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Discretion: its Definition and Applications According to the *Shafi'i* School of Jurisprudence

*Mansour R. Miqdadi**

ABSTRACT

This study deals with the discretion (*Istihsan*), one of the controversial principles of Islamic jurisprudence as a secondary source of Islamic legislation.

The study dealt critically with its linguistic and technical definition upon which based the dispute among Muslim scholars on the proof-value of discretion. This paper demonstrated that the concept in two main stages; the first stage as the concept was vague and unsettled. This stage is to be considered whereas the *Shafi'i* disagreed with the rest of the scholars. The second stage is represented in the final version of the *hanafi* definition of discretion. At this stage its proof-value became subject of consensus among the four schools of jurisprudence. Therefore, this shows that there is no real dispute on the actual concept of discretion.

The study has been concluded with applied issues from *shafi'i* school of jurisprudence to show to which level they relied upon discretion as one of the means of deducing the rulings. This disproves the idea that the *shafi'i* school denies discretion as a source of legislation.

Therefore, the dispute between the *Shafi'is* and *Hanafi's* seems to be formal rather than being genuine. *Shafi'is* however are the least to consider discretion.

Keywords: Discretion, Applications, *Shafi'* school.

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