secrets of the *Shari'ah*, and it has an integrated method, with its own dimensions in the branches of jurisprudence and the principles of religion (belief). The reality of this term, according to *Imam al-Shatibi*, when he intended the appropriate meaning, is that the intention of the idea is that it should result in (wisdom) when it is appropriate to the type or kind of ruling in the causality of bringing about a benefit or preventing a harm, which the Lawgiver intended in his command or prohibition through the obligatory rulings.²⁹

Wisdom is sometimes used to refer to a partial purpose, such as the wisdom of preventing a non-existent sale and wisdom is also used to indicate the overall purpose or overall interest, such as the purpose of preserving life, achieving ease, removing hardship, bringing about a benefit, and warding off harm.

²⁷ Al-Ghazali. *Al-Mustasfa*, (vol. 1, p. 177).

²⁸ Ibid. P.315; Al-Ghazali. *Shifa' al-ghalil*. P.207.

²⁹ Abd al-Salam al-Sharif, (1992), *usus al-maslahat fi nazgariyyat al-maqasid inda Imam al-Shatibi*, (Majallat al-Muwafaqat, Issue: 1, Dhu al-Hijjah p. 217.

Based on the above, wisdom and objectives are synonymous in expression and generality. *Imam Al-Shatibi* paid great attention to the subject of wisdom in his book *Al-Muwāfaqāt*, as it is the basic goal of legislation. This is what he outlined his approach in his book *Al-Muwāfaqāt*. As long as the legal texts came with rulings only to achieve a specific divine wisdom, the jurist must follow the path of *ijtihād*, which enables him to recognize the wisdom attached to the legal text in order to understand the text and be able to determine the scope of its application and the areas of its implementation.³⁰ This is what contemporary researchers called the interest-based interpretation of texts. This teleological approach also led *Imam al-Shatibi* to give great attention to the topic of wisdom, considering it the main purpose of rulings in reasoning. One of the results of this was to restore the concept of cause to its true meaning, so he defined it as the interest and sometimes the corruption itself.³¹ He confirms by saying: Wisdom is the cause, and accordingly he uses the words cause, wisdom and interest as synonymous meanings, then he further points out that the name of the cause is sometimes applied to the cause.³²

According to the idea of unrestricted analogy with *Imam al-Shatibi*, he realizes that the meaning of the cause does not stop at the apparent, controlled description only in the texts of issues that are usually analogized to, but also including that it is applied to the cause in its hidden meaning, i.e. wisdom, especially with *Imam al-Shatibi*, and in its meaning of suitability in general with *Imam al-Ghazali and al-Shatibi* by agreement. The appropriateness is the appropriateness of the descriptions of the rulings that were legislated to achieve the interests of the servants, and if this reason is not an appropriate description, then it is not valid to justify it, and the *mujtahid* must be sure that it is proven to have occurred.

From here it is concluded that the scope of the advanced or absolute analogy - in the language of *al-Ghazali* - is the appropriate, suitable and absolute, as for the appropriate, it was not the subject of debate because its consideration was proven by the text or consensus or analogy itself as a reason for a ruling of the same type as the ruling that was arranged according to it, as previously mentioned, such as the analogy of the ruling on combining prayers in the rain and at the same time, and the analogy of women's isolation due to the cause of postpartum bleeding on menstruation. However, the subject of the dispute is the 'appropriate absolute', where there was no ruling according to it nor evidence of its consideration or cancellation, and an example of it is the issue of collecting the *Qur'an*. *Al-Shatibi* called it the hidden because at the first moment their causality is not understood except by *ijtihād* and familiarity with the reasons for the rulings and their induction through the objectives. The practical example of this is that, for example, the collection of the *Qur'an* is a partial interest that was introduced in the time of *Abu Bakr al-Siddiq*. Its collection achieves a general interest, which is the interest of preserving the religion, by preserving it from the loss of many of its laws due to the loss of the *Qur'an* with the death of its memorizers.

Accordingly, the collection of the *Qur'an* achieves the preservation of the religion, which is a necessary objective. Thus, the meaning of collection is in itself the reason for collection because it is a suitable and appropriate meaning for the law of the ruling of collection, and the ruling of collection is the obligation of collection, to preserve the objective at the level of necessities. The principles of reasoning and analogy are also achieved in the appropriate meaning as highlighted by *Imam al-Shatibi*, which is that the law of the ruling should entail the principle of repelling corruption and bringing benefit. This is the meaning of wisdom, i.e. the reason in its broad sense.

The collection of the *Qur'an* is a general interest, and the meaning of its interest falls under one of the meanings of the necessary objectives of the *Shari'ah*, which is the interest of preserving the religion. This is what the researcher called the feature of

³⁰Ibid

³¹ *Al-Muwāfaqāt*, Vol. 1, p. 196

³² Ibid: p. 196

unrestricted analogy through the objectives and interests assigned to it, and it is an old method and approach whose concept was created by the two great *imams Al-Ghazali* and *Al-Shatibi* in an integrated manner. In short, wisdom according to *Imam Al-Shatibi* is the appropriate meaning if it is controlled, so the idea of unrestricted analogy according to *Imam Al-Shatibi* is based on his consideration of the appropriate description in the meaning of wisdom. His consideration of the appropriate in the meaning of wisdom only is from the door of the entrance that he chose to study the issue to clarify the idea of unrestricted analogy, since wisdom by consensus is nothing but the interest resulting from the ruling in terms of warding off corruption and preserving interest. So, the issue goes back to the same entrance of *Imam Al-Ghazali* in terms of interest and what he stipulated for it as previously mentioned.

METHODOLOGIES OF AL-GHAZALI AND AL-SHATIBI IN DEDUCING RULINGS USING ADVANCED ANALOGY

Al-Ghazali and *al-Shatibi* developed distinct yet complementary methodologies for deducing rulings through advanced analogy, both emphasizing the objectives of *Shari'ah* (*Maqāsid al-Sharī'ah*). *Al-Ghazali* expanded the traditional understanding of the cause (*'illah*) in analogy to include deeper meanings like wisdom and public interest. He categorized causes into three types: motive causes rooted in purposes, defined causes tied to *Shari'ah* principles, and obligatory causes mandated to address societal needs. His concept of appropriateness (*al-munasabah*) ensured that rulings align with the objectives of *Shari'ah*, prioritizing public interest (*maslahah*) and the preservation of religion, life, intellect, lineage, and wealth. *Al-Ghazali* also incorporated Aristotelian logic to create a systematic and structured approach to analogical reasoning.

Al-Shatibi extended *Al-Ghazali's* framework by focusing on *hikmah* (wisdom) as the essence of rulings and treating it as synonymous with the cause (*'illah*). He classified *Sharia's* objectives into necessities, needs, and enhancements, prioritizing necessities like preserving life and religion. *Al-Shatibi* advocated a teleological approach, where rulings were deduced by examining the Lawgiver's ultimate objectives rather than relying solely on texts. He also expanded advanced analogy to include hidden causes inferred from *Sharia's* goals, using examples like the collection of the *Qur'an* to illustrate how unprecedented actions could align with the preservation of religion. Through their methodologies, both scholars demonstrated how advanced analogy could address new issues while remaining rooted in the principles and objectives of *Sharia*.

Comparison Of Their Approaches

Aspect	Al-Ghazali	Al-Shatibi
Focus of Analogy	Appropriateness and rational compatibility.	Wisdom and alignment with <i>Sharia's</i> objectives.
Key Contribution	Emphasis on absolute appropriateness and logical structures.	Prioritization of objectives and teleological interpretation.
Public Interest (<i>Maṣlahah</i>)	Broadly integrated into analogy as a key principle.	Central to deducing rulings, with focus on necessities.
Methodology	Logical and systematic, influenced by Aristotelian thought.	Goal-oriented and focused on practical application.

Table 1: Comparison between *Al-Ghazali* and *Al-Shatibi* method

THE CONTEMPORARY APPLICATIONS OF UNRESTRICTED ANALOGY IN LIGHT OF THE OBJECTIVES OF ISLAMIC LAW

Here, the application of unrestricted analogy to the branches of jurisprudence is detailed with an illustrative example.

The issue of attributing *walad al-zina* (the illegitimate child) to his father

Who is *walad al-zina* (the illegitimate child)? A *walad* (child) is the newborn, and it is said for the singular, and it is pluralized as *awlaad* children, a child, and a child. It is used metaphorically for the child of a child and how low so ever and for the child from breastfeeding.³³ The technical meaning of the child has not departed from its linguistic meaning³⁴ As for *al-zina* (fornication/adultery), according to the linguists, it means immorality.³⁵ The Hanafis defined it as: "A man having intercourse with a woman in the vagina without ownership or the like"³⁶ So, the illegitimate child is what a woman gives birth to from fornication. i.e. out of wedlock.³⁷

As for lineage, linguistically: it means belonging. And lineage means kinship. *Al-Raghib al-Isfahani* said: "The lineage is a partnership on the part of one of the parents, and this is of two types: lineage by length, such as partnership between fathers and sons, and lineage by width, such as the lineage between brothers and uncles."³⁸ *Ibn al-Arabi* defined it as: "an expression of the mixing of water between the male and female according to the Sharia. If it was through disobedience, it was an absolute creation, and it was not a confirmed lineage."³⁹ The importance of lineage Islam that wanted is to make the bond of kinship and lineage a strong foundation for the cohesion and unity of the family, so its law was concerned with lineage by controlling and defining its conditions and rulings and distinguishing its correctness from its falsehood.

One of the manifestations of preserving lineage in Islam is considering reserving lineage or offspring as one of the five general objectives. The Messenger, may the peace and blessing of Allah be upon him, commanded us to take care of lineages and protect them from being lost. He said: "Any woman who introduces to people someone who is not from them, she has nothing to do with God, and God will not admit her into His Paradise. And any man who denies his son while he is looking at him, God will hide himself from him and disgrace him before the heads of the first and the last."⁴⁰ Another manifestation of this is the prohibition of adoption, as Allah said: "Call them by the names of their fathers; that is juster in the sight of Allah. But if you do not know their fathers, then they are your brothers in religion and your allies" (al-Quran. al-Ahzab: 5)

The Prophet, peace and blessings be upon him, said: "Whoever claims to be someone other than his father, knowingly, Paradise is forbidden to him."⁴¹ And because Islam cares about lineage, it forbade slander and adultery because of the mixing of lineages, and it established the punishment of flogging if the crime of adultery is proven for a single person, and stoning for a married person .

³³ Ahmad bin Muhammad bin Ali al-Fayyumi,(1327 AH) *al-Misbah al-Munir fi Gharib al-Sharh al-Kabir* (Beirut: Al-Maktaba al-Ilmiyyah.), p. 671.

³⁴ Abu Bakr bin Masoud al-Kasani,(1414 AH) *Bada'i' al-Sana'i' fi Tarteeb al-Shara'i'* (Beirut: Dar al-Kutub al-Ilmiyyah.), vol. 4, p. 40.

³⁵ Muhammad bin Makram bin Ali bin Manzsur, *Lisan al-Arab, with the commentary of al-Yaziji and a group of linguists* (Beirut: Dar Sadir,), vol. 14, p. 59.

³⁶ Muhammad bin Ali al-Shawkani,(1414 AH) *Fath al-Qadir* (Beirut: Dar Ibn Kathir,), vol. 14, p. 59].

³⁷ *Ibid*: vol. 14, p. 59

³⁸ Al-Husayn ibn Muhammad al-Raghib al-Isfahani,(1972) *Mufradat Gharib al-Quran* (Beirut: Dar al-Katib al-Arabi), p. 511.

³⁹ Abu Bakr Muhammad ibn al-Arabi, *Ahkam al-Quran* (Beirut: Dar al-Fikr), vol. 2, p. 447.

⁴⁰ Abdullah bin Abdul Rahman Al-Darimi,(2015) *Musnad Al-Imam Al-Darimi*,(Beirut: Dar Tawq Al-Najah, , Book of Marriage, Chapter on the one who denies his son while he knows him, Hadith No. 2260), Vol. 2, p. 727.

⁴¹ Al-Bukhari, *Sahih Al-Bukhari, (Book of Military Expeditions, Chapter on whoever claims to be someone other than his father*, Hadith No. 6385), Vol. 6, p. 2485.

Jurist's Opinions on the Attribution of an Illegitimate Child

The jurists agreed that the lineage of the child of fornication to the fornicator is not proven, because fornication is a crime that cannot be proven, due to an explicit hadith in it, which is the saying of the Prophet, peace and blessings be upon him: "The child belongs to the bed and the adulterer gets stoned".⁴² There is an old disagreement and heated discussion among the jurists, both ancient and contemporary, about the permissibility of attributing the child of fornication to his father. On this issue, there are two opinions:

The majority of the jurists of the four schools of thought and others from the *Zahiris* went with the first opinion.⁴³ Their opinion is that the child of fornication should not be attributed to the fornicator, whether he was born in a bed or not, and even if the child is completely similar to him, whether he acknowledges it or denies it. The main evidence for them is the hadith, "The child belongs to the bed and the adulterer is stoned." Their evidence is reasonable, that the water of adultery is a sin and a waste that has no effect, and that not attributing the child to the adulterer is a deterrent to him so that he may refrain from adultery, because proving that to him may lead to the spread of immorality and its public manifestation.⁴⁴

The second opinion: The proponents of this opinion hold that it is permissible to attribute the child of fornication to the fornicator if he claims him. This opinion is represented by a group of scholars: *Ibrahim al-Nakha'i, Ibn Sirin, al-Hasan al-Basri, Urwah ibn al-Zubayr, Sulayman ibn Yasar, and Ishaq ibn Rahawayh*. It is the choice of *Sheikh al-Islam Ibn Taymiyyah* and his student *Ibn al-Qayyim*.⁴⁵ They provided evidence for this with a collection of evidence, the main one of which is:

The story of the *Guraij*, in which *Guraij* asked the boy with whom he had committed adultery: "Who is your father, boy?" He said: "My father is so-and-so the shepherd." The evidence is that the boy said: "My father is so-and-so the shepherd."⁴⁶ It is also authentic that *Omar bin Al-Khattab*, may God be pleased with him, would attribute the children of the pre-Islamic era to those he claimed in Islam, even if he had fornicated with them, and the master of the slave woman or the husband of the free woman did not claim them, because the child belongs to the bed.⁴⁷ It has become clear from the above that the strongest evidence relied upon by those who forbid it is what was proven from the separation of the two who cursed each other and the attribution of the child to the woman. While those who permit it look at the harms resulting from denying the child from his fornicating father, so they said that it is permissible to attribute the child of fornication to the fornicator. Even if we assume for the sake of argument that the hadiths used by those who permit it are authentic, they are not free from discussion. It appears after careful examination and taking into account analogy that attributing the child of fornication to his father is to preserve the dignity of the child and protect himself, and to achieve the preservation of lineage from nonexistence. Because denying the child from his father exposes him to loss and makes the family in-cohesive, and this is contrary to the intention of the Lawgiver in lineage. As for the analogy: because the father is one of the fornicators, so if the father is attributed to his mother, and is related to her and inherits from her, and the lineage is established between him and his mother's relatives, and the child was found from the water of the two fornicators, and they shared in it, and agreed that he is their son, then what prevents him from being attributed to the father if no one else claims him. As for the interest, the Lawgiver is eager to preserve lineages and care for the children and provide for them with care and upbringing, and protect them from homelessness and loss,

⁴² Bukhari, *sahih al-bukhari (Book of Inheritance, Chapter: The child belongs to the bed, whether she is free or a slave, Hadith No. 6368)*, Vol. 6, p. 2481.

⁴³ Al-Sarakhsi, *Al-Mabsut*, Vol. 17, p. 154; and Al-Kasani, *Bada'i' Al-Sana'i'*, Vol. 6, p. 243; Malik ibn Anas, *Al-Mudawwana* (Beirut: Dar Al-Kutub Al-Ilmiyyah, 1994), vol. 6, p. 113; Ibn Qudamah, *Al-Mughni*, vol. 8, p. 126; Ibn ibn Ahmad ibn Hazm, *Al-Muhalla bi Al-Athar*, (Beirut: Dar Al-Fikr), vol. 10, p. 142.

⁴⁴ Al-Sarakhsi, , Vol. 17, p. 154.

⁴⁵ Muhammad ibn Abi Bakr Ibn al-Qayyim,(2019) *Zad al-Ma'ad*, (Beirut: Dar Ibn Hazm, 3rd ed.,), vol. 5, p. 426; and Ibn Hajar al-Asqalani,(1390 AH) *Fath al-Bari*, (Egypt: Maktaba al-Salafiyah,), vol. 6, p. 55.

⁴⁶ Al-Naysaburi, *Al-Jami' Al-Sahih* (Hadith No. 2550), Vol. 8, p. 4.

⁴⁷ Ibn Hajar, *Fath Al-Bari*, Vol. 6, p. 557.

and in attributing the child of fornication to his father is the realization of this interest.

Clarifying the Issue in Light of the Objectives and Unrestricted Analogy

There were many means to prove lineage in the past, the first of which was pregnancy, because the fetus is not related to its mother. Lineage is originally from the father, so if it is cut off from his side, it returns to the mother. If it is possible to return from the father, it returns from the mother to him because they shared the water⁴⁸.

The second means is the bed, that is, according to the principle "the child belongs to the bed". The woman is the bed in the original linguistic context, because she is the one who is penetrated, but the husband was given the name of the woman because they shared the marriage and clothing⁴⁹ and she was called that because the man is the one who spreads her out. The third means is physiognomy, which is one of the indications of proving lineage, from *qafā atharahu*, and *iqtāfaṭ atharau iqtīyafān* if he follows his trace, and the *qāif* is the one who follows the trace to know the resemblance of a man to his father and brother, and among the jurists it is reliance on a special science to follow the creation of a father and a newborn and attribute him to him by lineage.⁵⁰ Its legal origin is narrated from Aisha: the Prophet, (saw), entered upon me in a very happy mood, his face beaming with joy, and said, "Didn't you see that *Mujazziz* looked just now at Zaid bin Haritha and Usama bin Zaid, and asked: Do these feet belong to each other? And he said once: They have velvet covering over their heads, and their feet are visible".⁵¹

However, it is necessary to work on the principle of the bed and physiognomy that the occurrence of marriage is the reason for attributing the child to the father in the case of doubt, as will be explained shortly, and also on physiognomy, especially since it is not a matter of agreement among the jurists when it relates to proving lineage, since there is nothing in the Sunnah or the Book that indicates that, and it may result in corruption that can be attributed to the child and the mother, which is related to the objectives of preserving lineage by touching the slander of chaste women and denying lineage, and accordingly it is necessary to maintain the origin of evidence and cursing in the case of necessity. Even the legal means need a statement that prevents it from *Li'ān* (cursing) issued by both parties with the curse of God Almighty to confirm his statement, or with His anger to ward off punishment, and then denying lineage and eternal divorce, since warding off corruption takes precedence over bringing about interest. The one who ponders the apparent context of the verses on slander realizes that pursuing the obstacles to proving lineage is warding off by doubts due to the severity of its harms and its danger when a mistake or lie occurs.

To clarify the issue of attributing a child to his father, it is necessary to read the verses on slander in their generality and in light of their linguistic and purposive context. And the one who ponders the verses on slander will see that in their generality, in terms of the intended meaning, they are closer in their implications, in terms of what is required, to working with the purpose of preserving lineage from the aspect of existence, in continuation of the origin, instead of working with the previous means of proof except in cases of necessity. And it was stated in the principle: it is forgiven in the means what is not forgiven in the purpose⁵² because the necessary purposes are stronger in degree and take precedence over the means if the means are related to the corruption of their purposes or to their disruption in cases of doubt. Then he decided to prohibit the means of physiognomy and the indications related to it. Attributing a child to fornication is a commitment to the intended purpose, which is the necessity of preserving lineage and

⁴⁸ Ibn Qayyim al-Jawzi, *Jala' al-Afham fi Fadl al-Salaat 'ala Muhammad Khair al-Anam*, Vol. 1, p. 266.

⁴⁹ Ibn Faris, *Mu'jam Maqayis al-Lughah* 4/448

⁵⁰ Kuwaiti Jurisprudence Encyclopedia, (1404 - 1427) *al-fiqh al aam*, (Kuwait: Ministry of Endowments and Islamic Affairs, First Edition)

⁵¹ Al-Bukhari, (1423), *Sahih Al-Bukhari, Investigation: Abu Tamim Yasser bin Ibrahim* (Saudi Arabia: Maktabat Al-Rashd, Second Edition,) Hadith No.: 41, Vol. 8, p. 386.

⁵² Jalal al-Din Abd al-Rahman al-Suyuti, (1983) *ulum al-fiqh wal-qawahid al-fiqhiyah, al-ashbah wal al-nazahir fi qawaid wa furu' fiqh al-shafi'i*, (Dar al-Kutub al-Ilmiyyah,) Vol. 1, p. 158

offspring, and indications are a commitment to the means only, and what is forgiven in the means is not forgiven in the purposes. The strongest evidence for what was previously stated is the apparent meaning of the verses of slander, as mentioned above. Allah revealed the verse regarding the hadith of slander, as He revealed: *"Why, when you heard it, did not the believing men and believing women think good of one another and say, "This is an obvious falsehood"?"* (al-Quran. al-Mu`minun: 12) And Allah said: *"And why, when you heard it, did you not say, "It is not for us to speak of this. Glory is to You! This is a tremendous slander."* (al-Quran. al-Nur: 16).

So as these verses apply to cases of slander. Likewise, it applies to cases of doubt and suspicion in the matter of the lineage of an illegitimate child. The context of the two verses, in their apparent meaning, is about not disclosing, making noise, or talking about unfounded news, but rather remaining silent in cases of slander and suspicion, and verifying with good faith. Even if the intended meaning was about clarifying when slander occurs, since the subject of the two verses is slander, then the indication of the context of their apparent meanings falls within the objectives of preserving lineage and honor, which is a comprehensive category of interests in preserving lineage, and not preserving it may lead to great corruption. In the broad analogy of such analogies as mentioned above, it is the name of the proof of the effect of one type of ruling on another type of ruling. The ruling of verification in slander is appropriate to the meaning of verification in the case of doubt about the child's lineage, as it includes the meaning of slander when no evidence is reached, knowing that the ruling of the Lawgiver regarding the ruling of the aforementioned indications is not related to a definitive text in accordance with it or its cancellation, so it remained untranslated, but rather it is merely indications in proving lineage, from the indication of the bed and physiognomy and finally cursing in the event of denial so that the matter remains according to the ruling of God, the Knower of the Unseen for the day when the scales of justice are placed for the Day of Resurrection.

Therefore, according to the above, the attribution of children to their father is related to the marriage contract and its occurrence to avoid suspicion, because marriage here is an apparent and regulated matter, without resorting to intercourse due to its concealment. Accordingly, the reason for attributing the child to his father in this issue is marriage without intercourse, because here it is a hidden and unregulated wisdom, due to its concealment and the difficulty of knowing it. Therefore, this issue is not regulated except by objectives. In accordance with the unrestricted analogy, the closest way to most of this issue and resolving the dispute is to give preference to objectives, in accordance with the objective of preserving lineage, offspring and honor, collecting the general context of the verses of slander and then studying them according to their inclusion under the objectives of preserving lineage and offspring. Allah (*subhanau*) says: *"And those who accuse chaste women but do not produce four witnesses - flog them with eighty stripes and do not accept their testimony ever after. And those are the wicked"* (al-Quran. al-Nur: 4).

This verse is widely understood to mean that the failure to find four witnesses and the consequence of being flogged with eighty lashes undoubtedly makes the wise person understand that escaping from proving the occurrence of adultery and its consequences is a matter of priority due to its difficulty, as well as verifying and not getting involved in rumors by talking about doubts about the child's lineage when there is no acknowledgment. The wisdom behind this is that preventing harm takes precedence over bringing about benefit when doubt arises regarding lineage later on, and it was previously outside the scope of doubt. Even the evidence mentioned in the Quran: *"O you who believed, if there comes to you a wicked person with information, verify it, lest you harm people out of ignorance and become, over what you have done, regretful"* (al-Quran. al-Hujurat:6).

Ibn Taymiyyah confirms it by saying: "The evidence in the Qur'an did not mean two witnesses, but rather it meant the argument, proof, and evidence, individually and

collectively.⁵³ However, to clarify the idea of verification according to *Ibn Taymiyyah*, he accompanied it by concluding with his saying that the Lawgiver is eager to establishing lineages whenever possible, and the lineage is not ruled to be cut off except where it is difficult to prove it. Therefore, it is established by the bed, by the claim, and by reasons⁵⁴." Therefore, *Imam Al-Shafi'i* interpreted *āyahh*, "Then verify" as verification, and he said: meaning verification in the ruling. He said, "So God commanded whoever carries out His command on one of His servants, that it be verified before He carries it out.⁵⁵" The researcher chose the meaning of verification as an interpretation of the Almighty's saying: "Then verify it" for its linguistic precision and significance in reading the issue in light of unrestricted analogy. The reading of *Imam Hamza, Khalaf, and Al-Kisa'i* was mentioned in it.⁵⁶ Verification is the opposite of advancing and means deliberation. Therefore, it was mentioned that verification is from God Almighty and haste is from Satan. The most likely is that there is a difference between the two readings, otherwise the other reading would not have come with the other word, i.e. verification.

Accordingly, verification is the opposite of advancing and receding. Verification is more specific, and what clarifies this is the Qur'an: "*And more firm*" (al-Quran. An-Nisa: 66), and its meaning is more firm in stopping what they were forbidden from and admonished not to proceed, and based on that, it seems that not proceeding with searching for the lineage of the child of adultery in cases of doubt is closer to the objectives except in cases of necessity. The verse of clarification was mentioned in the context of the report of the immoral person with the prohibition of haste and ruling on him because of the corruption that results from the wrong ruling on the rights of the servants, and the same principle is applied in the issue of the lineage of the child of adultery.

Means of Proving Lineage in Contemporary Reality: Its Ruling and Controls in Light of the Objectives

It can be said that modern means are closer to the correct application of the objectives of proving the lineage of the child, but in accordance with the related legal controls and rules, as they govern it, and that is when it is necessary to act upon it. The discussion here is from the perspective of considering an unrestricted analogy between the issue of physiognomy and the evidence related to it to prove lineage as it was previously and what you will find from it from the use of genetic fingerprints or DNA. It is also from the perspective of deriving partial objectives from the general objectives, and in the language of unrestricted analogy, that is, the partial objectives from their generalities, meaning the five main objectives as stated by Al-Imam Al-Gazali.

The means used for proof are different from what they were in ancient times, and perhaps the closest to reaching the goal are the modern means for the sake of technological progress, and there is no doubt that it is in the interest of the nation, especially in the field of medicine, and those means help in terms of verification, proof or denial, and for the sake of its interests, they are used in the field of judicial proof, such as: the effect of sweat in blood analysis or genetic fingerprinting.

Conditions and controls have been set in the genetic fingerprint to determine the work within the framework of working with it, examining the texts of the Shari'ah and its objectives. The Genetics and Engineering in Medicine Symposium defined it as: "The detailed genetic structure that indicates the identity of each individual".⁵⁷ They reached the conclusion that it still makes mistakes in verifying the biological parents, but it was

⁵³ Ibn Qayyim al-Jawzi, al-Turuq al-Hukmiyyah fi al-Siyasa al-Shari'iyah, vol. 1, p. 11.

⁵⁴ Ibid: Vol. 1, p. 191.

⁵⁵ Al-Shafi'i, (2006) Tafsir Al-Imam Al-Shafi'i, edited by Dr. Ahmad bin Mustafa Al-Farran, (Saudi Arabia: Dar Al-Tadmuriyya,) Vol. 3, p. 1272.

⁵⁶ Muhammad Fahd Kharif, Al-qur'an wabi hamishihi - At-Tashil li-Qira'at At-Tanzeel min Al-Shatibiyyah wa Al-Durrah wa Al-Taysir wa Al-Tahbeer, (Beirut: Dar Al-Barouti), p. 132.

⁵⁷ Dr. Abdul Samad Dokuri, (2017) *nasab walad al-zina: dirasat fiqhiah fi daohi maqsad hifsi nasal*, Vol. 1, Issue 2 (Malaysia: Al-Madinah International University,) P. 119. See: The First and Second Resolutions of the Islamic Jurisprudence Assembly in Mecca, pp. 311, 314. With slight modification.

determined as the strongest means used in Islamic jurisprudence.

1. The Ruling on Genetic Engineering and its Controls

There is no text about it directly in the Qur'an or Sunnah, but dealing with it guarantees beneficial meanings that fall under the general objectives as a means of proving the objective of lineage and preserving it from the mixing and displacement of children in society without lineages. The corrupting factor is that it results in confusion in jurisprudential rulings such as inheritance and marriage in terms of unlawful inheritance.

Controls for Working with Genetic Engineering

Perhaps the decision of *Majma'u al-Fiqhi* is closer to working with it because it contains purposive and political principles, which are, in general, principles that, if observed, it would preserve lineages from being lost, the most important of which are the following:

- i. That the use of genetic fingerprinting in the field of lineage depends on taking complete caution and confidentiality, and accordingly, the texts and legal rules are given precedence over genetic fingerprinting
- ii. Not giving precedence to genetic engineering over cursing and not relying on it to deny lineage
- iii. Not using genetic engineering with the intention of confirming lineages established by *Shari'ah*, and
- iv. It must be prevented by the competent authorities because this prevention protects people's honor and safeguards their lineages.

That the use of genetic engineering is permissible in the field of proving lineage in the following cases:

- i. When there is a dispute over unknown lineage due to the absence of evidence mentioned by jurists, whether the dispute over unknown lineage is a reason for benefiting from evidence or when there is equality, or it is in the suspicious sharing of intercourse.
- ii. The case of suspected births in child care centers or hospitals or in test tube babies.
- iii. When children are mixed up or lost due to disasters or wars where it is impossible to know their parents or with the intention of verifying the identities of missing prisoners or wars.
- iv. It is not permissible to sell human cells to a race, an individual or people, nor is it permissible to donate them to any party due to the corruption that results from them.⁵⁸
- v. Among the most important recommendations issued by the Council's decision: That the state prevents genetic fingerprinting except at the request of the judiciary and prevents the private sector from intending to profit from conducting the examination and consult with legal specialists and doctors regarding their supervision thereof.

A Purposive Pause with the Decision of the Council in Light of Unrestricted Analogy

The decision of the Council is the closest solution in dealing with the issue of the lineage of illegitimate child, because it is considered to prove or deny lineage, it must be in accordance with rules and principles that preserve the purposive meanings, for which the Lawgiver made lineage a division of religion, and they are foundations that preserve lineages from mixing and loss. Therefore, lineage is not proven except by strong evidence and is not denied except by strong evidence. Lineage must be proven by all available

⁵⁸ Ibid: The seventh decision of the Islamic Fiqh Council in Mecca, pages: 343-345 with slight modification

means to achieve the objectives of the Lawgiver, which are manifested in proving lineages. In light of the purpose of preserving the lineage, it may be necessary to investigate the purposive meanings and purposive principles that provide the best solution to the issue according to the purposes:

In terms of the purposive meaning, the decision of the Council is an indication of giving precedence to the legal purpose over the means, no matter how good they appear, in addition to giving precedence to what is established by the law before the law in conducting the genetic fingerprinting process. One of the most prominent clarities of preserving the legal lineage in the decision of the Council was not to allow the use of DNA analysis except for convincing reasons to preserve the lineages from being doubted after they have been established, which leads to the corruption of losing love and harmony between the spouses.

Preference

If we assume, for the sake of argument, that the previous hadiths, as stated in the section on the jurisprudential adaptation of the issue cited as evidence, are correct, they are not immune to discussion. Therefore, it is most likely that the child of fornication is attributed to the fornicator, in order to read it in light of the objectives and unrestricted analogy, in order to preserve the dignity of the child and protect himself, and to achieve the preservation of lineage from nonexistence. This is because denying the child from his father exposes him to loss and makes the family not cohesive, and this is contrary to the purpose of the Lawgiver in lineage. The Prophet (saw), has commanded that lineage be taken care of and cared for, and that nothing should be mixed into lineages that would cause them to be distorted and disturbed. This command came as an obligation from him, may God bless him and grant him peace, as he said: "Any woman who introduces to people someone who is not from them has nothing to do with God, and God will not admit her into His Paradise. And any man who denies his child while he is looking at him, God will veil himself from him and disgrace him in front of the first and the last" (Hadith. Abi Dawud. 2263). This hadith indicates a severe warning against mixing lineages, and that this behavior is a major sin.

CONCLUSION AND RECOMMENDATIONS

It appears from this research that we have covered that this topic is one of the most important jurisprudential issues that the ancient jurists worked on in establishing the issues that occurred. The voice of renewal and the call for it arose in the jurisprudential arena in the twentieth century AD. There is no doubt that this issue and others like it attract many questions and wide discussion among students of knowledge because of its aspects that need clarification. Accordingly, necessity requires classifying it in the first degree in terms of importance, and building a clear theory to follow and explaining some of its applications.

This research has reached some results, the most important of which are the following:

1. *Ijtihād* generally has two areas, the first of which is in the stipulated issues, and the reason for analogy in it is stipulated. The other is in issues in which there is no text, and it is an objective *ijtihād* in which the reason is based on the objectives of the Lawgiver or the public interests, so analogy to such is what is meant by unrestricted analogy.
2. The analogy of the cause is the basic building block on which the unrestricted analogy is built, as it is the basis of the rational thought in Islamic jurisprudence based on the texts of the *Shari'ah* and its general principles. There is no unrestricted analogy without a cause, but its cause is not limited to a precise apparent description.
3. One of the most important contributions of *Imam Al-Ghazali* in expanding the scope of analogy is that he understood the reasoning by adding the ruling to the appropriate

description, as he understood the obligations of cutting off and flogging for the thief and the adulterer, that is, he understood that theft and adultery are the cause of the ruling and that it is a cause that is not explicitly stated, but the meaning of the speech precedes the understanding, which is called the meaning of the speech. Accordingly, *Imam Al-Ghazali* listed another type of relevance, which is understanding the unspoken from the explicit by the indication of the context of the speech and its purpose, and in expanding its scope, he activated it from the entry of the appropriate and the sent interests, that is, the sent appropriate.

4. One of the most important contributions of *Imam Al-Shatibi* in expanding the scope of analogy is his starting point in studying new developments by analogy according to the interests related to the objectives of the Lawgiver through the approach of wisdom, which is one of the most important basic topics of the science of the objectives of the *Shari'ah* from the injustice of its secrets, in order to understand the issues whose provisions are not stipulated and then clarify the purpose of the Lawgiver, in legislating the provisions, on the idea that the *Shari'ah* is basically based on taking care of interests: bringing benefit and repelling corruption.
5. It became clear that adopting unrestricted analogy is necessary because most of the texts came on general principles and general provisions, and most of them did not address the details or the methods, except in what was intended to be fixed and permanent, as well as the texts that came on general principles and general provisions whose application differs according to the times, places, conditions and customs, the majority of the texts in it were - mostly - flexible and general to a large extent.

Finally, the researcher recommends the following:

1. Enhancing the theoretical understanding of the concept of unrestricted analogy and its importance in light of the objectives of *Shari'ah*, by presenting more studies and research that explore this topic in depth.
2. Innovative methodological tools should also be developed to apply unrestricted analogy in addressing emerging issues, with a focus on achieving the objectives of *Shari'ah* and flexibly controlling rulings.
3. It is also recommended to deepen the foundational studies of unrestricted analogy by researching the legal sources and the opinions of scholars on this method and its practical applications.
4. Efforts should be directed to raise awareness and educate about unrestricted analogy and its role in controlling emerging issues, whether through workshops, seminars or various media outlets.
5. Applied research should be encouraged that uses unrestricted analogy to solve modern *Shari'ah* problems, and to measure its impact on achieving the objectives of *Shari'ah*.
6. It is recommended to enhance cooperation between scholars and thinkers in the field of jurisprudence and the principles of jurisprudence to share knowledge and exchange experiences in studying unrestricted analogy.
7. Scientific research and projects that aim to explore the applications of unrestricted analogy in light of the objectives of *Shari'ah* should be supported by the parties concerned with scientific research.
8. From the applied and model point of view of unrestricted analogy in the field of judicial institutions through a comparative examination between the rules of civil law and the rules of unrestricted analogy integrated to activate it practically and legally.

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