

Ethics of Disagreement in Islam: A Historical Perspective (Part – II)

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1. Ethics of Disagreement in the Time of Four Imams

After the age of companions of the Prophet Muhammad (S.A.A.^{W.S}) and their eminent successor, there were many intellectual and rationalist tendencies as there were groups, with each group formulating to own methods and principles for interpreting the texts of the *Qur'an* and the *Sunnat* and for dealing with new controversies. There was a pressing need to put in place some controls for regulating the situation, for specifying the methodologies that could be used for deriving positive laws from the divine revelation and for specifying what was allowed and what was not in the conduct of controversies.

In the period from the end of the first century after the *Hijrah* to the middle of the third century – there appeared some thirteen schools of thought in Islam jurisprudence. However, the ‘*aimmah* whose schools have lasted to this day, who have followers throughout the Muslim world, and whose principles and jurisprudence are still employed in assessing issues and in making legal judgments are mainly four : Abu Hanifah, Malik, Al-Shafi’ī and Ahmad Ibn Hanbal. All of them were leaders of correct path and they encouraged and guided the masses towards the correct path as well. Any slanderous remark cast against them is a sure sign of the deprivation of Allah’s mercy. These schools of thought show the differences because of the three main factors *viz* linguist factors, factors pertaining to the transmission of *hadith*, and factors pertaining to the principles and rules of deduction.¹

When Muslim jurists discuss the beginning of *Ikhtilaf*, they always refer to the practice of Muslims at the time of the Prophet Muhammad (S.A.A.^{W.S}). According to them, the Prophet Muhammad (S.A.A.^{W.S}) himself in some cases legitimated *Ikhtilaf* or provided opportunities for difference in judgment, since he gave

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instructions which could be interpreted in more than one way or he validated two different actions with regard to the same situation.²

Muslim jurists further believe that there was much evidence for *Ikhtilaf* immediately following the demise of the Prophet Muhammad (S.A.A.^W.S). *Ikhtilaf* in legal opinions, which occurred between one caliph and another, among the companions and especially, among the successors of the companions. Furthermore, numerous differences even contradictions have been noted within the corpus of prophetic *Ahādīth* which were major source of legislation.³

When faced by such difference, Muslim scholars usually try to harmonize the contradictory over *Ahādīth* by saying, for example, that all of them are acceptable but only one is recommended while the second is permissible and the third is obligatory and, so forth, they might also say that two different *Ahādīth* came from different periods, and that the later one has abrogated the former. Example of *Ikhtilāf* among later generations can also be seen in ‘Ancient schools’ of law which flourished in particular localities. The jurists within them produced the early corpus of Islamic law, but this corpus was far from homogenous.⁴ And in the generation of the successors, there was even greater boon for *Ikhtilaf* so much so that the masters of the former schools and later schools refused to consider the opinions of the successors as then trustworthy of Islamic law. Good examples of *Ikhtilāf* within the same region are those between Abu Hanifah and Ibn Abi Layla.⁵

Ikhtilāf among Muslim jurists occurred orally as well in writing. The former occurred directly in debate and indirectly through teaching; the latter emerged in records of letters and books. At the same time, the circles of the grand scholars developed into the centers for their thought and later became the centers of schools which were attributed to their personal names: Abu Hanifah in Baghdad, Sufyan al-Thawri in Basra.⁶ Malik b. Anas and al-Layth exchanged letters on the question of combining two prayers in one (*jam’*) at the time of rain.

Malik supported the combination; al-Layth rejected it. Malik argued with al-Layth on the authority of a *hadith*, which according to Malik, was fully practiced by the companions and later by the Medinans. Al-Layth rejected Malik’s view, arguing that the companion Muadh bin Jabal in Syria did not practice the combination because rain occurred more often in Syria than in Madinah. If the combination were very easy to do so, the people of Syria would have almost always combined prayers, since rain was very frequent in that area, argued al-Layth.⁷

Since early times, Muslim jurists also wrote books on *Ikhtilāf*, one type of which can be called polemical, whereas the other can be called descriptive.

The former are those which were written to support the author's respective opinions and the opinions of their schools and to argue against the opinions of others. Examples of these are *al-Radd 'al Siyar-al Awza'i* of Abu Yusuf, *Kitab al-Hujja 'al Ahl al-Madina* of al-Shayab, and *al-Radd 'al Muhammad bin al-Hassan of al-Shafi'i*. On every topic of discussion in his *al-Radd 'al Siyar-al Awza'i*, Abu Yusuf first states Abu Hanifah opinion and then cites al-Awzai's opinion and argument against it. Abu Yusuf and then rejects al-Awzai's opinions with detailed counter arguments. Abu Yusuf always uses a counter hadith to reject al-Awzai's argument from hadith.⁸

Similarly, in his *Kitab al-Hujja 'al Ahl al-Madina*, al-shayab n starts with the opinion of Abu Hanifah on every topic of discussion. He then states the Medinese's opinion, which mostly contradicts Abu Hanifah's. Finally, alshayab n rejects the argument of Medinese's especially Malik, in more detailed argumentation for example, when al-shayab n discusses, 'who is more appropriate to give a little female orphan in marriage: her grandfather or her brother?'⁹ He starts with Abu Hanifah's opinion that it is her grandfather. He adds that Abu Hanifah's is also reported to have said that there is no legal consequence to those who receive a recommendation about marriage, dead though they might furthermore, Abu Hanifah said that marriage basically belongs to guardians and the most appropriate persons to give a little female orphan in marriage is her father, then her grandfather, and finally her brother.

In contrast, the Madinese believe that the orphan's brother is more appropriate than her grandfather to give her in marriage and the two who receives a recommendation about marriage from her father is more appropriate than her brother to give her in marriage. After al-shayabani presents both opposing opinions, he gives a long argument in the support of Abu Hanifah against the Medinese.¹⁰ This is an example of his argument against the Medinese. In his *al-Radd 'al Muhammad bin al-Hassan*, al-shayabani, al-Shafi'i as a defender of Medinese, rejects Abu Hanifa's opinion, which is supported by al-Shayabani's argument.

Like the companions of the first generation and their immediate successors, the leading scholars of the 2nd and 3rd centuries had many differences on issues which required *Ijtihād*. Since their difference was not motivated by any form of egoism or desire to create discord, one can venture to say that they were all on the right

path. They were highly trained and qualified, and this is why their verdicts were accommodated by scholars of all ages.

When faced with a difficult issue, some jurists would consult to the literature of another school without any hesitation or embarrassment, even though they might not agree on the type of evidence used. They of course felt free to consult any substantiated text. They were easy-going, open-minded and their concern was to facilitated matters for people.

There were several differences relating, for example, to the preparation for and the performance of *salah*. Some recited *Bismillah* at the beginning of *surah-al-fatihah* some did not. Some uttered it aloud and others did not. Some recited *Qunut* supplication as the part of dawn prayer while others did not. Some renewed their ablution after nose-bleeding, vomiting and cupping while others did not. Some considered that any physical contact with women nullified *Wudu*, others did not, some renewed their *Wudu* after eating camel meat or food cooked on a direct fire while others precepted no need for that. However, the main fact is that these differences never prevented them from performing *salah* behind each other.¹¹

In fact, there is a vast distinction between fundamental and secondary differences. Those who consider this secondary difference equal to the fundamental differences and apply the Quranic verses and *Ahadith* about the evil of differences to the secondary difference are either ignorant or deceived into believing otherwise. There is no doubt, that the *shar'iah* has placed great ease and flexibility on the secondary differences. If this was not the case, the *Ummah* would have been encumbered with difficulties beyond their endurance.

This was one of the reasons why Imam Malik declined to comply with caliph Harun Rashid's request for him to hang a copy of his Muwatta' upon the wall of the Kaba and issued a command for everyone to adhere to it, in order to ensure that people did not differ over religious matters. Imam Malik was requested repeatedly to do this but he emphatically refused each time and declared.

“The companions also differed in subsidiary issues and all of them were considered to be correct. Their statements and schools of thought are practiced throughout the world and there is no sense in prohibiting the people from the other schools of thought”.

Similarly, when caliph Mansur went for Hajj, he requested Imam Malik to give him a copy of all his works so that he (Mansur) could have them published and

dispatched to all the parts of the Islamic world. Mansur wanted all the Muslims to adhere to uniform code of Islamic law, Imam Malik replied:

“O leader of the faithful! Do not ever think of doing this. The people have in their possession the *Ahadith* and the statements of the companions which they are adhering to. Allow them to continue accordingly”.¹²

‘Allama Sharani writes in his book (*Al-Mizan*), ‘if you view it with an impartial eye, you will clearly realize that all the four *Aimmah* and their followers are on the path of divine guidance. Once you have studied this carefully, you will not have objections against the followers of any of the Imams. It will be firmly impressed on your mind that all the four schools of thought are part and parcel of the *shari’ah*, and that the contradictory statements of the various Imams are a source of divine mercy. Allah is All-Knowing and All-Wise and his expediency demanded that things should turn out as they have become, if Allah abhorred this difference of opinion, then he would have forbidden it as He had forbidden debating on the fundamental things of Shariah. If you regard the subsidiary differences of opinion as the same as fundamental difference in religion, you will land yourself in an abyss of destruction because Allah’s Messenger (S.A.A.^{W.S}) concluded that differences in subsidiary issues of religion are a source of divine mercy”.

The differences of opinion found among the Imams which appear to be disunity are in actual fact not disunity. Whatever their stages of differences, they are indispensable and their absence would have been a burden on the *Ummah*.

Furthermore, since their differences of opinion stem from the differences in narrations, there was a religious need to have the narrations also revealed with some amount of ambiguity. If these juridical laws were conclusively revealed like the fundamental tenets of faith, there would be no scope for the Imams to have any differences.

In short, Those people who have studied books dealing with the subject of the differences of the Imams, for instance *al-Mizan* of Allama Sharani, *kitab al-Mughni*, *Bidayat ul-Mujtahid*, and *Kashf al-Ghumma* are quite aware of the fact that the opinions of the Imams are all extracted from the very teachings of Allah’s Messenger (S.A.A.^{W.S}) the only difference lies in the deduction and inferring of rulings.¹³

2. Ethics of Disagreement in the Recent Times

People in the fourth century may be dividing into scholars on the one hand and the general public on the other. The general public depended on the scholars for

transmitting to them the body of agreed-upon knowledge from the original sources on which there was unanimity/consensus among the scholars. This included knowledge of matters such as purification, the performance of *salah*, *swam*, and the collection and distribution of *Zakah*. If they were faced with any problematic details, people would seek help from any scholar regardless of the school of thought to which he belonged.

As for the specialist scholars, they were engaged in the study of *hadith*, and the legal legacy of the companions of the Prophet Muhammad (S.A.A.^{W.S}) and the generation that followed them, if they were faced with an issue on which they did not find any satisfactory or clear-cut answer in the original sources, they would turn to the pronouncement of previous jurists, choosing whichever verdict seemed more sound and reliable whatever it originated in the school of Madīnah or of Kufah.¹⁴

The contemporary Muslim world is afflicted by numerous diseases which have spread to almost every aspect of its beings. Beset by such catastrophic afflictions, one wonders in fact how the universal community of believers – the Muslim *Ummah* – has survived. That this *Ummah* has been spared and continues to exist to this day must be due to the fact that it still holds the legacy of the *Qur'an* intact as well as the example of Allah's Messenger (S.A.A.^{W.S}). It may also be due to the fact that there still exist some elements of righteousness in this community who continue to depend on Allah and genuinely seek his guidance and forgiveness. This we may infer from a Quranic verse which says that Allah didn't choose to punish even a disbelieving people because the Prophet Muhammad (S.A.A.^{W.S}) himself was among them and there remained the possibility that they might yet repent.

But Allah was not going to send them a penalty whilst thou was amongst them; nor was He going to send it whilst they could ask for pardon.¹⁵

It is extremely painful to note that some within the Muslim ranks have deliberately sought to clip the wings of this awakening by shackling it with the fetters of discord where this was totally unnecessary. The result is that Muslims are distracted by their own mostly petty quarrels; their efforts are dissipated; issues have become so confused and mixed up that they are unable to distinguish between trivial and important matters. How, one may well ask, can such a people deal with their problems according to the level of their importance and order their priorities in such a way as to bring about an effective renewal of Islamic life?

3. Reasons for Differences of Opinions

Differences of opinion on intellectual issues, and – by extension – on juristic ones as well, are natural on account of the inherent disparities in intelligence, understanding, and analytic capacity with which people are created. If we accept that this statement is valid.¹⁶ Then we must also accept that differences of opinion between several Companions during the time of the Prophet (S.A.A.^{W.S}) and the rightly-guided *Khulafa'* did occur, and these have been well documented. We would be doing a disservice to this religion if we denied this phenomenon.¹⁷ By the same token we do not regard an open discussion of these differences as detracting from the purity of the Islamic message or from the sincere intention of those Companions who had differences.¹⁸ Indeed we can say that in mentioning these differences openly we are in fact testifying to the objective reality and validity of the Islamic religion.¹⁹

4. Natural Differences

Islam treats people on the basis that they are human beings who, because of a variety of factors, are often at variance with the naturally pure state in which they were created. What is comforting to the believer, however, is that the differences of opinion among the Companions did not spring from weakness in belief (*ʿaqidah*) or any skepticism as to the truth of the Prophet's (S.A.A.^{W.S}) teachings. Instead, they resulted from a genuine desire to ascertain the truth through patient investigation and discover the purpose of the Lawgiver. So long as the Prophet Muhammad (S.A.A.^{W.S}) was the source of these laws, we find that no disagreement lasted longer than it took to refer it to him. From what we have said above about early Muslim history, we can say that the causes of differences of opinion in most cases hinged on the linguistic and juristic interpretation of Qur'anic texts and the interpretation of the *Sunnah* of the Prophet Muhammad (S.A.A.^{W.S}). There were certainly no hidden malicious motives behind these differences, much to the disappointment of the hypocrites who were bent on sowing the seeds of discord in the community. This accounts for the ease and the speed with which these differences dissipated as soon as the disputants met the Prophet Muhammad (S.A.A.^{W.S}) or as soon as a relevant text was produced by anyone. From the Companions' attitude, we can see the soundness of the saying that one who possesses a sound natural disposition (*fitrah*) supports truth wherever he finds it. It is to be expected that some differences and the reasons behind them should have been passed on from one age to another - there is no way of restricting these

differences to a given period. However, with the rapid spread of Islam after the demise of the Prophet Muhammad (S.A.A.^W.S), there surfaced new and more critical issues in the Islamic sphere which have in turn contributed to the spirit of disagreement.

5. After the Assassination of the Third Khalifah

In particular, since the assassination of the third *Khalifah*, `Uthman ibn `Affan, the new regions to which Islam had spread were exposed to violent agitations. This imparted a new and completely alien dimension to the previously said tradition of differences of opinion. The atmosphere of political agitation and uncertainty impelled people of every city and town to become more protective of whatever knowledge of the Prophet's (S.A.A.^W.S) *Sunnah* they had.

They were wary of attempts to corrupt or fabricate traditions. The cities of Kufah and Basrah emerged as centers of intellectual activity. They also provided a fertile ground for the exchange of political ideas and the proliferation of various sects such as the Khawarij, the Shi`ah, and the Murji`ah²⁰ as well as the Mu`tazilah, the Jahmiyyah and other speculative and deviant groups. At this time, there were as many intellectual and rationalist tendencies as there were groups, with each group formulating its own methods and principles for interpreting the texts of the *Qur'an* and the *Sunnah* and for dealing with new controversies. There was a pressing need to put in place some controls for regulating the situation, for specifying the methodologies that could be used for deriving positive laws from the divine revelation, and for specifying what was allowed and what was not in the conduct of controversies.

Fortunately, the very principle of allowing differences of approach in matters of jurisprudence (*fiqh*) was generally accepted. These were matters of detail and required, to begin with, a highly specialized knowledge of evidence from the *Qur'an* and *Sunnah*. The word "*fiqh*" literally means understanding. By extension it is used to denote the particular understanding which a jurist or *faqeeh* (literally one who understands) brings to certain issues. The word *fiqh* also refers to the body of knowledge, rulings, and judgments which comes from a jurist's understanding of issues in the light of clearly defined principles. On the basis of the knowledge available to him, a jurist may pronounce a judgment which may actually conform to what the Lawgiver intends, or it may not.

Whatever the outcome, he is not required to do more than exert the utmost of his intellectual effort to arrive at a judgment. It is likely that his judgment may coincide

with the purpose of the Lawgiver or be as close as possible to it in essence, purpose, and effect. Given this approach, difference of opinion was therefore regarded as legitimate provided it fulfilled two conditions:

1. Each disputant must have evidence or proof (*dalil*) to authenticate his argument. Failure to provide such evidence would invalidate an argument.
2. The adoption of a divergent opinion should not lead to anything preposterous or false. If the opinion is manifestly false from the beginning, it should be abandoned straight away.

These two conditions illustrate the difference between *Ikhtilāf*, which suggests a justifiable difference of opinion, and *ikhtilāf*, which is more akin to discord. *Ikhtilāf* presumes that sincere intellectual effort is exerted to arrive at a judgment; on the whole it represents an objective methodology. *Khilaf* on the other hand departs from one or both conditions mentioned above. It is a manifestation of impulsiveness and obstinacy. It has no link with objectivity.

The jurists whose schools of thought were variously adopted by the *Ummah* as a whole adhered steadfastly to the two conditions mentioned above: providing necessary evidence to authenticate an argument and abandoning any position that was patently preposterous. Legal historians are not at all unanimous in specifying the causes of the juristic differences in that period in spite of the vast literature on the theme. The causes, nevertheless, could be attributed to three main factors: linguistic factors, factors pertaining to the transmission of hadith, and factors pertaining to the principles and rules of deduction.

6. Linguistic Causes

A single word in a Qur'anic text or *hadith* may have several different meanings. The word *`ayn* for example can mean an organ of sight (eye), running water, pure gold, or a spy. If such a word is used in a context where it is difficult to say precisely what it means, even scholars (*mujtahidun*) who try hard may give variant meanings of a word or expression which can be sustained by the text. Meanings may also be suggested which are totally at odds with the intended meaning of the word. A case in point is the disagreement among jurists as to the true meaning of the word *qar'* in the verse:

Divorced women remain in waiting for three periods (*quru*), and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this [period] if they want reconciliation. And due to the wives is similar to what is expected of

them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise.²¹

The word *qar'* (plural: *quru'*) can either mean menstruation or purity following menstruation. The actual length of the waiting period can thus vary depending on which meaning is adopted. Some jurists from the Hijaz concluded that the waiting period should be three intervals of purity while jurists from Iraq concluded that it should be calculated on three occurrences of menstruation, which could mean a shorter waiting-period.²² Sometimes an expression can have both a literal and a figurative meaning. There was, however, disagreement among some scholars on whether in fact it was at all appropriate that Qur'anic expressions should have figurative meanings. Most scholars confirmed that it was appropriate while a few, like Abu Isfarayani and Ibn Taymiyah,²³ rejected such a possibility. Those who did not agree that a Qur'anic expression might have figurative connotations argued that such connotations had no real bearing on the original usage of the word.

Accordingly, the word "lion" for example cannot be taken to mean "a brave man." They argued that the Qur'anic texts came to clarify laws and not to confuse them, as figurative interpretations would tend to do. Our purpose here is not to debate this issue. The majority of scholars, as we have said, were of the opinion that figurative connotations of Qur'anic texts were admissible. Ibn Qudamah²⁴ and other jurists in fact considered the rejection of figurative connotations as a mark of obstinacy.²⁵ Nonetheless scholars, in studying Qur'anic texts, did differ in their understanding of the purpose of the Lawgiver.

If a word suggested two interpretations, some scholars opted for the literal meaning and some for a figurative meaning. The word *Mezan* for example literally refers to a scale or an instrument for weighing things. Figuratively, it may have the connotation of "justice" as in the verse:

And the firmament has He raised high, and He has set up the balance (m z n) in order that you may not transgress the balance. So establish weight with justice and fall not short in the balance.²⁶

In its last occurrence, the word *Mezan* above has the literal meaning of a scale used to weigh goods. In its first and second occurrences the word *Mezan* may signify "justice" (*ʿAdl*) or balance,²⁷ as in the following verse as well:

We have sent Our Messengers with all evidence of this truth and through them We bestowed revelation from on high and the balance (m z n) so that mankind might behave with equity.²⁸

Figurative speech is also to be found in the overall context of a Qur'anic passage as in the verse:

Children of Adam! We have sent down (*anzalna*) on you clothes to cover your nakedness, and a thing of beauty.²⁹

The word *anzalna* literally means "We have sent down". Of course clothes were not "sent down" from the skies as clothes. A literal understanding of *anzalna* is therefore inadmissible. *Anzalna* may instead be taken to mean "We have bestowed the knowledge of making or using." This meaning would fit other occurrences of the verb *anzalna* in the Qur'an as when Allah said that;

.... "He bestowed the knowledge of making or using (*anzala*) iron"....³⁰

We cannot translate this literally as "And Allah sent down iron." Another possible explanation of Allah "sending down clothes" is that Allah sent down the rain and caused plants to grow. He also created animals with wool, fur, and hair, and from these we make clothes.³¹ Hence the verse may refer to the finished product as a manifestation of Allah's bounty rather than the original water which He sent down and which is described elsewhere in the *Qur'an* as the source of every living thing. Apart from the meanings of individual words, linguistic difficulties arose over questions of grammar.³² It is common knowledge that a direct imperative of a verb, for example "Do!", often indicates a command to fulfill an obligation; the negative imperative (Don't do!) indicates prohibition. These imperative forms, however, are not always used in this absolute sense. The direct imperative form of a verb may be used, for example, to indicate a commendable course of action, offer guidance, give a warning, or convey some news.³³ The command to:

But let them who find not [the means for] marriage abstain [from sexual relations] until Allah enriches them from His bounty. And those who seek a contract [for eventual emancipation] from among whom your right hands possess - then make a contract with them if you know there is within them goodness and give them from the wealth of Allah which He has given you. And do not compel your slave girls to prostitution, if they desire chastity, to seek [thereby] the temporary interests of worldly life. And if someone should compel them, then indeed, Allah is [to them], after their compulsion, Forgiving and Merciful.³⁴

For any enslaved person requesting such a deed is taken by scholars either as an absolute command which has the aim of the abolition of slavery as a social institution or as indicating a commendable course of action.

The command to the believers who give or take credit to;

O you who have believed, **when you contract a debt for a specified term, write it down**. And let a scribe write [it] between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. And if there are not two men [available], then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her. And let not the witnesses refuse when they are called upon. And do not be [too] weary to write it, whether it is small or large, for its [specified] term. That is more just in the sight of Allah and stronger as evidence and more likely to prevent doubt between you, except when it is an immediate transaction which you conduct among yourselves. For [then] there is no blame upon you if you do not write it. And take witnesses when you conclude a contract. Let no scribe be harmed or any witness. For if you do so, indeed, it is [grave] disobedience in you. And fear Allah. And Allah teaches you. And Allah is Knowing of all things.³⁵

This command given in this verse is regarded as offering guidance and advice. The command addressed to those who deliberately turn away from the Prophet's (S.A.A. ^W.S) message to:

and they say, "Our hearts are within coverings from that to which you invite us, and in our ears is deafness, and between us and you is a partition, so work; indeed, we are working,"³⁶

This command given in this verse is generally regarded as a warning against the consequences of obstinacy. Apart from direct prohibition, the negative imperative may be used to encourage abstinence from acts which are improper or disliked, to offer guidance, or to convey some news. When Allah says: "So turn not your eyes [longingly] towards the worldly benefits which we have granted to some of those [that deny the truth]"³⁷

The negative imperative "turn not your eyes" is taken to encourage abstinence from a potentially distressing attitude. And when Allah commands the believers: "Do not ask about matters which, if they were to be made manifest to you (in terms of law), might cause you hardship"³⁸

This is taken as offering guidance in avoiding undesirable curiosity.³⁹

The varying ways of interpreting both positive and negative commands have contributed to differences among jurists in their approaches and in their methods of deriving laws from the texts of the *Qur'an*. According to these differences, a text

may be regarded, for example, as either general or specific, absolute or limited, summing up or clarifying. Our brief treatment of the subject here may encourage the reader to study these fascinating linguistic roots of juristic differences in the specialized works available.⁴⁰

7. Differences over Hadith

Most of the juristic differences among the early scholars can be traced back to the narration of sayings attributed to the Prophet Muhammad (S.A.A.^{W.S}). Sometimes a *hadith* never reached a certain scholar and so he might formulate his judgment according to the explicit meaning of a Qur'anic text or another *hadith* available to him.⁴¹ Alternatively, he might resort to *qiyas* from a relevant judgment made by the Prophet Muhammad (S.A.A.^{W.S}), or he would have recourse to the presumed continuation (*istishab*) of a law not known to have been revoked where the circumstances were analogous.⁴² Or, he might base his judgment on the principle of not burdening people with obligations when there is no textual evidence to warrant it, or on some other accepted principle of reaching a judgment through *Ijtihād*. Sometimes in actual fact, a different *hadith* from that available to one scholar would reach another scholar, and this would result in different judgments on the same issue. At other times, a jurist may receive a *hadith* which he considers to be defective, thus preventing him from using it for making a legal ruling.⁴³ The following are some possibilities in this regard:

1. The chain of narration (*isnad*) going back to the Prophet Muhammad (S.A.A.^{W.S}) may not be sound and may include a narrator who is obscure or untrustworthy, or whose memory is weak or defective.
2. The *isnad* may be "interrupted," that is to say the narrator did not cite the first authority who had heard the *hadith* from the Prophet Muhammad (S.A.A.^{W.S}).
3. The jurist, especially in the case of a *hadith* reported by a single narrator, may impose certain conditions for the probity of a narrator which others do not impose. His conclusions and his judgments on these particular issues may therefore differ from those of others. The conclusions and judgments of scholars also differed according to their individual conceptions and definitions of the actual text and implications of certain *hadith*. For example, they differed on the meaning of certain technical terms in some *hadith* - terms such as: *al muzabanah*,⁴⁴ *al mukhabarah*,⁴⁵ *al muhaqalah*,⁴⁶ *al mulamasah*,⁴⁷ *al munabadhah*,⁴⁸ and *al gharar*.⁴⁹ Occasionally, there might be textual variations in versions of the same *hadith* to the extent that a key word might be missing from one text, or the entire meaning of the *hadith* might change because of this missing word. Furthermore, some

scholars might receive a *hadith* which had a consistent internal meaning whereby it was possible to get a good understanding of its intended sense.⁵⁰ Others were not so fortunate and their understanding of the *hadith* would be at variance with the intended sense.

Differences of opinion would also occur when one narrator heard only part of a *hadith* while another heard it in its entirety. The original text of a *hadith* might also be changed through misspelling, misrepresentation, or interpolation during the course of transcription – thus resulting in divergent conclusions and judgments.⁵¹ A jurist might also consider a *hadith* to be sound but at variance with another which he regards as more reliable. He would naturally go by the latter. In another situation, it might not be clear to him which of two pieces of evidence is more reliable and he would refrain from using either until such time as he attains independent confirmation. A certain jurist might come across information which abrogates a *hadith* or makes it more specific or limited in scope. Another would not have the benefit of such information and this would of course result in differences in their schools of thought.⁵²

8. Differences over Juristic Methods

This is the third major factor in explaining the emergence of differences of opinion. ‘*Usul al-fiqh* (sources and principles of jurisprudence) may be defined as the science which embodies knowledge of the proofs or evidences (on which jurisprudence is founded, the methodology of making deductions from this knowledge, and the subject to which the law applies. All the principles and rules formulated by scholars for regulating the process of *Ijtihād* and deriving subsidiary laws of the *Shari`ah* form part of the science of ‘*Usul al-fiqh*. In their various methodologies, jurists specified the basic principles which they used for formulating laws and they gave the proofs for these laws.

They elaborated all the steps they took from the beginning to arrive at a legal ruling. The scholars of various schools of thought differed in the principles and rules they used. Some, for example, admitted the rulings of Companions of the Prophet Muhammad (S.A.A.^{W.S}) as a sound basis for making a judgment on the grounds that a Companion of the Prophet Muhammad (S.A.A.^{W.S}), because of his moral probity, would only give a verdict on the basis of proper evidence, or proper understanding of the evidence, or on the basis of having heard a relevant statement directly from the Prophet Muhammad (S.A.A.^{W.S}) which they were unaware of. Others did not place such a great reliance on the rulings of the Companions, choosing to go by only what the companions reported directly from the Prophet and not their interpretations, impressions, or actions.

Notes and References

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- ¹ Ibid., p.70.
- ² A.Qodri Azizy, *Juristic Differences (Ikhtilaf) in Islamic:Its Meaning, Early Discussions and Reasons(A Lesson for Contemporary Characteristics)*, op.cit., p. 273.
- ³ Ibid.
- ⁴ Ibid.
- ⁵ Ibid.
- ⁶ Ibid.
- ⁷ Ibid.
- ⁸ Ibid, p.274.
- ⁹ Ibid.
- ¹⁰ Al-Shaybani, *al-Hujjah*, (Arabic) J M Printing Press, Hyderabad, 1968, vol. 3, pp.123-4
- ¹¹ Al Alwani, Taha Jabir, *Adab al-Ikhtilaf fi'l Islam*, op.cit.,p. 92.
- ¹² Shaykh al-Hadith Muhammad Zakariyya Kandhlawi; Mawlana Muhammad Kadwa (translator), *The Differences of the Imams*, White Thread Press (November 2008) ,p.21.
- ¹³ Shaykh al-Hadith Muhammad Zakariyya Kandhlawi; Mawlana Muhammad Kadwa (translator), *The Differences of the Imams*, White Thread Press (November 2008) ,p.46.
- ¹⁴ Al Alwani, Taha Jabir, *Adab al-Ikhtilaf fi'l Islam*, op.cit.,p. 109.
- ¹⁵ *Al-Qur'an*; 8 : 33.
- ¹⁶ Al Alwani, Taha Jabir, *Adab al-Ikhtilaf fi'l Islam*, op.cit.,p. 75.
- ¹⁷ Ibid.
- ¹⁸ Ibid.
- ¹⁹ Ibid.
- ²⁰ The Murji'ah or "Deferrers" is a sect which derives its name from the word irjaa' which means postponing or deferring. They defer judgment of a sinner to God and the Day of Judgment. They consider that where there is faith, sin or wrongdoing does no harm; similarly where there is unbelief (kufr) right action is of no benefit. This position is contrary to accepted Islamic belief.
- ²¹ *Al-Qur'an* ; 2 : 228.
- ²² Al- Qurtubi, *Al-Jami li-Ahkam al-Qur'an*, Beirut, Lebanon, volume 3, p.113.
- ²³ Taqî ad-Dîn Ahmad ibn Taymiyyah known as Ibn Taymiyyah (22 January 1263 - 26 September 1328) was a Islamic scholar (*alim*), theologian and logician. He lived during the troubled times of the Mongol invasions. He was a member of the school founded by Ahmad ibn Hanbal, and is considered by his followers, along with Ibn Qudamah, as one of the two most significant proponents of Hanbalism. In the modern era, his adherents often refer to the two as "the two sheikhs" and Ibn Taymiyyah in particular as "Sheikh ul-Islam". Ibn Taymiyyah sought the return of Sunni Islam to what he viewed as earlier interpretations of the Qur'an and the Sunnah, and is considered to have had considerable influence in contemporary Wahhabism, Salafism, and Jihadism. He is renowned for his fatwa (takfir) issued against the Mongol rulers declaring jihad by Muslims against them compulsory, on the grounds that they did not follow Sharia and as such were not Muslim, their claims to have converted to Islam notwithstanding. His teachings had a profound influence on Muhammad ibn Abd al-Wahhab, and other later Salafi scholars.
- ²⁴ Imam Mawaffaq ad-Din Abdullah Ibn Ahmad Ibn Qudama al-Maqdisi was a noted Hanbali ascetic, jurisconsult and traditionalist theologian. He authored many treatises on jurisprudence and doctrine, including *al-Mughni* (the most widely known textbook of Hanbali fiqh) as well as *Tahrim an-Nazar* (*Censure of Speculative Theology*, criticism of Ibn Aqil's views.) He was a member of the school founded by Ahmad ibn Hanbal, and is considered, along with Ibn Taymiyyah, as one of

the two most significant proponents of Hanbalism; in the modern era, adherents of the school often refer to the two as "the two sheikhs and Sheikh ul-Islam.

²⁵ Ibn Qadamah al-Maqdisi, *Rawdat al-Nazir wa-Jannat al-Munazir*, Dar al Asima, Kingdom of Saudi Arabia, p.35.

²⁶ *Al- Qur'an* ; 55 : 7-9.

²⁷ Ibn Kaseer, *Tafseer Ibn Kaseer*, Dar-us-Salam, 2003, vol. 4, p270.

²⁸ *Al- Qur'an*; 57: 25.

²⁹ *Ibid*; 7 : 26.

³⁰ *Ibid* ; 57 : 25.

³¹ Al Alwani, Taha Jabir, *Adab al-Ikhtilaf fi'l Islam*, op.cit., p. 79.

³² *Ibid*.

³³ *Ibid*.

³⁴ *Al- Qur'an* ; 24 : 33.

³⁵ *Al- Qur'an* ; Chapter 2 : verse 282.

³⁶ *Ibid* ; Chapter 41 : verse 5.

³⁷ *Ibid* ; 15 : 88.

³⁸ *Ibid* ; 5 : 101.

³⁹ Ibn al Sayyid al Batlayoosee, *al Tanbeeh `alaa al Asbaab Allatee Awjabat al Ikhtilaaf bayna al-Muslimeen* (Warning on the Causes Which Make for Disagreement among Muslims), 32-3. 99

⁴⁰ *Ibid*.

⁴¹ Al Alwani, Taha Jabir, *Adab al-Ikhtilaf fi'l Islam*, op.cit., p.81.

⁴² *Ibid*.

⁴³ *Ibid*, p. 82.

⁴⁴ Al Muzaabanah - sale of expected yield of a crop for actual produce, for example, the sale of dates on a tree in return for picked dates or of grapes in return for raisins.

⁴⁵ Al Mukhaabarah – similar to share-cropping, where the right is given by the owner of a plot of land to a farmer to till it in return for some of the produce.

⁴⁶ Al Muhaaqalah - the sale of a crop before it is harvested, as is the current practice in `futures' markets.

⁴⁷ Al Mulaamasah - a form of sale in pre-Qur'anic times which is concluded by a buyer touching the goods which at once become his property whether the vendor agreed or not.

⁴⁸ Al Munaabadhah - a sale in which a seller would throw an article towards the intending buyer to signify the completion of a sale.

⁴⁹ Al Gharar - a sale in which the goods were not in the possession of the vendor at the time of the contract, nor was the quantity known, nor was it certain that the seller would be able to deliver them in order to fulfill the contract.

⁵⁰ Al Alwani, Taha Jabir, *Adab al-Ikhtilaf fi'l Islam*, op.cit., p. 82.

⁵¹ *Ibid*.

⁵² Ahmad ibn abd al- Halim Ibn taimiyah, *Raf' al-malam 'an al-a'immah al-a'lam*, p. 7.