

COMPARING THE LEGAL RULES (*AHKAM-I SHARIAH*) IN THE MALIKI AND SHAFII SCHOOLS WITH THE HANAFI SCHOOL OF THOUGHT

Hyder Gulam

Al-Wasat Newspaper and Australian National Imams Council, Australia
Email: hyderg@yahoo.com

Abstrak

Artikel ini membahas tentang peraturan hukum (*ahkam al-shariah*) dalam madhhab Maliki dan Syafi'i, dibandingkan dengan madhhab Hanafi. Dalam artikel ini dibahas secara ringkas beberapa hal terkait dengan empat madhhab utama Sunni dalam bidang hukum Islam. *Al-ahkam al-shar'iyah* termasuk dalam rubrik fikih karena berhubungan dengan penetapan ajaran-ajaran Islam ke dalam aspek praktikal meliputi domain ibadah yang diturunkan secara langsung melalui wahyu Allah kepada Nabi Muhammad Saw di dalam al-Qur'an ataupun Sunnah. Ketika berbagai madhhab bermunculan, pada dasarnya mereka tidak memaksa siapa pun untuk mengikuti mereka. Seseorang boleh saja tidak setuju dengan pendapat mereka. Lebih lanjut lagi, artikel ini juga menjelaskan bahwa perbedaan di antara madhhab pada hakikatnya merupakan sebuah rahmat dari Tuhan.

Kata Kunci: *Madhhab; Syari'ah; Fikih; al-Qur'an; Sunnah*

Abstract

This paper is about the legal rules (*ahkam-i shariah*) in Maliki and Shafii Schools, as compared with the Hanafi School of thought (or *madhabs*). This paper will define certain terms and it will briefly provide an overview of these Schools of law (noting that there are four main *Sunni* Schools of law). *Ahkam-i shar'iyah* falls within the generic rubric of *fiqh* because it deals with putting the Message of Islam into practice and involves both rulings about acts of worship that derive directly from Allah's revelation to His Prophet Muhammad (*peace be upon him*) in the book or the *Sunnah*. When the various Schools appeared, they did not compel anyone to follow them should an individual disagree with one of their judgments. This paper will also posit that the differences amongst the Schools is but an inherent mercy from God.

Keywords: *Madhhab; Syari'ah; Fiqh; al-Qur'an; Sunnah*

مستخلص

تبحث هذه الورقة العلمية عن أحكام الشريعة عند المالكية و الشافعية، بالمقارنة مع الحنفية. وستناقش هذه الورقة بعض المصطلحات و النظائر المتعلقة بهذه المذاهب الرئيسية من اهل السنة و الجماعة. كانت الأحكام الشرعية هي المضمونة في الفقه لأنها تتعلق بأفعال العباد و كانت مقررة على الوحي الذي انزله الله تعالى على نبيه الكريم محمد صلى الله عليه و سلم إما المكتوب في القرآن العزيز او السنة. فعندما ظهرت المذاهب الكثيرة المختلفة، فإنها

لم تجبر أي شخص على متابعتها. و إذا كان شخص يختلف أو لا يوافق مع الأحكام
إستنبطها مذهب الاخر فلا ضير له. وستفترض هذه الورقة أيضا أن الاختلافات بين
المدارس ليست إلا رحمة قررها الله عز و جلّ.

الكلمات الرئيسية: المذهب؛ الشريعة؛ الفقه؛ القرآن؛ السنة

A. Introduction

Technically speaking, *ahkam-i shar'iyaa* falls within the generic rubric of *fiqh*. The reason is because *fiqh* deals with putting the Message of Islam into practice and involves both rulings about acts of worship which derive directly from Allah's revelation to His Prophet Muhammad (*pbuh*) in the book or the *Sunnah*¹. When the various Schools appeared, they did not compel anyone to follow them if an individual did not agree with one of their judgments.² As-Safadi furthermore elaborates that the “*Imams* expended their greatest efforts to acquaint people with this religion and guide them to it. They did not intend to be imitated as the Prophet was imitated. Their intention was to help people to understand the rulings of Allah”.³ This paper will also posit that the differences in the Schools are but an inherent mercy from God.

B. Discussion

1. An understanding of the key terms

This part of the paper will set out the definitions of the main terms used herein, as well as a brief overview of the Maliki, Shafii and Hanafi Schools. *Ahkam* is the plural for the Arabic word for *hukm* which literally means “a command”.⁴ The *hukm* is a rule of Islam law and the types of legal rules are known as *ahkam-i-shariah*. The legal rules come into being through the operation of three elements:

- a. True source from which the *hukm* originates – the original source is God.
- b. The act which the *hukm* operates (i.e. *fard*, *wajib*, *sunnah* etc, explained below).
- c. A liable person within Islamic law (literally *mukallaf*), for whose conduct the *hukm* is stipulated.

¹As-Safadi, M. *The mercy in the difference of the four Sunni Schools of Islamic law* (London: Dar Al Taqwa, 2004), v. The precedents laid down by the Prophet to be followed as binding law. These may be through statements acts, approvals. See Nyazee, I. A. K., *Islamic Jurisprudence* (Selangor, Malaysia: The Other Press, 2003), 397.

²*The mercy in the difference*, vii.

³*Ibid.*

⁴Dogan, R., *Ahkam Shar'i (Values of Islamic Law)*. In *Usul al-Fiqh methodology of Islamic jurisprudence* (Clifton, NJ.: Tughra Books, 2014), 14.

COMPARING THE LEGAL RULES (AHKAM-I SHARIAH)

The *mukallaf* must be (a) Muslim, (b), reached puberty (maturity) and (c) be mentally and physically healthy i.e. competent.⁵

Madhab or School of law means a group of students, legists, judges and jurists who had adopted the doctrine of a particular leading jurist such as Abu Hanifa, and which had distinctive characteristics.⁶ As noted above, *Sunnis* are mainly divided into four Schools, which grew up in the second and third centuries of Islam. Each *madhab* influenced its own territory over time.⁷ The *Sunni* Schools of law did not appear all at once, but instead germinated to meet the needs of the expanding Islamic empire.⁸

The *Sunni* Schools of Islamic law are not sects; their disagreements are not based on theological issues. They represent groups of jurists who uphold different theories of interpretations of the law. Each School has its own set of principles for interpreting the texts. The disagreement of the *Sunni* Schools on other principles of interpretation is not to be seen as some kind of disunity amongst the Muslims: it is a characteristic found in all legal systems.⁹

2. The *Madhabs* or Schools

Each *madhabis* also an ocean of diversity and constant scholarly activities. The Hanafi School was based on the often contrasting opinions of Abu Hanifa with his two main disciples Shaybani and Abu Yusuf, as well as a more independent student named Zufar. The Maliki School built upon the opinions of Malik and his senior disciple, who often disagreed with him and each other. Imam Shafi's extensive travel and intellectual evolution led to two distinct periods in his legal opinions, 'the Old' and 'the New' both of which were incorporated into his *madhab*.¹⁰

The Maliki School of law was established by Imam Malik ibn Anas al-Asbahi (711–795 CE/93–179 AH) in the eighth century in the Arabian Peninsula. It was originally referred to as the School of Hejaz or the School of Medina. It is predominant in North Africa and significantly present in Upper Egypt, Sudan, Bahrain, United Arab Emirates, and Kuwait. It is characterized by strong emphasis on *hadith*; its many doctrines are attributed to early Muslims such as Prophet Muhammad's wives, relatives, and Companions. A distinguishing feature of the Maliki School is its reliance on the practice of the Companions in Medina as a source of law.¹¹

The Shafii School of Islamic law was founded by Imam Muhammad ibn Idris ibn al-Abbas ibn Uthman ibn Shafii (767 — 820 CE / 150 — 204 AH) in the eighth century. It is prominent in Egypt, Palestine, and Jordan with a significant number of followers in Syria, Lebanon, Iraq, Hejaz, Pakistan, India, and Indonesia and among Sunnis in Iran and Yemen. It combines knowledge of *fiqh* as practiced in

⁵Dogan, R., *Five pillars of Islam* (San Clemente: FB Publishing, 2015), 24-25.

⁶Hallaq, W. *Shari'a: Theory, practice transformations* (New York: Cambridge University Press, 2012), 63.

⁷Brown, J. A. C. *Misquoting Muhammad: The challenges and choices of interpreting the Prophet's legacy* (London: Oneworld Publications, 2014), 50.

⁸Ibn Rusd, 2010, xxxix.

⁹Ibn Rusd, *The distinguished jurist's primer (volume two)* (Translated by Imran Ahsan Khan Nyazee) (Reading, UK: Garnet Publishing, 1996), xxxix.

¹⁰Brown, J. A. C., *Misquoting Muhammad: The challenges and choices of interpreting the Prophet's legacy* (London: Oneworld Publications, 2014), 49.

¹¹Espósito, J.L. (ed) *The Oxford Dictionary of Islam*. Oxford University Press Print Publication. Current Online Version: 2014 DOI: 10.1093/acref/9780195125580.001.0001 eISBN: 9780199891207.

Iraq with that of Hejaz and considers hadith superior to customary doctrines of earlier Schools in formulation of Islamic law.¹²

The origins of the Hanafi School of legal thought are attributed to Imam Abu Hanifa (80 AH/699 CE – 150 AH/767 CE) in Kufa, Iraq, in the eighth century. It is the most widespread School in Islamic law, followed by roughly one-third of the world's Muslims, in central Asia, Pakistan, India and Europe. It was dominant in the Abbasid Caliphate and the Ottoman Empire. This School uses reason, logic, opinion (*ra'yu*), analogy (*qiyas*), and preference (*istihsan*) in the formulation of laws.¹³

The accusation about Imam Abu Hanifa abandoning *hadith* appears to have been formulated whilst he was still alive (Abu Zahra, 2005). The accusation was not discounted during his life and continued for quite some time (Yusuf, 2007, p. 21). The adherents of *hadith* criticised Abu Hanifa and made accusations about him, the most significant was that he irreverently disregarded the *hadith*. However, a quick perusal of the arguments of the adherents to *hadith* were that they were not looking to understand the *fiqh* of Imam Abu Hanifa but rather attacking the person. In fact, as established by Abu-Mu'ayyad Muhammad ibn Mahmud al-Khwarazmi (593 AH/1197 CE – 655 AH/1257 CE), there existed at least fifteen of the earlier *musnads* (*collection of Hadiths*) of Imam Abu Hanifa.¹⁴ If one is to believe and accept the grounds regarding the accusation about Imam Abu Hanifa abandoning *hadith* and using his personal opinion, one must disregard his character. An impossible task when one is reminded that many of his contemporaries, his students, historians, scholars and Muslims around the world, hold Imam Abu Hanifa in high esteem. To accept the reasoning behind this accusation is not possible when understanding the man who was Imam Abu Hanifa.¹⁵

3. The legal rules explained and compared

This section of the paper will discuss the legal rules of the Maliki and Shafii Schools, as compared to the Hanafi School. From the outset, it should be noted that the legal rules of the Maliki and Shafii are virtually identical, and the deduced religious injunctions according to the *fiqh* of the Maliki and Shafii *madhabs* are of five categories.¹⁶ In contrast, the Hanafi School has seven types of legal rulings pertaining to a *mukallaf*.¹⁷

The Sunni Schools of law divide the juridical 'levels of accountability' into five levels (except for Hanafis as noted above), namely obligatory (*wajib*), recommended (*mandub*), lawful (*mubah* or *halal*), discouraged (*makruh*) and prohibited (*haram*) (all these terms are explained below). The Hanafis added two levels to the five-level classification based on the 'certainty' of the evidence. Thus, there are two levels of obligations and two levels of prohibitions, namely (a) requirement and obligation, and (b) prohibition and sinful. The practical application of this differentiation is that the 'requirements' and 'prohibitions' become part of the

¹²Ibid.

¹³Ibid.

¹⁴Yusuf, A-R., *Fiqh-al-Imam: key proofs in Hanafi fiqh* (California: White Thread Press, 2007).

¹⁵Dickinson, E. A mad B., "Al- alt and His Biography of Ab an fa", *Journal of the American Oriental Society* Vol. 116, No. 3, 1996, pp. 406-417. Retrieved from: <http://www.jstor.org/stable/605146>.

¹⁶Laldin, M. A., *Introduction to shari'ah and Islamic jurisprudence (3rd edition)* (Kuala Lumpur: CERT Publications, 2011), 11.

¹⁷Dogan, R., *Five pillars*, 15.

COMPARING THE LEGAL RULES (AHKAM-I SHARIAH)

religion, which means that they are part of not only the Islamic practice code but also the Islamic belief system. This means that ‘denying’ any of the ‘requirements’ or ‘prohibitions’ puts one’s faith in danger, while denying matters of ‘obligation’ or ‘sin’ is not a matter of creed.¹⁸

In the Shafii and Maliki School, there is no difference between the obligatory (*fard*) and the requisite (*wajib*), except in the pilgrimage, where non-performance of a requisite does not invalidate the pilgrimage, but necessitates an expiation by slaughtering. For any act of worship, obligatory or non-obligatory, all conditions necessary for its validity and all of its integrals (*rukun*) are obligatory, since it is unlawful to intentionally perform an invalid act of worship.¹⁹

Wajib is an obligatory duty raised from a definite source or evidence. The Hanafi School labels this as *fard*. For them *wajib* is slightly weaker in that it is raised from speculative evidence that is open to interpretation. Denying *far* is disbelief (*kufur*), *wajib* acts are absolutely binding, and it is necessary to perform them or punishment is incurred.²⁰

Wajib acts have been divided into two based on time conditions: *mutlaq wajib* (duty unrestricted by time) and *muqayyad wajib* (duty with time restrictions). Additionally, *muqayyad wajib* has been further divided into three categories according to the length of the performance time: *muwassa’* (extended); *mudayyaq* (limited) and *dhush-shabahayn* (similar to the two sides), which also have differences in relation to the intention to perform the act. *Wajib* acts have also been classified into two categories according to their amount; *muhaddad* (specific amount) and *ghayr muhaddad* (unspecific amount).²¹

Wajib duties are again divided into two categories from the view point of the liable person upon which the ruling operates; ‘*ayn* (personal) which must be fulfilled by all liable people and *kifaya* (communal) which must be fulfilled by some of the community and failure in this results in punishment of the whole community.²²

Mandub are the acts that are recommended by the lawgiver and are not binding, thus neglecting them is not a sin. It is also called *sunnah*. The evidence which renders an otherwise binding command a recommendation might be a textual authority in the Qur’an and Sunnah, or a general principle of Islamic law. Or it could be indicated by the lack of punishment set for the omission of such acts. *Mandub* acts are divided into three different types: *Sunnah muakkada*, (the emphasized *Sunnah*), *Sunnah ghayr muakkada* (recommended *Sunnah*) and *Sunnah zaw id* (the general daily acts of the Prophet).²³

Prohibited acts are named *haram* and are absolutely forbidden by the Lawgiver in binding and definite terms. Prohibition is recognized in the evidence in various ways: the use of the word *haram*; by abrogating the *halal*; with general terms of prohibition; with cautionary phrases and with the assignment of punishment. There are two categories of *haram* or forbidden acts: *haram li-dhatih* (forbidden for its own sake) and *haram li-ghayrih* (forbidden because of something else). *Haram li-dhatih*

¹⁸Auda, J. *Maqasid Al-Shariah as philosophy of Islamic Law: a systems approach* (Kuala Lumpur: International Institute of Islamic Thought, 2008), 136-138.

¹⁹al-Misri, A. *Reliance of the Travellers: a classic manual of Islamic sacred law* (translated by Nuh Ha Mim Keller) (Evanston, IL, USA: Sunna Books, 1994), 30)

²⁰Dogan, R., *Ahkam Shar’i*, 15.

²¹Nyazee, I. A. K., *Islamic Jurisprudence* (Selangor, Malaysia: The Other Press, 2003), 61-65.

²²Keller, N. H. M., *Al-Nawawi’s manual of Islam* (Cambridge: The Islamic Texts Society, 2009), 8-9.

²³Nyazee, I. A. K., *Islamic Jurisprudence*, 65-68.

acts are absolutely forbidden because they contain evil and bring harm. If someone performs them, the act is deemed a sin and invalid and cannot bring a legal result. *Haram li-ghayrih* is acts that are permissible in themselves but prohibited due to other reasons. anafi jurists hold that legal results can be established based on this type of act (al-Misri, 1994, pp. 36-37).

Makruh(disliked) acts are those that should be omitted based on evidence. However, the available evidence for these acts is speculative and open to interpretation. The majority of scholars hold that performing *makruh* does not incur punishment or blame. For anafi jurists only *makruhtanzihan* (somewhat disliked) acts do not incur punishment or blame but *tahrimanmakruh* (prohibitively disliked) acts do incur punishment. Denying *tahrimanmakruh* is not disbelief but it is misguidance and worthy of punishment and performing these acts is a sin (Dogan, 2014, pp. 235-247).

Hanafi jurists divided *makruh* into two types; *tanzihanmakruh* (somewhat disliked) and *tahrimanmakruh*(prohibitively disliked). *Tahrimanmakruh* have a firm command to omit them but they are based on probable evidence (*dalil-i anni*) such as *khbarwahid* (reported by a single source), therefore they are not definite but are open to interpretation. Performing these types of acts is a sin. *Tanzihanmakruh* are not issued by the Lawgiver with binding terms but are acts, which it is recommended to avoid. Avoiding these acts is rewarded whilst performing them diminishes rewards but is not deserving of punishment.²⁴

Mubah are permissible acts where it is left up to the liable person whether or not to perform them. The commission or omission of a *mubah* act merits neither reward, no entails any punishment.²⁵

Sheikh ‘Ali Gomaa says that “the variance of opinion amongst the scholars and mujtahids possessing the requirements for making *ijtihad* in matters allowing variance is a great mercy bestowed by God upon Muslims”.²⁶ God has allowed for broad interpretation and it is permissible for them to follow whatever is appropriate to their circumstances. The need for interpretation of *fiqh* developed from the changing nature of Islamic society in the decades after Prophet Muhammad’s life. The first generation after the Prophet could rely on how they saw him practice, but after the 600s, barely anyone was left who could remember his life and actions. As Islam spread thousands of kilometres in all directions, and new converts to Islam began to populate the major cities of the Muslim world, the need arose to interpret Islamic law in systematic way, facilitating everything from worship to business transactions.²⁷

Mufti Taqi Uthmani says that “a person should follow the School of any of the recognized Imams whom he believes to be the most knowledgeable and most pious”.²⁸ However, “once a person has adopted a particular *madhab*, then he should not follow any other *madhab* in any matter, whether it be to seek convenience or to satisfy his personal choices, both of which are based on his desires and not on the force of argument”.²⁹ There are exceptions to this rule, depending on the knowledge of the person, and their intention.

²⁴Dogan, R. *Ahkam Shar’i*, 235-247.

²⁵Laldin, M. A., *Introduction to shari’ah and Islamic jurisprudence (3rd edition)* (Kuala Lumpur: CERT Publications, 2011), 13.

²⁶Gomaa, A. *Reasoning from the tradition* (Louisville, Kentucky: Fons Vitae, 2011), 199.

²⁷Alkhateeb, F., *Lost Islamic history: reclaiming Muslim civilisation from the past* (London: Hurst and Company, 2014), 79.

²⁸As cited in Yusuf, A-R., *Fiqh-al-Imam*, 13.

²⁹Yusuf, A-R., *Fiqh-al-Imam*, 17.

COMPARING THE LEGAL RULES (AHKAM-I SHARIAH)

C. Conclusion

In concluding this paper, principally, the *madhab* “enshrine(d) the principle of *ikhtilaf* (disagreement/difference), which permits a Muslim to choose the interpretation of the religious teachings that best suit his own circumstances and causes the least harm”.³⁰ Two famous sayings of the *Rasul* in favour of *ikhtilaf* are: “Difference of opinion in the Muslim community is a sign of divine favour”; and “(I)t is mercy of God, that men of knowledge (*ulama*) differ in opinion”.³¹ The Sunni Schools of Islamic law are “identical in approximately 75% of their legal conclusions, and as noted in the paper, the remaining questions, variances within a single family of explainers of the Qur’an and sunnah, are traceable to methodological differences in understanding or authentication of the primary textual evidence, differing viewpoints sometimes reflected in even a single School”.³² This difference is but a mercy from God.

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³¹Ibid.

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SQNLDR (ret) Hj Hyder Gulam FRCNA FACN

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