



A comparative analysis on the Reasons for Juristic Disagreement in Islamic Jurisprudence (Asbāb Ikhtilāf al-Fuqahā')

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Abstract

Juristic disagreement (ikhtilāf al-fuqahā') is a well-established and significant feature of Islamic jurisprudence that has contributed to the richness, flexibility, and dynamism of Islamic law throughout history. This study presents a comparative analysis of the reasons for juristic disagreement among Muslim scholars, examining the various methodological, textual, linguistic, and contextual factors that have led to differences in legal opinions. It explores the role of varying interpretations of the Qur'an and Sunnah, differences in the authenticity and acceptance of Hadith, linguistic variations in Arabic, divergent principles of legal reasoning (*uṣūl al-fiqh*), the use of analogy (*qiyās*), juristic preference (*istiḥsān*), public interest (*maṣlaḥah*), and the influence of customs (*'urf*) and socio-cultural contexts. The study further compares the approaches adopted by the major Sunni schools of jurisprudence in addressing these sources of disagreement, demonstrating that juristic diversity is rooted in scholarly diligence (*ijtihād*) rather than contradiction in Islamic law. It argues that legitimate differences of opinion reflect the adaptability and comprehensiveness of the Sharī'ah in responding to varying circumstances across different times and places. The research adopts a qualitative and comparative methodology based on classical and contemporary literature in Islamic jurisprudence.

Keywords: *Juristic disagreement (Ikhtilāf), Islamic jurisprudence (fiqh), uṣūl al-fiqh, ijtihād, comparative analysis, legal methodology, Sharī'ah.*

Introduction

Islamic Jurisprudence (*Fiqh*) is the human understanding and application of the divine law (*Shari'ah*). Although Muslim jurists derive rulings from the same primary sources- the Qur'an and the Sunnah- they sometimes arrive at different legal conclusions. This phenomenon is known as ***Ikhtilaf Fuqaha*** (juristic disagreement).

Juristic disagreement is a natural outcome of scholarly reasoning (*Ijtihad*) and had existed since the time of the companions of the prophet Muhammad (SAW) such disagreement does not indicate contradictions in Islam; rather, they demonstrate the flexibility, richness and adaptability of Islamic law.

Conceptual Framework and Definition of Terms

The term *Ikhtilāf*: Literally means "difference" or "divergence." In Islamic legal terminology, it refers to the diversity of legal opinions, rulings, and methodologies among qualified Muslim jurists (*Mujtahidūn*).

Khilāf: Often used interchangeably with *Ikhtilāf*, but technically denotes a dogmatic dispute where the underlying objective differs. *Ikhtilāf*, conversely, is a constructive diversity of opinions seeking the same ultimate truth. In other words, it refers to – the variation of legal opinions among qualified legal jurists regarding a legal issue based on their understanding and interpretation of the evidences of *Shari'ah*. (Al-Alwani 1987)

Legitimacy of juristic disagreement

Differences among scholars are recognized in Islam. The Prophet (SAW) encouraged qualified jurists to exercised independent reasoning. When he said:

When a judge exercises *Ijtihad* and Reaches the correct decision, he Receives two rewards, and if he Exercises *Ijtihad* and errs, he receives One reward (Sahih al-Bukhari)

The above hadith establishes that sincere scholarly effort is rewarded even when conclusions differ.

Legality of *Ikhtilāf* in Islamic Jurisprudence

In Islamic jurisprudence, divergence in the branch matters of law (*Furu'*) is not viewed as a failure of the legal system, but rather as a divine mercy (*Rahmah*) and a testament to the flexibility of Shari'ah.

Concerning the Prophetic command During the march to *Bani Quraydhah*, the Prophet (SAW) said:

"None of you should pray '*Asr* except at *Bani Quraydhah*." (Sahih al-Bukhari)

Some Companions took the instruction literally and delayed their prayer until arrival, while others understood the command as an instruction to hasten and prayed on the way. The Prophet did not rebuke either group, establishing the validity of diverse, sincere textual interpretations.

Concerning the Reward of *Ijtihād*: The Prophet (SAW) was reported to have said:

If a judge makes a ruling striving to find the truth (*Ijtihād*) and is correct, he receives a double reward. If he makes a ruling striving to find the truth and errs, he still receives a single reward. (Sahih Muslim)

Development of Islamic Legal thought

Development of Islamic Jurisprudence is the study of how Islamic law has evolved and developed. History of the growth of the Muslim legal system is different from the Islamic History. We are concerned here not with history but with growth and development the law. We are going to examine the foundation of the legal schools through a historical analysis of Islamic law in the era of the prophet (SAW), rightly guided Caliphs, Tabi'un and the great Imams. We will explore the process of the development and refinement of a legal school and why following a legal school is the best option to implement Islam in Muslim's life.

We can divide the whole development of Islamic law within the past 14 years into Five periods. The first period begins from the date when the prophet (SAW) was inspired by the first revelation and terminates with the end of prophetic career. The second period starts with the period of the first caliph and covers the reign of the four caliphs. The third period marks the beginning of the four Sunni schools of law and then the fourth period begins where the period of Sunni Schools of law ends. The fifth and final period starts with the Twentieth century and is going on till today. (Yusuf 2020)

1. Legislative period

The first period commenced when the prophet (SAW) was guided by the first revelation by Allah and ended with his death. The prophetic era, comprising the life of the prophet (SAW), saw the completion of the edifice of the Shari'ah (Islamic law) and the completion of the religion. During Prophetic period, the whole Qur'an was revealed and the Prophet explained and reinforced it through his own teaching and practice, the Sunnah. The Qur'an became the first source of Islamic law.

2. Interpretation Period

The second period is the era of the Prophet's companions, the rightly guided caliphs and their successors (Tabi'un) and ends with the foundation of different schools of Jurisprudence. This period of is considered the preliminary stage for the codification of Islamic law.

3. Scientific period

The third period starts from the beginning of the second century A. H. to the middle of the fourth century A. H. During this stage, the codification of Islamic law was completed. At this stage, Islamic law became a distinct science of its own that scholars would specialize in. schools of law were formed in this period, which is the stage that Islamic law as a science was established.

4. Period of Taqlid

The fourth phase in the formative history of Fiqh began around 950 C.E., after the close of the third century of the Hijrah. This period is characterized by the institutionalization of the dominant schools, with emphasis not on new developments but on following precedents (Taqlid). The Jurists occupied themselves with elaborations and commentaries on the work of their predecessors. By far the longest phase, this period lasted for about Nine centuries and witnessed the downfall of the Abbasid and Ottomon Empires, the expansion in the military and political powers of the west, and the industrial revolution and colonial domination of Muslim lands by European powers (Ibid).

5. Period of renaissance

The Fifth and final period in the development of Muslim legal system began at the turn of the twentieth century. It is marked by less emphasis on precedent and greater emphasis on original thinking and the quest to make the Shari'ah once again relevant to the social reality and experience of contemporary Muslims. (Yusuf Ibid)

Core Reasons for Juristic Disagreement

Juristic disagreements generally stem from three foundational areas: Linguistic interpretations of the text, Hadith methodology and accessibility, and Differences in legal principles (*Usul*).

Cause 1: Linguistic Variances in Scriptural Texts (*Al-Asbāb al-Lughawiyah*)

The Quran and Sunnah are in Arabic, a language rich in metaphors, homonyms, and grammatical dualities.

The following are some of the key areas where Arabic is distinguished from other languages:

1. Homonymy (Words with Multiple Meanings (*Al-Mushtarak*):

- Example: The Quranic word *Qur'* (plural: *Quru'*) in Surah Al-Baqarah (2:228) regarding the waiting period of divorced women: "Divorced women remain in waiting for three *Quru'*."
- Disagreement: In Arabic, *Qur'* means both menstruation (*Hayd*) and the period of purity between menses (*Tuhr*). The Hanafis adopted "menstruation," whereas the Shafi'is and Malikis adopted "periods of purity," leading to different calculated lengths for the waiting period (*Iddah*).

2. Literal vs. Figurative Language (*Al-Haqīqah wa al-Majāz*):

- Example: The word *Lams* (touch) in Surah An-Nisa (4:43) listing things that invalidate ritual purity: "...or you have touched (*Lāmastum*) women."
- Disagreement: The Shafi'is interpreted "touch" literally, ruling that any skin-to-skin contact between non-*mahram* post-pubescent males and females invalidates ablution (*Wudu'*). The *Hanafis* interpreted it figuratively as a metaphor for sexual intercourse, ruling that normal physical contact does not break *Wudu'*. The *Malikis* took a middle path, ruling that it only breaks *Wudu'* if accompanied by physical pleasure.

3. Command Particle (*Amr*) and Prohibition Particle (*Nahy*):

- Jurists disagreed on whether a command in the Quran or Sunnah strictly denotes an absolute obligation (*Wujūb*) or merely a recommendation (*Nadab*).

Cause 2: Hadith Transmission and Methodology (*Al-Asbāb al-Athariyyah*)

The primary reason for disagreement in the generation of the early Imams was the collection and systematic verification of Hadith. (Umar 2024)

1. Accessibility and Reach of Hadith:

The Companions of the Prophet scattered across different provinces (Iraq, Syria, Egypt and Madinah). A specific Hadith might have reached a jurist in Madinah (like Imam Malik) but not a jurist in Kufa (like Imam Abu Hanifah), causing the latter to rely on analogous reasoning (*Qiyas*) or general Quranic principles.

2. Disagreement on Hadith Authenticity Criteria:

- Example: Imam Malik accepted solitary narrations (*Khabar al-Wāhid*) only if they did not contradict the established practice of the people of Madinah (*'Amal Ahl al-Madinah*), which he viewed as a continuous mass-transmitted tradition (*Mutawātir*).
- Example: Imam Abu Hanifah placed strict conditions on accepting solitary narrations, requiring that the narrator must have acted in accordance with what they narrated, and that the Hadith must not deal with matters of public, everyday necessity (*'Umum al-Balwa*).

Cause 3: Disagreement on Supplementary Legal Principles (*Adillah Ghayr Muttafaq 'Alayhā*)

While all major schools of thought agree on the authority of the Quran, Sunnah, *Ijma'* (Consensus), and *Qiyas* (Analogy), they diverge on secondary sources of law:

1. The Practice of the People of Madinah (*'Amal Ahl al-Madinah*): Adopted primarily by the Maliki school as a binding source, but rejected as a universal proof by the Shafi'i and Hanafi schools.
2. Public Interest (*Maslahah Mursalah*): Employed extensively by the Malikis and Hanbalis to formulate rulings where no specific scriptural text exists.
3. Juristic Preference (*Istihsān*): Utilized heavily by the Hanafis to bypass a strict analogy in favor of an alternative ruling that yields a more equitable and practical outcome.
4. The Law of Previous Revelations (*Shar'u Man Qablanā*): Disagreement on whether laws revealed to prior Prophets (e.g., Prophet Musa or Isah A. S.) are binding on Muslims unless explicitly abrogated.

3. Classifications of Disagreement

Scholars classify juristic differences into two main categories:

1. Divergence of Variation (*Ikhtilāf Tanawwu'*):

Different, equally valid ways of performing an act of worship.

- Example: Variations in the wordings of the *Tashahhud* prayer or the method of pronouncing the *Takbīr* during funerals. All options are acceptable, and practicing any of them is valid.

2. Divergence of Contradiction (*Ikhtilāf Tadādd*):

Rulings where one opinion declares something permissible (*Halal*) and another declares it prohibited (*Haram*).

- Example: The validity of a marriage contract without the consent of a guardian (*Wali*). The Hanafi school permits it for adult, mature women, whereas the majority of other schools deem it invalid.

Examples of juristic disagreements

1. Touching a woman and Ablution (*Wudu'*)

- The Shafi'i school holds that touching a non-*Mahram* woman invalidates *Wudu'*
- The Hanafi school holds that mere touching doesn't invalidate *wudu'* unless accompanied by sexual discharge.
- The disagreement arises from different interpretations of Qur'an regarding the phrase "*aw laamastum al-nisaa'*" (or you touched women) (Qur'an 4:43)

2. Recitation of Surah al-Fatihah behind the Imam

- Shafi'i Jurists consider reciting al-Fatihah obligatory for every worshipper, including one praying behind an Imam.
- Hanafi Jurist maintain that the recitation of the Imam suffices for the followers in congregational prayer.

3. Raising the hands (*Raf' al-Yadayn*) in salah

- Shafi'i and Hanbali Jurists recommend raising the hands before and after bowing (*Ruku'*).
- Hanafi Jurists generally restrict it to the opening Takbir.
- The disagreement results from different assessments of Hadith evidence.

4. Distribution of Zakah to the Eight categories

- some jurists hold that Zakah should be distributed among all Eight categories mentioned in Qur'an when possible. (Qur'an 9:60)
- others allow giving it to only one category, such as the poor and needy.

5. The waiting period (*Iddah*) of a pregnant widow

- Some companions and jurists held that her (*Iddah*) ends upon delivery.
- Others initially combined the periods of pregnancy and widowhood.
- The majority later adopted the view that it ends upon childbirth based on authentic Hadith.

6. Combining prayers during travel

- Hanafi Jurists generally limit combining prayers.
- Maliki, Shafi'i, and Hanbali Jurists permit combining prayers under specified circumstances.

7. The amount of blood that invalidates *wudu'*

- Hanafi jurists consider flowing blood to invalidate *wudu'*
- Shafi'i and Maliki Jurists generally do not regard external bleeding as invalidating *wudu'*

8. Pronouncement of Triple Talaq at one time

- The majority classical Jurists count three pronouncements made together as three divorces.
- Some scholars, including ibn Taymiyyah, considered them to count as a single divorce.

9. The Minimum Number For *Jumu'ah* prayer

- Different schools stipulate different minimum numbers.
- Hanafis: Three worshipers besides the Imam.
- Shafi'i: Forty residents.
- Malikis and Hanbalis: other varying numbers.

10. Wiping over socks (*al-Mashu ala al-khuffain*)

- Jurists differ regarding the permissibility of wiping over ordinary socks.
- Some permit it under certain conditions, while others restrict it to leather socks.

Conclusion

The study concludes that understanding the causes of juristic disagreement promotes intellectual tolerance, mutual respect among scholars, and informed legal reasoning while discouraging sectarianism and blind partisanship. It recommends greater emphasis on the study of comparative jurisprudence to foster unity within the Muslim community and to equip students and researchers with a balanced understanding of Islamic legal diversity.

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CITATION

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