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Al-Shāfi's Position on Analogical Reasoning in Islamic Criminal Law: Jurists Debates and Human Rights Implications (Article)

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Abstract

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Al-Shāfi (d. 204/820) has been unreservedly credited as one of the designers, if not the "master architect," of *uṣūl al-fiqh* (Principles of Islamic Jurisprudence). His most important scholarly work, *Al-Risālah* (The Epistle), clearly demonstrates his cognitive creativity in this field. One of the methodologies for the decision of cases under Islamic law that Al-Shāfi championed is *qiyās* (analogical reasoning), which he equated with *ijtihad* (legal reasoning). His balanced approach invites further enquiry into the extensive use of *qiyās* in general and in criminal law in particular. The extent to which *qiyās* can be applied to Islamic criminal law depends upon the degree or typology of *qiyās* being used, taking into account the Islamic theory of criminology. This article will analyse the position of al-Shāfi in this regard. It will critically examine al-Shāfi's complex views on the use of *qiyās* as a method for establishing culpability under Islamic criminal law. It will then explore how his position corresponds to the human rights paradigm in the contemporary age. This article concludes that, while the use of *qiyās* in criminal law, especially in law of retaliation (*qiṣās*) and predetermined punishments (*ḥudūd*) in accordance with al-Shāfi's approach is tantamount to incriminating a person based on less than certainty (*yaqīn*), it also represents the most promising way of protecting the right of victim. © 2016, Springer Science+Business Media Dordrecht.

Author keywords

Al-Shāfi Analogical reasoning Certainty Doubt Human rights Islamic criminal law Modern technology Probability Qiyās

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- 1 Abu Sulayman, A.H.A. (1987) *The Islamic theory of international relations: New directions for Islamic methodology and thought*. Cited 4 times. International Institute of Islamic Thought, Herndon, VA
- 2 Abū Zahra, M. (1998) *Al-Jarīmawa l-'uqūbāt l-fiqh al-Islāmī*. Dār al-Fikr al-'Arabī, Cairo
- 3 Hasan, A. Analogical reasoning (2009) *Study of the judicial principles of qiyas*. Islamic Jurisprudence A, (ed), Adam Publishers & Distributors, New Delhi
- 4 *Ali bn Abi Ali bn Muhammad. 2003/1424. Al-lhkām fī uṣūl al-ahkām*. Al-Amidi.(Abdul Razzaq Afri, Ed.). Riyadh, Dar al-Sumai
- 5 Bayān al-Mukhtasar Sharh bn al-hājib. Saudi Arabia: Dar al-madani *Al-Asfahānī, Maḥmūd ibn Abdul Raḥmān. 1996/1406*

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