

# *Evolution of Jurisprudential Principles and the Doctrinal Differences in Historical Perspective*

**Humaira Jahangir**

M.Phil Scholar, Department of Islamic Studies  
Fatima Jinnah Women University, Rawalpindi

**Dr. Shahzadi Pakeeza**

Assistant Professor, Department of Islamic Studies  
Fatima Jinnah Women University, Rawalpindi

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## **Abstract**

*The prime objective of Islamic jurisprudence is the unity of Muslim ummah as it offers cogent evidence of Islamic Shari'ah. The existence of differences of opinion as a recognized branch of Islamic jurisprudence is a natural indication of a healthy climate of openness and tolerance, among ulēmā of Islam. The adoption of variant methodologies resulted in the emergence of Ahl al-Ḥadīth and Ahl al-Ra'i. This study discusses that with advancement in Islamic jurisprudence, different religious sects and political factions appeared in the history of Islam. The study is qualitative, with a descriptive and analytical approach. It is also mentioned that due to variant knowledge, the aspects of politics, faith, and jurisprudence became the leading cause of doctrinal differences. Rapprochement of madhāhib and the role of jurisprudential principles has been the focus of jurists and scholars since the formative period of Islam. The study also focuses on the differences of opinions during the prophetic era, the era of companions, and in the later periods which has contributed for the jurists to lay down the jurisprudential principles. The role of politics, religion and jurisprudential areas in enhancing and limiting the doctrinal differences is discussed in detail. The research finding showed that even though several madhāhib emerged based on the doctrinal differences yet there are certain points of convergence in these madhāhib.*

**Keywords:** Islamic jurisprudence, religious sects, Islamic madhāhi, ikhtilāf, convergence

## **Introduction**

The Islamic jurisprudence is the world's most prosperous legal system that has been exercised for more than fourteen hundred years. It is encompassed detailed rules that bestowed Muslims with their unique identity.<sup>1</sup> Islam is a divine religion that is ordained for whole humanity for all times. The eminent jurists interpret sources according to their distinctive capabilities. With the advancement of cultural differences, different schools of thought were formulated. This results in the emergence of multiple *madhāhib* in the Islamic state. In the later ages, multiple emergences of Islamic schools of thought were considered as a natural phenomenon and their differences and contradictions were taken as a legitimate and inherent characteristic of Islamic law.<sup>2</sup>

## **Research Questions**

- What is the role of jurisprudential principles in the elucidation of texts (*nuṣūṣ*)?
- Why diverse methodologies employed by the different Islamic *madhāhib*?
- How *ikhtilāf al-fuqahā* act as an important juristic tool regarding diversity?

## **Research Methodology**

The present research work is qualitative. The methodology employed is descriptive. For analysis of data in a qualitative method, both content and thematic analysis are exercised. The tool of data collection in this research is grounded on primary and secondary sources. In primary sources, the Holy Qur'ān and prophetic traditions have been used. While secondary data includes books, articles, journals, conference proceedings, and related internet resources. These research tools are used to examine the existence of the resources historically. Data is presented systematically i.e. one chapter at a time. No tabulation is employed and data presentation is descriptive.

## **Literature Review**

'*Ikhtilāf al-Fuqahā: Diversity in Fiqh as a Social Construction*' by Muḥammad Khālid Mas'ūd has explained *ikhtilāf* in terms of disagreement, differences of opinion and diversity in views specifically among Islamic jurisprudence experts. However, the basic reason behind *ikhtilāf al-fuqahā* in detail is not discussed and neither various methodologies adopted by *fuqahā* under the umbrella of Islamic Jurisprudence.

"*Al-Khilāf Bain al-Ulēmā*" by Muḥammad bin Salih bin Muḥammad Al-Usaimin has mentioned causes of differences in the time of early generation companions. He has also cited several incidents on which they differed. The

various aspects which are also responsible for differences are not discussed in this literature.

The author, Taha Jabir Al-Alwani of “*The Ethics of Disagreement in Islām*” describes *Adab al-ikhtilāf* as an essential element for the treatment of a widely spread malady that is presently besetting the Muslim *ummah*. Alwani sheds light on the constructive aspects of *ikhtilāf* and how the early generation companions utilized them as a productive and vitalizing feature for their society. However, different strategies in the adoption of rapprochement among Islamic *madhāhib* are not mentioned in this work.

Abū ‘Umar and Yūsuf bin ‘Abdullah bin ‘Abdul Barr in their book “*Al-Istidhkaa li Madhabī Aimmatil Amsaar fi ma Tadammanahu al-Muwatta min Ma’ani al-Ra’i wal Athār*” discussed unique approach based on Imām Mālik’s *Muwatta*. This work is an amalgamation of differences among various jurists in different perspectives concerning *Hadīth* and later on, it focuses on the views of a jurist. However, the cause behind these differences is not covered in this work.

### **Islamic Jurisprudence in the Formative Period**

Islamic jurisprudence is one of the significant aspects as it provides rulings regarding daily life. The Holy Prophet Muḥammad (PBUH) said on the importance of *fiqh* that:

*‘When Allah intends well for a person, He grants him the understanding (fiqh) of Din’.*<sup>3</sup>

This was the main reason that *Sahābah* adopted certain methodologies for the deduction of laws and rulings. The development of *fiqh* begins with the first revelation of the Holy Qur’ān.<sup>4</sup>

In the Prophetic era, rulings were sketched through revealed scripture. In the absence of revelation, the Holy Prophet Muḥammad ﷺ made laws with the help of reasoning to deal with emerging events. Revelation emanates to validate or oppose reasoning, as long as it relates to legal principles. The companions also adopted the approach of legal reasoning within the restricted boundaries. In the real sense, they submit and surrender themselves in the path of Allah.<sup>5</sup>

After the death of the Holy Prophet Muḥammad ﷺ, the companions by following his footsteps solved the unusual incidents with the help of Qur’ānic injunctions and the prophetic traditions.<sup>6</sup> If they did not find any solution in these sources, then they adopted legal reasoning.<sup>7</sup> It is also stated that analogy is also articulated by the *Uṣūlīs* (Islamic Law Theoreticians) in the later times.<sup>8</sup>

Afterward, the companions relied heavily on *ijmā’* and *ijtihād* in making deductions. This period is known for its great contribution towards

Islamic jurisprudence as *fiqh* maxims were being recorded at that time. The adoption of different methodologies makes Islamic jurisprudence fully developed.<sup>9</sup> The method of extrapolation (*Istinbāt*) expanded as jurists avoided engaging in hypothetical rulings. These approaches did not lead towards any factionalism. The Islamic jurisprudence in Mu'āwiyah's time changed from consultation to partisanship and autocracy.<sup>10</sup>

Later on, the proper compilation of *fiqh* commenced in the Umayyad's time. This led to the development of two new trends in the field of jurisprudence. The first trend deals with individual reasoning. When there exists no evidence from the text and comprehensive scope of assumption, discretion was utilized. This approach was adopted by Ibrāhim al-Nakhā'ī, the jurist of Iraq. The second trend was surrounded by the companion's sayings and individual reasoning. This technique was adopted in dire need while considering the public interest. This technique was famous among Sa'īd bin Al-Musayyab and Imām Mālik (d. 474/1081), the jurists of Madīnah.<sup>11</sup>

The Islamic jurisprudence took a definite shape after its systematic compilation which resulted in the flourishing of learning centers. This results in the formulation of religious sects, political factions, and sectarian views in Islamic society.<sup>12</sup>

### **Factors Contributing towards Emergence of Islamic *Madhāhib***

The difference in views and opinions is catered as a natural phenomenon. It emerges due to the presence of variant knowledge, physical potentials, and infinite mental approaches.<sup>13</sup> The motive behind the doctrinal differences among Islamic *madhāhib* triggered the problem of succession after the demise of the Holy Prophet Muḥammad ﷺ. To spread the true spirit of Islam, Muslim jurists put their dire efforts to spread the knowledge of Islam all around the world. They all agreed that the consensus of Muslims can be achieved if the gap of state leadership would be filled. However, leadership issues continued in successive generations turning the disagreements into conflicts and disparities that became the basis of jeopardized Islamic unity. Therefore, the doctrinal differences mainly deal with the following three areas:<sup>14</sup>

### **The Role of Politics in Doctrinal Differences**

It is well-known that the rationale behind doctrinal differences in the early period was related to politics in terms of the succession of the next caliph. Each sect at that time made arguments for their reasoning for which they established evidence too. Caliph Ali made a decisive decision about conflict by conceding other parties as well. He further made allegiance to the first three Rightly Guided Caliphs to preserve Islamic unity and uniformity among Muslims. Afterward, when Caliph Ali was nominated as leader of

Muslims, he led faithful believers towards the mission of defending Islam through mutual benefits. However, turbulence occurs in the believers who claimed a severe punishment for revenge for Caliph Uthmān's murder.<sup>15</sup> This dissension divided Muslims into different discordant sects, which were later on categorized as major Islamic sects.

### **The Sect of *Al-Khawārij* (Dissenters) and its Political Ideologies**

*Al-Khawārij* dissented from Caliph Ali as he acknowledged the formulation of arbitration. Among the main offshoots of *Al-Khawārij* are *Al-Azāriqa*, *Najdāt*, *Al-Ajāridah*, *Iḥādhiyya* and *Safāriyya*. *Al-Azāriqa* were the followers of Nafi bin Al-Azraq. They considered people as infidels who have no belief in *Khawārij* ideology. The followers of Najda bin Amir al-Ḥanafī are known as *Najdat*. They believe that humans do not need any leader to lead them. *Al-Ajaridah* being the supporters of Abd al-Karīm ibn Ajrad divided themselves into the ideology of indeterminism and determinism. *Iḥādhiyya* is the followers of 'Abdullah bin Ibad who rejected to be considered dissidents as their leader declined to dissent from the caliphate. Whereas *Safāriyya* is the admirers of Ziyād bin Al-Asfar and who leave the *Safāriyya* clan were given the title of infidels.<sup>16</sup>

### **The Sect of *Shī'ites* and its Political Ideologies**

The *Shī'ites* parted from mainstream doctrine and developed a separate doctrinal diversion soon after the death of Caliph Ali. The succeeding incidents in Islamic history and conflicts of Amir Mu'āwiyah and Yazid further proliferated these disputes.<sup>17</sup> The *Shī'ites* believed that Caliph Ali and his sons are more eligible for *khilāfat* than anyone else.<sup>18</sup> The *Shī'ites* are divided into many sects, among which the important one is *Imāmiyya*. They explicitly claim that Caliph Ali should be the leader of faithful believers after the demise of the Holy Prophet Muḥammad ﷺ. This verdict was made on the fact elucidated by him at *Ghadīr Khum*:

"من كنت مولاه فعلي مولاه"

"whosoever I am his master, Ali is his master, too."<sup>19</sup>

This sect is further divided into the Twelvers or *Ashariyyah*<sup>20</sup> and *Ismā'īlis* or Seveners.<sup>21</sup> The other offshoots of Zaydīs are the followers of Imām Zayd bin Abī Tālib. They are of the perception that assured concepts should be retained secret (*taqiya*), and they permit the *Imāmate* of the preferred distinctive authority though a better one is present.<sup>22</sup>

### **The Sect of *Ahl al-Sunnah wal Jamā'ah* and its Political Ideologies**

They are of the view that the Holy Prophet Muḥammad ﷺ has left the issue of *khilāfat* to be decided by Muslims through mutual consultation (*shūrah*). He did not make any statement explicitly about any specific

successor. The *Sunnīs* believe that the true believers after the time of the Holy Prophet Muḥammad ﷺ are the Rightly Guided Caliphs and his companions only.<sup>23</sup> The leadership of the entire nation is chosen by either learned scholar's consent or by the oath of fealty and adherence (*bay'ah*) agreed by those Muslims who have the political control to endorse or dissolve a pledge to the elected ruler. It constitutes submission to Allah and gives leaders sincere instructions and counsel.<sup>24</sup>

### **The Role of Religion in Doctrinal Differences**

The differences which resulted from the political aspect slowly get rooted into faith-related disagreements. It affected the parties in conflict and their only concern was to see who is more entitled to become the next successor. This conflict raised the dispute over belief-related aspects in the context of their meanings and interpretation of the text. One of the disputes was whether the belief is to be accepted by heart or by the tongue and whether action is part of belief or not.<sup>25</sup>

Being the followers of Caliph Ali (رضي الله عنه), *Al-Murjī'a* takes faith as accepted by heart only. The sect of *Mu'tazilah* claims that faith does not mean to accept or declare it, it only needs action. The doer of any major sin falls halfway in the category of belief and disbelief.<sup>26</sup> On the other side, *Al-Khawārij* has dissented directly from Caliph Ali (رضي الله عنه) and for them, one who commits a major sin is a disbeliever. They characterize faith into three pillars; *Nasdaq bi al-jinān* (validation in the heart), *iqrar bi al-lisān* (oral recognition), and *amal bi al-jawāriḥ* (applicable in the charity of limb).<sup>27</sup>

Such political attitudes and cultural diversities led Muslims to interpret faith-related issues variantly. This development led to the formulation of new Islamic science known as '*Ilm Al-Kalām*' (Theology). Its main focus was theological and prophecies concerns and inter alia. There are many controversial issues on which there are disagreements, among which important ones are:

### **Predestination**

The concept of predestination deals with whether humans have a free or controlled will in their actions. It is classified into three categories by the text of the Holy Qur'ān. The first group assumes that humans have free access to their actions and they are only accountable for their actions. The second group believes that individuals are only determined to accomplish their acts and they do not possess any free will relating to their actions. While the third group articulates that humans are free in some actions while others are predestined.<sup>28</sup> For the sake of explanation instead of argument, it might be demanded that it was inside the setting of individual opinions and theological cognitive exertions on 'predestination' along with the matters of 'promise and

threat' that *Ilm al-Kalām* developed.<sup>29</sup>

### **Divine Wisdom**

The concept of divine characteristic is categorized into two factions; one confirms the characteristics of it and the other denies them. Firstly, some *Sunnīs* are against the science of theology and they held a negative attitude against it. Over time, more *Sunnī* scholars engaged themselves in the study of theology like Abū Al-Ḥassan Ali bin Ismā'il Al-Asha'ari (206-324 A.H.). They showed little tendency towards rational argumentation (dialectics) and developed a moderate opinion related to promoters of predestination and the supporters of free will.<sup>30</sup>

### **The Role of Jurisprudential Area in Doctrinal Differences**

Muslims, being a community have unanimous belief in all the basic principles of religion. It includes eternal facts relating to pillars of religion along with the eternal principles of Islamic law. It constitutes a mainframe that integrates the Islamic *ummah* in the meaning of religious belief. Within this essence of uniformity, a new concept of plurality was developed. The diversity in emerging different opinions in the ancillary branches of Islamic jurisprudence, whether they deal with worship or transactions contributed to enriching the schools of jurisprudence. However, some of them were not renowned and even did not flourish but still, they were a main factor in the diversity. The Islamic schools of jurisprudence get immersed in diversity and plurality but this never advances them to indulge in disagreement over the eternal principles of faith. Their disagreement was given the title of 'categories' which relates to theories and conception in the way of ancillary branches.<sup>31</sup> The thematic zones of the entity as well as the characteristics of *Tawḥīd* constitute 'marginal' issues affixed to the issues of monotheism. They are not interconnected to the spirit of faith. Different thoughts have been articulated by religious scholars such as distance or transcendence, concise clarification or extraneous explanations, rationalism, and interpretation or merely the overt connotation of legal texts. Therefore, in this way, the Muslims were witnessed by diversity in the doctrines of Islamic jurisprudence along with plurality in the theological sects.<sup>32</sup>

During this time of legal reasoning, the formulated doctrines did not change their shape to rigid creeds but were resistant to any innovation. The field of jurisprudence expanded proportionately with the advancement of the Islamic world and emerging trends employed numerous degrees of influence. These trends were further enhanced by the recordings of the prophetic traditions and the initiation of 'Islamic jurisprudence principles' as it deals with the evidence of the basis of Islamic jurisprudence along with its philosophy of legal reasoning. The conception of legal reasoning is specified by the jurisprudence scholars as an inference from their 'legal sources' which

is referred to as 'the complete'. It also includes the principle of rulings on the new emerging events, which were referred to by these jurists as 'chain-based or 'applied'.<sup>33</sup>

The religious scholars are of the view that the legal reasoning jurists particularly 'the Complete' should be accompanied with fresh academic skills. They must be equipped with knowledge of the Holy Qur'ān, the prophetic traditions including Arabic language, knowledge of analogy, and conception of consensus, disagreement, and rulings thereof.<sup>34</sup>

### **The Development of Islamic Jurisprudence**

The development of the Islamic jurisprudence field produced exceptional juristic scholars who expounded doctrines that reinforced instructions for the practice of jurisprudence. They elucidated universally its principles and delineated its issues through a sound process of legal reasoning which was not affected by disagreement. These doctrines have transformed well-known throughout the Islamic realm. Their degree of development in various Islamic states depends on political, ecological, and cultural factors.<sup>35</sup>

### **The *Hanafī Madhhab* (المذهب الحنفي)**

The *Hanafī madhhab* is the oldest orthodox among reputable schools of jurisprudence.<sup>36</sup> The doctrine's name is named after *Iraqi* scholar, Abū Hanīfa Al-Nauman bin Thābit bin Zuwta bin Mah Al-Taymi al-Kūfī (80-150 A.H).<sup>37</sup> The *Hanafī* school was labeled as the official jurisprudence school during the Abbasid caliphate.<sup>38</sup> Imām Abū Hanīfa (d. 150/767) was once asked by Ja'far Abū Al-Mansur about the prominent scholars by whom he learned jurisprudence.<sup>39</sup> During his time, the Islamic world bubbled in ferment, ferment which was instigated due to yeast of dispute in the political area.<sup>40</sup> After the death of the Holy Prophet Muḥammad ﷺ, the Islamic law passes through an imbalance situation. With the great effort of scholars of many generations, it achieved the equilibrium position.<sup>41</sup>

Imām Abū Hanīfa (d. 150/767) summarized his juristic approach as follows:

*'I would take the book of God, and, if I could not find an injunction therein, then I would refer to the Sunnah of the Prophet. If I failed to discover an injunction in either of the main texts, then I would go to the words and states, Aqwal, of the Prophet's companions. From these, I would either take or leave evidence as I saw fit. I would not refer to anyone else. When I came to the Tābi'īn such as Ibrāhīm al-Nakhā'ī, Sha'bi, Ibn Sīrīn, Attā' and Sa'īd b. al-Musayyab, I would exercise my own opinion as they would do, since they are only men like me.'*<sup>42</sup>

Therefore, his methodology was based on the primary sources along with the sayings of the companions. He does not adopt the sayings of the companions' contemporaries<sup>43</sup> and gave more weightage to his opinions.<sup>44</sup> He adopted consensus, analogy, and customary law, and the adoption of his approach elucidates that he differed with other schools of law. He also adopted prophetic traditions with a weak chain of narration and prefer it over analogical and personal reasoning.<sup>45</sup>

To extract any ruling from the Holy Qur'ān, he constantly observed for its ultimate objectives with effective causes (*ilal*). Imām Abū Hanīfa (d. 150/767) being insightful not rely on the apparent meaning of texts. He constantly seeks underlying motives and immediate significance. Being an independent intellectual, he never adopted any opinion without pondering over it.<sup>46</sup> Imām Abū Hanīfa's (d. 150/767) body of *fiqh* is classified into two categories. The first category deals with the divine law of *Shari'ah* and the second caters with prudential judgment i.e. *Qānūn*.<sup>47</sup> It is also stated that '*most valuable contribution to fiqh was the distinction he made between the Shari'ah and the Qānūn.*'<sup>48</sup>

Imām Abū Hanīfa (d. 150/767) left a heritage for his students which include complete guidance of theological treaties and his pupils reported it later too.<sup>49</sup> The noteworthy students of Imām Abū Hanīfa (d. 150/767) played a momentous role in the dissemination of *Hanafī* doctrine due to which it grew remarkably. The thoughts of this school, later on, spread all over the areas under the Abbasid regime.<sup>50</sup>

### **The *Māliki Madhhab* (المذهب المالكي)**

The *Māliki madhhab* was entitled after Mālik bin Anas bin Mālik bin Abi 'Amir Al-Asbahi (93-179 A.H). He was raised in the house of knowledge, Madīnah.<sup>51</sup> Imām Mālik (d. 474/1081) was a learned student which makes him qualified. He was so much profound in legal opinions that his caliber was appreciated by eminent seventy leading scholars. With such remarkable achievement, he was elected as an instructor of legal opinions.<sup>52</sup>

Mālik bin Anas (d. 474/1081) formulated his jurisprudence school based on the Holy Qur'ān and the sayings of the Holy Prophet Muḥammad ﷺ.<sup>53</sup> The *Māliki* doctrine is also known for the formulation of legal science shaped by *ḥadīth*.<sup>54</sup> This technique was later further developed by the doctrine of Imām Shāfi'ī (d. 204/819). He also adopted the practice of the people of Madīnah and legal opinions of the Holy Prophet Muḥammad's ﷺ companions.<sup>55</sup> The *Māliki* and *Hanafī* doctrines adopt the same technique of strict analogy where they did not find any solution relating to certain legal problems.<sup>56</sup> Imām Mālik (d. 474/1081) also utilized the principle of *istiṣlah* which measures that he reflected upon *maṣlahah*.<sup>57</sup> *Istiḥsān* grounded on public

interest deliberated by him as 'nine-tenths of knowledge', as compared to public welfare. As it involves no proof for its acceptance or rejection and can be adopted in the absence of any textual evidence. It has to be in line with Islamic law. Imām Mālik (d. 474/1081) and his followers always tried their best in penetrating the legal structure with sacred and ethical thoughts.<sup>58</sup>

Imām Mālik (d. 474/1081) apprehended a moderate opinion on the disagreement between political and faith-related issues which Muslim *ummah* was facing at that time. According to his perception, faith is attained when it is declared, believed, and practiced. For him, *khilāfat* was only attributed to the rightly guided and there is no compulsion to belonging to *Bani Hāshim* or 'Alawi family to become caliph. He made this statement on the basis that Caliph Abū Bakr (رضي الله عنه) did not belong to such families. For him, Islamic leadership (*Imāmah*) is of no use where injustice has prevailed.<sup>59</sup>

Imām Mālik (d. 474/1081) was considered among the outstanding scholars of prophetic traditions and jurisprudence, which made him qualified in these spectacular disciplines. The intellectual position of Imām Mālik (d. 474/1081) was so exceptional that his position was explicitly confirmed by other leading scholars too. With his utmost efforts, numerous peers, predecessors, and successors adopted his methodology. His work is reported by notable scholars in their scholarly work. The historic work of the Māliki school of jurisprudence by its founder and followers made it renowned among many Islamic territories.

### **The *Zaydī Madhhab* (المذهب الزيدي)**

The *Zaydī* school of law is ascribed to Imām Abū-Husayn Zayd bin Ali bin Al-Ḥusayn bin Ali bin Abī Tālib (d. 740 A.H.). The majority traditions of *Zaydī* jurists are referred to the followers of the imāms that belong to the Holy Prophet Muḥammad's ﷺ family.<sup>60</sup> They deal in juristic issues, *Tawḥīd* and the gratitude of the *Imāmate* of Imām Zayd bin Ali. Therefore, the motive behind this doctrine was of 'belonging'<sup>61</sup> rather than doctrinal 'commitment'. The activists of *Zaydī* school prefer to be ascribed this school to the Holy Prophet Muḥammad's ﷺ family as they are highly committed to Prophet's jurisprudence and subsequently it is the doctrine at which all the other jurisprudence schools congregate.<sup>62</sup>

The *Zaydī* jurisprudence school is known for its excellence in academic research. They utilized genuine books relating to prophetic traditions and draw issues on the themes of theology and jurisprudence. *Zaydī* agrees with the narrations of those who disagree with them with the condition that these are impartial. However, they do not disagree with the narrations of other schools. They do not create a line between their school's narration and others except the one which is the basis of derailing from the Islamic arena or the one

which seems to be invented.<sup>63</sup> They adopted principles of all Islamic law which are adopted by variant jurisprudence schools. The prophetic traditions narrated in *Al-Majmū'*, books of jurisprudence, and traditions reported by Imām Zayd are in alliance with the *Sunnī* traditions. Thus they do not have any element of the idiosyncratic present in them. Imām Zayd's school of jurisprudence is following other four *Imāms* particularly the *Ḥanafīmadhhab*.<sup>64</sup>

The *Zaydī* school of jurisprudence depends on eight sources, namely; the Holy Qur'an, the prophetic traditions, the Holy Prophet Muḥammad ﷺ sayings in terms of acts and approvals, consensus, analogy, *istiṣhāb*, *istiḥsān*, and pre-Islamic divine law. The majority of *Zaydīs* have done abundant work in the discipline of science and arts. They are illustrated with the asset of tolerance and the acceptance of the other scholars' conclusions too.<sup>65</sup>

### **The *Shāfi'ī Madhhab* (المذهب الشافعي)**

The founder of *Shāfi'ī* school is Abū-'Abdullah bin Idrīs bin Al-'Abbās bin Uthmān bin Shāfi'ī (150-204 A.H).<sup>66</sup> He traced back his origin to the *Hāshim* family.<sup>67</sup> In an early age, Imām Shāfi'ī (d. 204/819) excelled in the Holy Qur'an, archery, Arab poetry, theology, traditions as well as literature. He was blessed with a sharp memory and brilliant intelligence. He was advised by learned scholars to study jurisprudence for the building of his scholarly personality. For this purpose, he started reading *Al-Muwatta'a*.<sup>68</sup>

Before reaching twenty, he was qualified for issuing legal opinions. In this regard, Imām Mālik (d. 474/1081) believes that no one can issue legal opinions relating to divine religious matters except Imām *Shāfi'ī*. He was proficient in the sciences of *'Ulūm al-Qur'an*. He set the criteria for a skillful person. He has to be proficient in prophetic traditions and should be exceptional at language and poetry. Besides all these skills, he must know differences of opinion emerging in the Islamic regions. If the individual convenes with the above-mentioned requirements, then he can hold theological debates and legal opinions in both permissible and forbidden matters of the religion. Otherwise, he is not capable of this.<sup>69</sup> Imām Shāfi'ī (d. 204/819) had wide knowledge about theological issues.<sup>70</sup>

Imām Shāfi'ī's (d. 204/819) school of jurisprudence was characterized by a critical compromise between legal opinions and the prophetic traditions. He formulated the methodology of his school based on five principles, *'The first is the Holy Qur'an and Prophet's Tradition if the latter is authentic; the second is consensus about the matters not assessed in the Holy Book or Prophet's Tradition; the third is the sayings of the companions that are not known to have been uncontested by any of the companions; the fourth is the disagreement of opinion among the Prophet's companions, the fifth is analogy drawing on some of the categories. No source shall be consulted in the presence of the Holy Book and the*

*Prophet's Tradition. Knowledge is derived from the highest sources.'*

Imām Aḥmad Ibn Ḥanbal (d. 513/1119) is of the view that Imām Shāfi'ī (d. 204/819) is the only person who observed the prophetic traditions more diligently than anyone else.<sup>71</sup> He alleged, 'No writer has ever followed the Prophet's Tradition more closely than Al-Shāfi'ī.'<sup>72</sup> Ibn Ḥanbal (d. 513/1119) once asked Imām Shāfi'ī (d. 204/819) about the importance of analogy and he said, 'if need be'.<sup>73</sup> Imām Shāfi'ī (d. 204/819) did not rely on *istiḥsān*, unlike other Imāms. He considered it as only a source of legislation. While he takes into consideration custom and *sadd al-dharā'ī*. Unlike Imām Mālik (d. 474/1081), he did not opt for the public interest. *Istiḥāb* according to him is valid only in the matter of description.<sup>74</sup> Imām Shāfi'ī (d. 204/819) was praised by Ibn Ḥanbal (d. 513/1119) due to his rich heritage in Islamic jurisprudence, prophetic traditions, language, and literature.<sup>75</sup>

### **The *Ḥanbali Madhhab* (المذهب الحنبلي)**

The *Ḥanbali* school of jurisprudence named after Abū 'Abdullah Aḥmad bin Muḥammad bin Ḥanbal Al-Shaybānī Al-Bāghdadī (164-241 A.H).<sup>76</sup> This school is baptized as the strict school of traditionalists.<sup>77</sup> When he reached the age of forty, he started issuing legal verdicts. His academic sessions were honored with respect. He keeps himself abstained from indulging in theological issues.<sup>78</sup> Ibn Ḥanbal (d. 513/1119) was an advocate of the prophetic traditions and also a proponent of the *salaf* methodology.<sup>79</sup>

Imām Aḥmad's (d. 513/1119) intellectual work on the prophetic traditions includes a chain of transmission (*Riwāya*) over legal opinion (*fatwā*). His meticulously work on this theme made his effort as a predominant reliance over the prophetic traditions. The issuance of legal opinions depends upon the following five principles among which foremost is the textual evidence. If any text is present, then he issues relevant legal opinion regardless of any other source. The second significant source for Imām Aḥmad (d. 513/1119) is the sayings of the Holy Prophet Muḥammad ﷺ and he prefers it over personal reasoning, analogical deduction and companion's saying. If any ruling does not disagree, then Imām Aḥmad (d. 513/1119) did not look for any evidence elsewhere. The third source according to Imām Aḥmad (d. 513/1119) is the amalgamation of different opinions expressed by the companions. He chooses the closest one to the essence of the Holy Qur'ān and the Prophetic traditions. However, if he is not satisfied with such a statement then he searches for the alternative argument but never issued a final statement regarding them. Next source adopted in his methodology is the *mursalḥadīth* with a weak *sanad*. This weak chain transmission is preferred by him over analogical deduction.<sup>80</sup> If this source is not equipped with any text then Imām Aḥmad (d. 513/1119) recourse to the fifth source namely analogy which he utilized only in necessity.<sup>81</sup>

Imām Aḥmad Ibn Ḥanbal (d. 513/1119) was considered among the advocate of the prophetic traditions which gives his jurisprudence a new thought. However, he was faced with many critical opinions regarding his beliefs and non-indulgence in jurisprudential argumentation. The pupils of his school put their utmost effort into the dissemination of Ibn Ḥanbal's (d. 513/1119) jurisprudence school and they strived hard due to the limited expansion. The reason behind this is its late inception as compared to the preceding schools. They were also faced with the lack of support from the authorities of Islamic historical eras but still Ibn Ḥanbal (d. 513/1119) was highly honored by his contemporaries.<sup>82</sup>

### **The *Ja'fari Madhhab* (المذهب الجعفري)**

The Twelver *Ja'fari* school is among the most notorious *Shi'ite* doctrines and is considered among the outstanding school of jurisprudence in the Islamic realm. This school is ascribed to Imām Ja'far bin Muḥammad bin Al-Ḥusayn bin Ali bin Abī Tālib.<sup>83</sup> Imām Ja'far As-Sādiq was born in Madīnah, the same year when his pupil Imām Abū Hanīfa (d. 150/767), the jurist of Iraq was born. He learned under the greatest companions and numerable jurists. He was also known for his spectacular work of preserving the narrations of the Holy Prophet Muḥammad's ﷺ family.<sup>84</sup>

The *Ja'fari* jurisprudential school's principles are based on the Holy Qur'ān, the prophetic traditions and consensus of the infallible leaders. The specialized learned scholars used their minds in the derivation of legal evidence from the above three legal sources. The *Ja'fari* doctrine scholars employed legal reasoning and academic issues beyond the possibility of the invariable philosophies of Imām Ja'far. It is safely appealed that such issues were entirely at variance with the values of the rest of Islamic schools of law except trustworthy legal reasoning of Imām Ja'far. The consulted references specify that most of the authentic jurisprudential and cognitive issues of the *Ja'fari* school are close to the *Sunni* jurisprudence approach.<sup>85</sup>

The legal reasoning comprises of many benefits among which foremost is tolerance. It flourished Islamic law dynamically and made it adaptable for new advancements as Islam is not bound by temporal or spatial factors.<sup>86</sup> The sources of deduction utilized by the *Shi'ites* school have revealed that firstly they utilized the sourcebooks that belonged to the family of the Holy Prophet Muḥammad ﷺ. These principles are almost coherent therefore easy to bring them closer within the framework of rapprochement objectives from a constructive perspective.<sup>87</sup>

### **The *Iḥādhi Madhhab* (الإباضية المذهب)**

The *Iḥādhi* school of jurisprudence is ascribed to 'Abdullah bin Iḥād

Al-Tamim. He was known for his boldness, confidence, and courageous attitude in dealing with Yazid bin Mu'āwiyah to protect the holy city of Makkah. He elucidated his jurisprudential visions in a treatise dedicated to 'Abdul Mālik bin Marwān where he deliberates immoderation in religion. He was not an *Imām* with his doctrine. He adopts that the *Iḥādhi* school relies on the authentic obvious legal commands and it trails the traditions of the rightly guided Caliphs.<sup>88</sup>

The *Iḥādhi* school recent publications indicate that they adopted a moderate doctrine. It does not reflect any historical or theological features which were ascribed to them. It also shows that they are not extremists. Their moderation demonstrates their utmost effort in understanding jurisprudential issues and intellectual achievement. These elements show that the objective of reconciliation of Islamic *madhāhib* is not difficult to materialize. The real picture of the *Iḥādhi* school of law should be visualized with the authentic jurists and scholars affiliated with them. As there is no doubt in taking the information of *Iḥādhi* school from irrelevant sources would result only in a rift. The reason is that the enemies of Islam would devise inadequate statements about Islamic *madhāhib*. However, *Iḥādhi* school is among one the schools in the Islamic doctrines. The *Iḥādhi* scholars do not prefer to imitate blindly as they depend on truth instead of the invention.<sup>89</sup> Their rulings are launched in compliance with the Holy Qur'ān, the prophetic traditions, consensus, analogical reasoning, preference, and presumption of continuity.<sup>90</sup> The *Iḥādhi* jurists whether classic or contemporary explicates that their school is based on the essence of the Holy Qur'ān and the prophetic traditions. They always prefer moderation and are designed at establishing the pure teachings of Islam both in theory and practice. The work of *Iḥādhi* scholars and jurists indicates that the issues concerning the fundamental plans are not too far from the opinions of scholars affiliated with the previous Islamic doctrines. The magnitudes of such concerns would be elucidated as their scope enclosed and the horizons of their mutual grounds would be initiated through in-depth investigation. The ultimate goal of this exertion is to offer a comparative study and to delineate the adopted jurisprudence orientations as well as the relevant authorized reasoning issues enclosed therein.<sup>91</sup>

### **Analysis on Points of Convergence in Islamic *Madhāhib***

The science of principles (*uṣūl*) deals with twofold approaches. Firstly, it signifies the leading principles of *Imāms* belonging to different Islamic *madhāhib*. Such principles should be formulated with a specific manual that would function as a basis for systematized records. These records would then be devoted to the requirements of principles approved in expressions of intellectual theory and practice. Such sophisticated work is dependent upon a detailed study conducted by specialized experts. Secondly, it permits for

utilization of basic principles at the initial stages that escort the course of reconciliation to discover a balance on the one hand. While on the other side is firm adherence to the commands and proscriptions of Islamic law. It confirms the choice of concrete solutions which take account of the interest and honor of the Islamic Nation in addition to the personal assistance of all individuals realizing their legitimate wishes.<sup>92</sup>

The most exceptional principle supposition is that these solutions are a fragment of divine worship rulings. These conventions are not dependent on specific permissions or far-fetched interpretations. It focuses on the foundations as stated in the Holy Qur'ān:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ<sup>93</sup>

*"He has imposed no difficulties on you in religion."*<sup>94</sup>

The Holy Prophet Muhammad ﷺ always choose the easier of two options as he said, 'Announce the good news [about religion], and do not make it hated.' Such jurisprudential principles are 'harm shall be removed', 'hardship calls for alleviation', 'Habits shall be legally observed', and 'the intentions are more important than the acts themselves'.<sup>95</sup> There is a dire need to preserve the essence of Islam in both of its terms i.e. worship and interaction. The Islamic jurists should put their effort into providing relevant guidance through collective legal reasoning. This would renovate jurisprudential principles by issues subsumed under legal analogy. This effort would be baptized as, 'modern action' and can be capitalized with the practice of four sources i.e. the Holy Qur'ān, prophetic traditions, consensus, and analogy. This would lead towards the achievement of the interest of the Islamic Nation.<sup>96</sup>

### **Legal Reasoning in Juristic Principles**

The independent jurist should be equipped with the following qualifications namely, the Holy Qur'ān, the prophetic traditions, and issues of analogical reasoning. He should be a master of the Arabic language and principles of jurisprudence too. These skills are equipped with the quality of memorization. Rather, the jurist knows ruling and legal statement issues whereas he should be trained with rules of inference and reasoning. In the words of Islamic law historians, memorizers are 'pharmacists' and jurists are 'physicians'.

Therefore, aptitude for legal reasoning hinges directly on mental skills instead of memorization of any information. The jurisprudential principles may not be productive without practicing legal reasoning. This is because contrasting imitation to legal reasoning is not always accurate. Those who have preferred to imitate have truly practiced legal reasoning. The individual may be deliberated as an imitator unless he is exposed to innumerable

tendencies in various schools. When only one school of Islamic jurisprudence exists and unaware of other schools then such person is an imitator. If the individual rests with the statements of his doctrine which may include disagreement in terms of ancillary subdivisions then he accepts some of such declarations and rejects others. At this stage, he behaved like any other practitioner of legal reasoning in some other school. On the other hand, if he chooses certain statements based on proof from the sources then he has apportioned with the relevant issues based on preference about legal reasoning.<sup>97</sup>

The understanding of Islamic *madhāhib* can be achieved through the practice of legal reasoning as it sticks towards pure imitation and old agreements are kept constant with static fashion. Proficient in the science of principles demands exercising of legal reasoning in relevance to their qualifications. The situation in which they satisfy the requirements then the *Uṣūlīs* approved that it is a responsibility incumbent upon Islamic *Ummah* collectively.<sup>98</sup>

### **Common Interest in Juristic Principles**

The Islamic law theoreticians have considered common interest as an essential element for the betterment of Islamic *Ummah*. Allah has revealed His laws for the benefit of His humanity and to materialize their secular and religious interest. Allah has stated different rulings in the Holy Qur'ān relating ablution, prayer, *jihād*, and many more issues. If readings on these concerns provide evidence then there exists no objection in following them. The Islamic jurisprudence scholars have a unanimous approach in the account of the mutual benefit of the whole Islamic *Ummah*. It is catered as a respected responsibility of every Muslim. Common interest deals with essential matters, needs, and desirable matters. These three principles constitute a common ground for all Islamic *madhāhib*. Its basic purpose is to provide reasonable interest and precludes from real harm. If a matter deals with both benefit and impairment then preference is given to benefit.<sup>99</sup> As the benefit is preferred in the case of alcohol and gambling. Allah says in the Holy Qur'ān:

يَسْأَلُونَكَ عَنِ الْخَمْرِ وَالْمَيْسِرِ قُلْ فِيهِمَا إِثْمٌ كَبِيرٌ وَمَنْفَعَةٌ لِلنَّاسِ وَإِثْمُهُمَا أَكْبَرُ مِنْ نَفْعِهِمَا<sup>100</sup>

*“They ask thee concerning wine and gambling. Say: In them is a great sin, and some profit, for men; but the sin is greater than the profit.”<sup>101</sup>*

From all Islamic schools of jurisprudence, it is evident that all of them are involved in the achievement of settlement by using the essence of interest of the Islamic *umamah*. The rationale behind this piece of evidence is to position Islamic *umamah* in the best place to regain its position and self-worth in the world where the best survives only. If the Islamic doctrines of the Islamic *umamah* remain divided and busy in exchanging adverse criticism and

branding each other as disbelievers and sinners then they will collapse. It will lose its strength and remain subject to the menaces of many enemies.<sup>102</sup>

### **Aspects of Difference between Islamic *Madhāhib***

The scholars and Islamic jurists of Islamic schools of jurisprudence have unanimous agreement that jurisprudence is of paramount importance and a significant objective. It is through this principle that rulings become clarified for different acts. It brings in the notice of ancillary branches and their contact with each other as well as with their creator. Therefore, it cannot be overlooked by Muslims to converge with the prerequisite of their religious and secular concerns. All the Islamic scholars, jurists, and practitioners agreed upon the primary and secondary sources of philosophies of Islamic jurisprudence.<sup>103</sup> The jurists and scholars concluded that all Islamic doctrines always had strong ties and their followers maintain no conflict with each other as the poetic verse says:

*All of them quote from the messenger of Allah, Scooping up from the sea or sipping from the drizzle.*<sup>104</sup>

### **Reasons for Juristic Disagreements among Islamic *Madhāhib***

The difference between the juristic opinions is natural due to the inherent discrepancies in intelligence, scholarly capabilities, varying understanding, and analytical competence with which human beings are created. Although the jurisprudential schools are grounded on the four main sources of Islamic law namely the Holy Qur'ān, Prophetic traditions, *ijmā'*, and *qiyās*, however, certain differences still exist among Islamic *madhāhib*. As Allah has created human beings with diversity therefore it is a natural phenomenon for humanity who is sanctified with deviating opinions within the assured limits. The chief reasons for this diversity among the juristic philosophies are as follows:

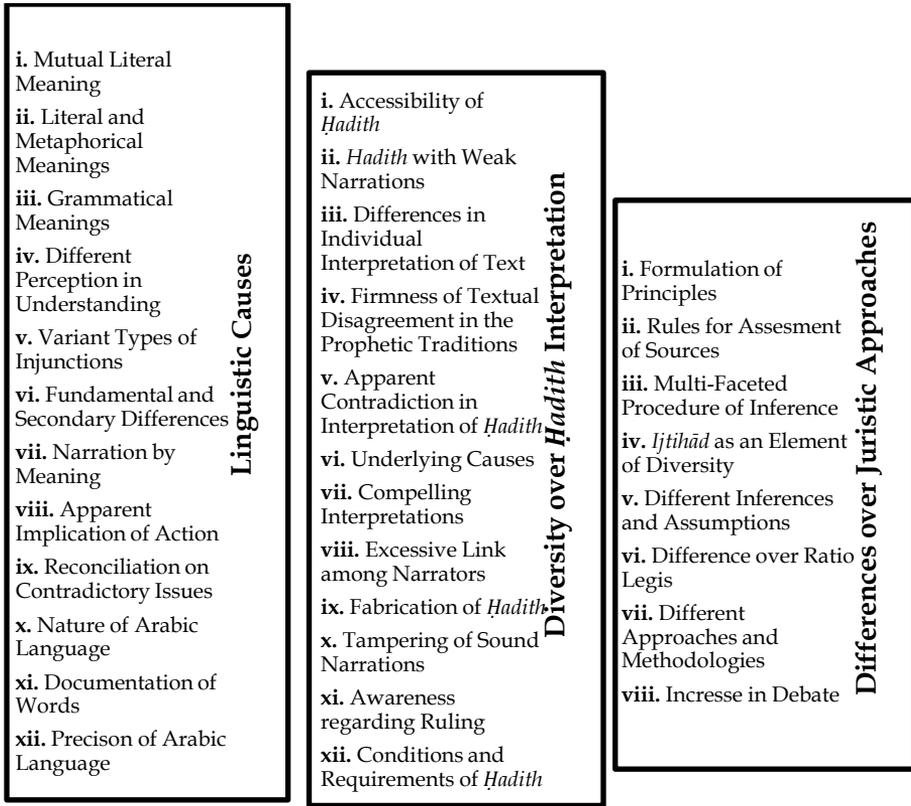


Figure 1.1 Reasons of Differences among Islamic *Madhāhib*<sup>105</sup>

### Jurisprudence Division in Terms of *Ibādāt* and *Mu'amalāt*

The early jurist has divided jurisprudence into two categories, the first deals with human's obligation towards Allah and is called as *ibādāt* and the second is *mu'amalāt* which deals with laws prevailing human relations. In terms of reference and connotation, jurisprudence depends on conclusive proof in an expression of authenticity and meaning. It includes belief in five mainstays of Islam, compulsion to avoid prohibited and harmful matters and observing of moral things offered by Allah. In conventional terms, the science of jurisprudence deals with laws relating to human duties, family affairs, and transactions.<sup>106</sup>

### Conclusion

Islamic doctrines represent the true heritage of the Islamic *Ummah* and hold fast the uniformity of Islamic law. The disagreement was the basic issue that led to the commencement of Islamic schools of jurisprudence and the diverging legal concepts resulted in different sects and groups. The oldest orthodox *Hanafi madhhab* was established through the adoption of primary sources, Companion's sayings, consensus, analogy, and custom. The *Māliki*

*madhhab* is known for legal *ḥadīth* sciences and is grounded on *Madinan* practice. Imām Mālik (d. 474/1081) is known for using *istiṣlah* and *istiḥsān* in the formulation of his *madhhab*. The *Zaydī madhhab* prohibits imitation and probably refers to political canon than political doctrine. The *Zaydīs* draws issues on theology, and from a presumption of continuity, consensus and analogy. Imām Shāfi'ī (d. 204/819) was proficient in prophetic traditions and theological issues. The *Shāfi'ī madhhab* also takes custom, *sadd al-dharāi'* and *istiṣhāb* into consideration in the formulation of their principles. The *Ḥanbali madhhab* applied *mursal ḥadīth* in rulings and prefer it over analogical deduction. The *Ja'fari madhhab* was aligned with the uniformity of jurisprudential principles which helped in the achievement of reconciliation objectives. The *Iḥādhi madhhab* does not reflect any historical feature in its formulation and was not in favor of blind imitation. Besides having differences of opinion, legal reasoning and common interest act as an essential point of convergence for Islamic *madhāhib*. The diversity in Islamic *madhāhib* is mainly due to linguistic causes, interpretation of *ḥadīth* text, and variant juristic approaches. The Islamic jurisprudence deals with *Ibādāt* and *Mu'amalat* to create benefits for Islamic *ummah*. The jurisprudential differences in terms of regulation and necessity articulate the message of unity and tolerance. However, the divine laws are not meant to create any branching or division as they were only revealed to create uniformity among the Islamic Nation. Islam is not in favor of all anthropomorphic implications emerging in the realm of faith.<sup>107</sup> Based on this assumption, the target of reconciliation among Islamic *madhāhib* is not hard to achieve. Its objectives are within the limits of each doctrine as long as all schools of laws are agreeing to converge to achieve besides methodology which varies from school to school. This assures that common ground issues among jurisprudence schools are far more than disagreement issues. They never disagreed on the sources, principles, and rulings. Their disagreement is enclosed by the element of diversity to numerous approaches in studying different principles. These approaches led towards the understanding of the nature of principles and Islamic rulings at several degrees.<sup>108</sup> Hence, the Islamic schools of jurisprudence did not disagree with one another on the principles neither differed over the priority thereof. The basic difference among them is the adoption of variant methodologies from which they infer legal rulings. They also credited different degrees of precedence to jurisprudence bases. Hence the plurality of Islamic *madhāhib* comprises diversity within the uniform frame of Islamic law.



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