

Unity in Diversity: A Study of Schools of Islamic Jurisprudence

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DOI: <https://doi.org/10.35719/ijlil.v7i1.430>

Abstract: Islamic jurisprudence (*Fiqh*) is human understanding of Islamic law (*Shari'ah*) which is divine in nature. As major sources of Islamic law, both Qur'an and Sunnah address fundamental issues, leaving out detailed matters for human interventions to decide on in the light of general principles generated from the primary sources. This paves the way for *Ijtihad* as an intellectual process undertaken by a master-jurist (*mujtahid*) who derives legal rules from the sources of Islamic law. Thus, the emergence of different schools of Islamic thought a natural outcome of *Ijtihadat* (pl. *Ijtihad*) of leading jurists of major schools of thought. All the schools of Islamic jurisprudence, especially the four dominant ones, employed distinct principles which appear mutually antagonistic. Yet, beneath these diverse principles is uncompromising unity of sources and purpose. This paper seeks to study juristic principles of the four famous schools of Islamic jurisprudence, namely Hanafi, Maliki, Shafi'i, and Hanbali Schools of legal thoughts. It employs a doctrinal research method, alongside inductive and analytical methods. The paper finds that despite their divergent positions on different legal issues, the eponyms of these schools of thought were united in many respects: they subscribed to the same primary sources, discouraged dogmatism (*Taqlid*), and charged their disciples to evaluate their opinions against the primary sources of the *Shari'ah*. Above all, it was obvious that each of those pious jurists was driven by sincerity of purpose and the desire to unravel the legal rule of Islamic law. In essence, this is unity in diversity.

Keywords: *Fiqh*, *Shari'ah*, Schools of Law, *Ijtihad*, *Taqlid*.

Abstrak: Yurisprudensi Islam (*Fiqh*) adalah pemahaman manusia terhadap hukum Islam (*Syariah*) yang bersifat ketuhanan. Sebagai sumber utama hukum Islam, baik Al-Qur'an maupun As-Sunnah membahas persoalan-persoalan mendasar, mengabaikan hal-hal rinci yang dapat diputuskan oleh campur tangan manusia berdasarkan prinsip-prinsip umum yang tercantum dalam sumber-sumber utama. Dengan demikian, *Ijtihad* diartikan sebagai suatu proses intelektual yang dilakukan oleh seorang ahli hukum (*mujtahid*) yang mengambil kaidah hukum dari sumber hukum Islam. Hal ini menjadikan munculnya berbagai aliran pemikiran Islam sebagai hasil alami dari *Ijtihadat* (pl. *Ijtihad*) para ahli hukum terkemuka dari aliran pemikiran besar. Keempat mazhab yurisprudensi Islam yang dominan menerapkan prinsip-prinsip berbeda yang tampak saling bertentangan. Namun, di balik beragam prinsip ini terdapat kesatuan sumber dan tujuan yang tidak dapat dikompromikan. Tulisan ini berupaya mengkaji prinsip-prinsip hukum dari empat mazhab fiqh Islam yang terkenal, yaitu mazhab Hanafi, Maliki, Syafi'i, dan Hanbali. Ia menggunakan metode penelitian doktrinal, bersama dengan metode induktif dan analitis. Hal ini menunjukkan bahwa walaupun mereka memiliki pandangan yang berbeda mengenai permasalahan hukum yang berbeda, para pendiri mazhab ini memiliki kesamaan dalam banyak hal: mereka menganut sumber-sumber primer yang sama, tidak mendukung dogmatisme (*Taqlid*), dan meminta para pengikutnya untuk mengevaluasi pendapat mereka berdasarkan sumber-sumber primer. *syariah*. Yang terpenting, masing-masing ahli hukum yang saleh tersebut didorong oleh ketulusan tujuan dan keinginan untuk mengungkap aturan hukum Islam. Intinya, ini adalah kesatuan dalam keberagaman.

Kata Kunci: Fiqih, Syari'ah, Fakultas Hukum, *Ijtihad*, *Taqlid*.

INDONESIAN JOURNAL OF LAW AND ISLAMIC LAW (IJLIL)

Volume 7 Number 1 January-Juni 2025;

ISSN 2721-5261 E-ISSN 2775-460X



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Introduction

Shari'ah i.e. Islamic law, is a divine legal system promulgated by the Lawgiver in order to regulate all activities of Muslims. It is a divine law as it is based on the totality of Allah's commands revealed to Prophet Muhammad as embodied in the Qur'an¹. The Qur'an and Sunnah constitute its primary sources, while *istihsan* (juristic preference), *maslahah* (human interest/welfare), *istishab* (presumption of continuity), *'urf* (local custom), *sadd al-dhari'ah* (blocking of means to prohibited things), etc are some of its secondary sources. Shari'ah is fundamentally divine, but its proper and correct understanding involves human agency, hence the concept of *fiqh* (lit. understanding) which is a logical outcome of *Ijtihad*. The inherent difference in human understanding as a universal factor accounts for diversity in understanding (*fiqh*) some rules of Islamic law (Shari'ah)². This, among other factors, is responsible for the emergence of various schools of thought, five of which are still extant, while many others are extinct. They include Hanafi School, Maliki School, Shafi'i school, Hambali School, and Zaydi School. The first-four schools belong to the Sunni theological orientation, whereas the fifth one is among the schools in the Shi'ite faction. The actual emergence of these schools was not at the instance of their respective leaders. Rather, the schools were established by the loyal disciples of those great jurists who studied and understood their legal principles and methodologies, and promoted same far and near. In other words, those schools were posthumously ascribed to master-jurists as their founders by their respective disciples.

Obviously, these schools of thought espouse different principles consequent upon different approaches adopted by their leading jurist in relation to the understanding of the law as well as its sources. For instance, the Hanafi School embraced the principle of *istihsan*, the Maliki adopted *'amal ahl al-madinah* and the Shafi'i school preferred *maslahah*. Arising from their peculiar principles, these and other schools produced divergent opinions on various jurisprudential issues which they encountered during their time. These schools of Islamic law have been adopted and promoted in different countries in the Muslim world and beyond. In some instances, some people, owing to excessive loyalty, ignorance, or mischief, take these schools as if each of them was a new religion. This explains why some Muslims see fellow Muslims as opponents just because of the fact that they do not belong to the same school of legal thought. This is antithetical to the principle of flexibility that should define our relationship with those schools of thought. This sense of blind loyalty to schools of Islamic law is a stark contradiction of the general principles of those pioneer jurists after whom the extant schools are named. The difference in understanding the laws allows for diversity of opinions, which is regarded as a manifestation of divine mercy. Indeed, it is due mainly to the recognition and tolerance of disagreement among the 'ulamā' over juristic issues that Islamic law is often described as diversity within unity; that is, unity in basic principles of law, and diversity regarding details³.

This natural difference in human understanding (*fiqh*) which elicits diversity of opinions (*ahkam* or *fatawa*) does not make the schools of thought new religions. Each one of them represents a distinctive approach or methodology towards understanding the divine law. Besides, difference in opinions in these schools does not affect fundamental issues in Islam such as the obligation of *salat*, *sawm*, among other basic religious tenets and their modes of application. Instead, it only concerns secondary issues in Islam which are not definitively addressed in the primary sources, and are therefore left for intellectual

¹ Mohammad Hameedullah Khan, *The Schools of Islamic Jurisprudence (A Comparative Study)*, Kitab Bhavan, India, 2011, p.3

² Bernard G. Weiss, *The Spirit of Islamic Law*, University of George Press, Athen, 2006, p.116

³ Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Oneworld Publication, England, 2008, p.99

efforts of well qualified scholars (*mujtahidun*) to determine. More importantly, beneath the diversity of opinions in various schools of thought is the unanimous convergence of those leading jurists on certain fundamental terms and principles. These principles are substantially the same, and they differ from each other only in matters of detail⁴. To be sure, all of them premised their legal extrapolations (*Ijtihād*) on the Qur'an and Sunnah based on their peculiar understandings, they all eschewed blind following (*taqlid*), and they were all pursuing the truth in an objective manner. All these principles underscore the unity in diversity in Islamic law as against tension which is ignorantly assumed in some quarters.

Against this background, this paper studies the four famous schools in Islamic law by highlighting their principles and methodologies. It will account for factors that informed the difference of opinions (*ikhtilaf*) in various schools. It shall also show how these schools converge on certain fundamental principles. Finally, it will reiterate the fact that the difference of opinions in the schools of Islamic thought mainly affects secondary issues and not the primary ones which constitute the foundation of the religion.

Research Methods

The method adopted in this research is doctrinal. By this, both classical and orthodox works on Islamic Jurisprudence were used. Inductive method was also deployed in relation to the classical works from which major principles of all the four legal schools of thoughts were gleaned. Subsequent to this, an analytical method was used to discuss those principles. Modern works in the twin discipline of Fiqh and Usul al-Fiqh by contemporary authors were also consulted to complement classical works.

Results and Discussion

About the Islamic Law

The term 'Islamic law' is the English equivalent of Shari'ah, an Arabic word, which literally connotes a path leading to the spring where water is fetched. Technically, Islamic law is a divine legal system promulgated by the Law-Giver to regulate religious, socio-political, and economic activities of man. It is an integral part of the last divine message sent to the mankind through Prophet Muhammad (SAW), the seal of all prophets of Allah (AS). Unlike the manmade laws, the scope of the Islamic law is comprehensive as it covers spiritual and mundane activities of man. It has primary and secondary sources. The Qur'an, Sunnah, Ijma' and Qiyas constitute its primary sources, while its secondary sources include, but are not limited to, *istihsan*, *istishab*, and *maslahah*. An essential feature of Islamic law is its capacity to remain relevant and adaptable in all situations and places. It also contains flexible and rigid aspects. Fundamental issues in Islamic law such as those relating to the worship (*'ibadaat*) and capital punishments (*Jinaayaat*) are some of its rigid aspects and cannot change even with changes in time and place. However, the flexible aspect of it may be susceptible to changes in time and place. This flexible aspect concerns social dealings (*mu'amalaat*) the rules of which change especially when their legal bases are custom (*'urf*) and public interest (*maslahah*). Generally, the scope of the Shari'ah covers both the spiritual and mundane aspects of man which are intertwined. Specifically, the following fall within the ambit of the divine law, namely, beliefs (*I'tiqadat*), devotions (*'Ibadat*), moralities (*'Adab*), transactions (*Mu'amalat*), and punishments (*'Uqubat*)⁵.

As a divine legal system, the Islamic law has some intrinsic values which make it unique and superior to man-made laws. It is universal irrespective of gender, race, and status; it applies to all Muslims across the globe. Just as it is not space-bound, it is also not

⁴ Muhammad H. Khan, *The Schools of Islamic Jurisprudence*, p.60.

⁵ Musa Ali Ajetunmobi, *Shari'ah Legal Practice in Nigeria 1956-1983*, Kwara State University Press, Malete, 2017, p.2

time bound. The application of the fundamental aspects of the Islamic law at the time of revelation has not changed today. Nothing has changed about the legal rules of major acts of worship such as the five pillars of Islam and those in the realm of criminal law such as penalties for adultery, banditry, theft, defamation, etc. This rigid part of the divine law is complemented by its flexible part which is inevitable to accommodate exigencies and the progressive nature of human society. This flexible part of the law largely affects the social aspects of the human endeavors that are based on local customs (*‘urf*) and which change from time to time according to the legitimate common interest (*maslahah*) of the Muslim community.

The main objective of Islamic law (*Maqasid al-Shari’ah*) is the protection of human welfare or interest which is technically known as *maslahah*. This human welfare or interest is protected at all three categories, namely *daruriyyah* (necessity) *hajiyyah* (need), and *tahsiniyyah* (embellishment). The first is regarded as the most important category because it concerns the five basic human values or rights which include: religion, life, intellect, progeny, and wealth- all of which must be protected against violation⁶. Intrinsically, this overarching objective of the Islamic law is connected with the principle of *taysir* i.e. ease or facility, which is the trademark of Islam as clearly articulated in many verses in the Qur’an and practically demonstrated in the prophetic traditions. In the Qur’an, Allah says: “Allah intends for you ease and does not intend for you hardship” [Q2:185]; “Allah does not want to place you in difficulty, but He wants to purify you” [Q5:6]; “He has chosen you and has not placed upon you in the religion any difficulty” [Q48:78]. Also, the Prophet (SAW) was reported to have said:

The religion (of Islam) is easy, and whoever makes the religion a rigour, it will overpower him. So, follow a middle course (in worship); if you can't do this, do something near to it and give glad tidings and seek help (of Allah) at morn and at dusk and some part of night⁷.

The proper application of Islamic law is hinged on the correct understanding of the texts of a given rule. Regarding this, texts of rules in Islamic law may be definitive (*Qati’iyyah*) and speculative (*Zaniyyah*). When the text is definitive, the rule therein can be understood by the jurist (*mujtahid*) with little or no efforts. There will be no divergent opinions regarding the subject matter. However, if the text is speculative, the rule therein can only be understood differently by different jurists. In essence, different opinions in understanding the *Nās* in the Qur’ān and geographical factors where each *mujtahid* domiciled account for popular factors that necessitate disagreement among the jurists⁸. This unavoidably will give rise to divergent opinions which ultimately resulted into the emergence of various Schools in Islamic thought.

There are a number of other factors that precipitate the divergence of opinions in Islamic law. Some of these factors shall be discussed in the next paragraph.

Emergence of Schools of Islamic Thought

Technologically called *madhahib*, schools of thought are a by-product of *Ijtihād* which is an intellectual process of legal extrapolation undertaken by a versatile jurist with the purpose of providing legal solutions to new legal problems not explicitly addressed in the Qur’an and Sunnah. During the life time of the Prophet (SAW), he addressed all legal problems that surfaced during his time with the aid of the divine revelation. The nascent

⁶ For details on *Maqasid al-Shari’ah*, see Muhammad al-Tahir Ibn Ashur, *Treatise on Maqasid al-Shari’ah*, IIIT, London, 2006.

⁷ Reported by Muslim, *the Hadith was related by Abu Hurayrah (may Allah be pleased with him)*. Riyad as-Salihi, Introduction, Hadith no.145.

⁸ Ali Khafif, *Muhadaratul Asbab Al-Ikhtilaf Al-Fuqaha*, Matba’a Risalah, Cairo, 1956, p.108

Muslim community was, as then, not faced with fundamental legal issues warranting major *Ijtihād* from the Companions. However, in the era of the Companions, especially during the exceptional periods of the four rightly Caliphs, few novel issues that required *Ijtihād* emerged. A good example in this regard is the compilation of the Qur'an which was undertaken during the administration of Abubakr, the first Caliph, consequent upon the unanimous consensus of major companions, especially 'Umar who made the suggestion. Generally speaking, all the Companions of the Prophet (SAW) had proper understanding of Islam. However, some of them were noted for their legal acumen which enabled them to undertake *Ijtihād* and pass most *fatawa*⁹.

In addition to the Qur'an and Sunnah upon which they relied as primary sources, they also made recourse to *ijma'* as an authoritative source. They used to reach consensus on various issues after a wide consultation amongst themselves. They also used to consider '*Ilah* (rationale/wisdom) and *maslahah* (public interest) in formulating legal opinions through the instrumentality of *Ijtihād*¹⁰. Yet, no distinctive school of law could be identified during this pristine period of the Companions, save two unique and opposing approaches to solving legal problems as employed by *ahl al-Hadith* (the traditionalists) and *ahl al-Ra'i* (the rationalists) respectively. The first approach was ascribed to Ibn 'Umar who was based in Madinah, while Ibn Mas'ud was regarded as the upholder of the second one with his base in Kufah, Iraq. These two approaches had large followership which made them independent of each other¹¹.

During the era of the followers of the companions (*tabi'un*) new territories had come under the Islamic rule and new converts embraced Islam carrying with them their respective cultures which were not necessarily un-Islamic. This development naturally elicited novel experiences which needed new rulings that conform to the principles of the Qur'an and Sunnah. Among the *tabi'un* with sound understanding of the law were a number of jurists who were direct students of the companions at different Islamic territories in Hijaz (Makkah and Madinah) and Iraq (Kufah and Basrah). These students, of course, carried on with the two legal approaches to understanding of Islamic law, namely *hadith* (tradition) and *ra'i* (rationality) which were ascribed to Ibn 'Umar and Ibn 'Abbas in Madinah and Kufah respectively, as earlier mentioned. Imam Sai'd ibn al-Musayyab was the prominent figure for *ahl al-Hadith* in Madinah, while Ibrahim Ibn Yazid al-Nakhi was the head of *ahl al-Rai'* in Kufa¹².

The Abbasid period was noted for unprecedented developments in the field of *fiqh* as major successes were recorded in various branches of Islamic sciences generally. It witnessed the maturity and documentation of sciences like Hadith, *fiqh* and its *usul* among others. This was between the second century and the fourth century of Hijrah. For this reason, the period was truly regarded as the golden era of Islam as far as the intellectual advancement of the Muslim Community (*Ummah*) is concerned. The successive caliphs played a leading role in the development of *fiqh*. Some of them patronized jurists by providing them with an enabling environment to develop and exhibit their juristic acumen. For instance, during the time of Harun Rashid, he commissioned a

⁹ Seven companions were said to issue higher number of *fatawa*. They include: 'Aishah Umm al-Mu'minin, 'Umar ibn al-Khattab and his son Abd Allah, 'Ali ibn Abu Talib, Abd Allah ibn Abbas and Zayd ibn Thabit. Taha Jabir al-Alwani, *Usul al-Fiqh al-Islami: Source Methodology in Islamic Jurisprudence*, IIIT, Herndon, 1990, p.7

¹⁰ Abdulkareem Zaydan, *al-Madkhal li Dirasah al-Shari'ah al-Islamiyyah*, Mu'assasah al-Risalah, Beirut, 1981, p.122

¹¹ For details on the two groups, see Wael B. Hallaq, *The Origins and Evolution of Islamic Law*, Cambridge University Press, 2005, p.74

¹² Abdulkareem Zaydan, *al-Madkhal li Dirasah al-Shari'ah al-Islamiyyah*, Mu'assasah al-Risalah, Beirut, 1981, p.139-140

prominent disciple of Abu Hanifah, Abu Yusuf to produce a reference material on Islamic fiscal policy for the government. The jurist responded with a resourceful material entitled *al-Kharaj*. Earlier, the caliph, Mansur reportedly desired to make *Muwatta* of Imam Malik the only reference material on *fiqh* that must be consulted by all. But the Imam declined. When the same proposal was made by Harun Rashid, Imam Malik maintained his stance¹³.

It should also be noted that the schools of Islamic legal thought evolved from various study circles where legal issues were discussed under the instruction of prominent jurists who were later considered founders of such schools. In Iraq, Imam Abu Hanifah used to conduct a study circle which attracted a large number of disciples prominent among whom were Abu Yusuf and Imam Shaybani. These two disciples-scholars later played a leading role in the spread and popularization of the Hanafi School of law across the world. In Madinah, Imam Malik was the master-scholar with a large number of disciples attending his study circle located right inside the grand Prophetic Mosque in Madinah. Imam Shafi' was the most outstanding among those disciples, though he used to hold opinions different from those of his master in some issues. Imam Ahmad also used to attend the study circle of Imam Shafi' and both scholars exhibited rare mutual respect and affection towards each other. Imam Ahmad used to acknowledge the intellectual prowess of Imam Shafi' especially when it came to the argumentation and debate skills against the upholders of rationality in favour of the tradition. On his side, Imam Shafi' would also recognize the outstanding knowledge of Imam Ahmad in the field of the prophetic tradition¹⁴.

The schools of the Islamic law are not exclusively limited to those of the Hanafi, Maliki, Shafi'i, and Hanbali. Nor are the schools confined to the Sunni group. Rather, there were a number of schools of law most of which are now extinct. The reason for their extinction was not due to the inferior intellectual capacity of their founders/ leaders. Far from that, the founders of the extinct schools of the Islamic law were equally versatile scholars like the famous four jurists. For instance, there was a school named after Imam al-Awzai¹⁵ (708-774 CE). There were also those of Imam al-Layth¹⁶ (716-791 CE), Sufyan al-Thawri¹⁷ (719-777 CE), Daud al-Zhahiri¹⁸ (815-883 CE), and al-Jariri¹⁹ (839-923 CE), etc.

¹³ Abdulkareem Zaydan, *al-Madkhal li Dirasah al-Shari'ah al-Islamiyyah*, Mu'assasah al-Risalah, Beirut, 1981, p.142

¹⁴ AbdulRahman I. Doi, *Shari'ah: The Islamic Law*, Ta Ha Publishers, London, 1984, p.85-88

¹⁵ This Madh-hab is named after the Syrian scholar 'AbdurRahman Ibn al-Awzaa'i who was born in Ba'labek in the year 708 CE. He became known as one of the major scholars of Hadith of the eighth century CE and was opposed to the excessive use of Qiyaas and other forms of reasoning in cases where clear texts from the Qur'an and or Sunnah were available. Imam Awzaa'i spent most of his life in Beirut, eventually dying there in the year 774 CE, but his Madh-hab became widespread in Syria, Jordan, Palestine and Lebanon as well as in Spain. See Abu Ameenah, Bilal Philips, *the Evolution of Fiqh*, (International Islamic Publishing House), p.77

¹⁶ This Madh-hab was named after al-Layth ibn Sa'd who was born in Egypt of Persian parentage in the year 716 CE. After an extensive study of all the then known areas of Islamic learning, al-Layth became the major scholar of Egypt. He was contemporary of both Imam Abu Hanifah and Imam Malik. In fact he carried on a debate with Imam Malik by mail on various points of Islamic law, one of which was Malik's inclusion of Madinite custom as an independent source of Islamic law. See Abu Ameenah, Bilal Philips, *the Evolution of Fiqh*, p.86

¹⁷ Imam Sufyan ath-Thawri was born in Kufah in the year 719 CE, and after an extensive study of Hadith and Fiqh became the main Fiqh scholar of the Hadith school in Kufah. He held similar views to those of his contemporary, Abu Hanifah, however he opposed the latter's use of Qiyas and Istihsan. See Abu Ameenah, Bilal Philips, *the Evolution of Fiqh*, p.87

¹⁸ The founder of this school of thought, Dawud ibn 'Ali, was born in Kufah in the year 815 CE. His early Fiqh studies were under Imam ash-Shaafi'i's students, but he later inclined towards the study of Hadith and joined the Hadith circle of Imam Ahmad ibn Hambal. He continued to study under Ahmad until he was expelled from Ahmad's classes because he voiced the opinion that the Qur'an was Muhdath (newly existent) and therefore created. After his expulsion, he took an independent path of reasoning based on the obvious and literal meanings (Dhahir) of the texts of the Qur'an and the Sunnah. Because of this approach, his Madh-

Other schools included those belonging to the Shi'ite group, the most prominent of which is the Zaydi School of law which was named after Imam Zaydi²⁰ (700-740 CE). Though, there are other Shi'ite schools, this is the closest to the Sunni understanding of Islam. For this reason, it is usually reckoned as the fifth school of the Islamic law. But all other schools had since become extinct due to many factors ranging from lack of royal patronage to non-documentation of legal opinions and principles of the founders as well as the fact that the concerned scholars/teachers did not have the committed disciples to promote and popularize their legal principles and verdicts²¹.

Invariably, there occurred differences of opinions among the four leaders of the schools of Islamic law on a number of legal issues as informed by different approaches to *Ijtihād* each of them adopted. These differences manifest in distinct interpretations 'that may be placed on a wide spectrum whose extreme ends represent uncompromising literalism and liberal pragmatism' each of which had its exponents²². Apart from this, many other reasons and factors account for the divergence of opinions of the leaders of the schools of Islamic law. According to Ibn Taymiyyah, all leading jurists were unanimous on the necessity and authenticity of the Sunnah as an impeccable source. Whenever they appeared to have overlooked and contradicted a particular tradition, they should be given excuses and benefit of doubts because they could not have ignored a sound prophetic tradition deliberately. This could be due to one of the following reasons. One, it could be that the information about the prophetic tradition in question did not reach the concerned scholar; or that he got the information about it but he was not convinced of its authenticity; and he might have considered the tradition to be weak, among other possible reasons²³.

Disagreement of opinions is a natural feature in any human setting and it is based on peculiar characteristics of individuals. It is especially inevitable when it comes to understanding and interpreting the rulings of Islamic law from the primary sources. As opined by Imam al-Suyuti, *ikhtilaf* (difference of opinions) is a manifestation of divine mercy for the Muslim community. He considered it as a topmost secret of blessings in the Muslim community which is recognized by the knowledgeable ones, while the ignoramus ones are not aware of it²⁴.

Underlining the difference of opinions among the jurists is the fact that none of them was infallible. Infallibility was exclusively reserved for the Prophets of Allah (AS). Yet, all of them (the jurists) made genuine efforts at understanding the Islamic law based on their degrees of knowledge and with utmost sense of sincerity. As a matter of principle,

hab was called the Dhahiri Madh-hab and he became known as Daawood adh-Dhahiri. See Abu Ameenah, Bilal Philips, the Evolution of Fiqh, p.95

¹⁹ This Madh-hab was founded by Muhammad ibn Jareer ibn Yazeed at-Tabaree who was born in the province of Tabaristan in the year 839 CE. He acquired a high degree of proficiency in the fields of Hadeeth, Fiqh, and history. As a travelling jurist, he studied the systems of Imaam Abu Haneefah, Imaam Maalik, Imaam ashShafi'ee and others. For the first ten years after his return from Egypt he strictly followed the Shaafi'ee Madh-hab. At the end of that period he founded a school of his own, whose followers called themselves Jareerites after his father's name. But his Madh-hab fell comparatively quickly into oblivion. See Abu Ameenah, Bilal Philips, the Evolution of Fiqh, p.97

²⁰ This Madh-hab traces its origin to one of 'Ali Ibn Abi Taalib's great grandsons through his son al-Husayn. Imam Zayd's father, 'Alee Zayn al-'Aabideen, was well known for his great legal knowledge and his narration of Hadeeth. Born in al-Madinah in the year 700 CE, Zayd ibn 'Alee soon became one of the foremost scholars of the 'Alawi family. He narrated Hadith from all of his relatives including his older brother, Muhammad al-Baaqir See Abu Ameenah, Bilal Philips, the Evolution of Fiqh, p.82.

²¹ Abu Ameenah Bilal Philips, The Evolution of Fiqh, A.S Noordeen, Kuala Lumpur, 2012, p.128

²² Wael B. Hallaq, *Usul al-Fiqh: Beyond Tradition*, in *Law and Legal Theory in Classical and Medieval Islam*, Ashgate Variorum, GB-US, 1994, p.179.

²³ Abu al-Abbas Ibn Taymiyyah, *Sharh Raf'ul-malaam 'an il-aimmat il-a'alaam*, NP, ND, p.20

²⁴ Abdulrahman, A., *Ikhtilaf al-Madhahib*, Dar al-'itisam, Syria, ND, p.80

they all accepted the authority of the Sunnah i.e. the Prophetic tradition as an impeccable source of Islamic law which is only second to the Glorious Qur'an. Their subscription to these common principles is, in essence, a pointer to their unity in diversity.

Common Principles in all Schools of Law

It is true that all leading jurists in the four major schools of Islamic law used to uphold divergent opinions on particular issues bordering on various aspects of Islamic law. As pointed out earlier, this was consequent upon their different juristic approaches in the process of deriving laws (*Ijtihād*) from the impeccable sources. Thus, the primary goal of all interpretation and *Ijtihād* is to discover the intention of the Ultimate Lawgiver²⁵. As previously discussed, Imam Abu Hanifah was particularly fond of *Istihsan* (juristic preference), Imam Malik was renowned for the acceptance of '*Amal Ahl al-Madinah* (early Madinah's tradition), Imam Shafi'i adopted *Hadith Ahad* (single-chained Hadith), likewise Imam Ahmad Ibn Hanbali²⁶. Despite this divergence in approach which necessitated difference in opinions and verdicts, it should be noted that all of these pious jurists were united by certain fundamental principles which underscored their juristic processes and outputs. These include sincerity of purpose and committed quest for the truth, respect for the impeccable sources, and employment of *Ijtihād* and abhorrence of *taqlid*. As shall be seen, there are instances and cases to support each of these principles.

1. Sincerity of Purpose

Every human act is judged by intention, according to a popular Prophetic tradition. Therefore, the nature of intentions behind actions determines the reward or punishment as the case may be. This accentuates the primacy of intention in acts of worship undertaken by Muslim and in his quest for knowledge. The sincerity of purpose is what distinguishes a real scholar who is desirous of the truth in his intellectual endeavours, from a fake scholar whose utmost end in his pursuit of knowledge is fame and material benefits of this world.²⁷

According to historical facts, all the four major leaders of schools of Islamic jurisprudence were driven by sincerity of purpose and unflinching commitment to the truth quest for understanding of divine injunctions and rulings in every human action. Abu Hanifah was ever committed to seeking the truth in his juristic exercises and would not superimpose his ideas not even on his disciples. He used to say: "this statement of ours is but an opinion. It is the best that we can offer for now. Should anyone bring forth a better opinion, such would be more correct than ours"²⁸. Out of his sincerity of purpose, he was ever ready to discard his opinion in favour of a more correct one, especially when his opponent mentioned an authentic tradition. According to him, there is no room for an opinion in the presence of the prophetic tradition²⁹. His methodology of deriving rulings was informed by his sincere desire to arrive at the correct verdict. He used to discuss legal

²⁵ Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, Adam Publishers, New Delhi, 2012, p.265

²⁶ For details on sources adopted by respective schools of Islamic law, see Da'wah Institute of Nigeria, *Shari'ah Intelligence: The Basic and Objectives of Islamic Jurisprudence*, Islamic Education Trust, Minna, 1436 AH/2015, p.68

²⁷ It is narrated on the authority of Amir al-Mu'minin (Leader of the Believers), Abu Hafs 'Umar bin al-Khattab (may Allah be pleased with him), who said: I heard the Messenger of Allah (peace be upon him), say: "Actions are according to intentions, and everyone will get what was intended. Whoever migrates with an intention for Allah and His messenger, the migration will be for the sake of Allah and his Messenger. And whoever migrates for worldly gain or to marry a woman, then his migration will be for the sake of whatever he migrated for." Reported by Bukhari and Muslim.

²⁸ Muhammad, A., *Tarikh al-Madhahib al-Islamiyyah fi al-Siyasah, wa al-'aqaid wa tarikh al-Madhahib al-Fiqhiyyah, Dar al-Fikr al-'Arabi*, Saudi Arabia, 1987, p.362

²⁹ Muhammad, A., *Tarikh al-Madhahib al-Islamiyyah fi al-Siyasah, wa al-'aqaid wa tarikh al-Madhahib al-Fiqhiyyah, Dar al-Fikr al-'Arabi*, Saudi Arabia, 1987, p.362

issues with his disciples in an open and consultative manner where everyone had every right and freedom to make his contributions to the ongoing legal debate. After all had submitted, he would then draw his conclusions in the light of contributions made by his disciples³⁰. This explains why he produced exceptional disciplines such as Abu Yusuf and Muhammad al-Shaybani who were equally brilliant and outstanding in the process of deriving legal rules from the primary and secondary sources i.e. *Ijtihād*.

The second major jurist, Imam Malik was similarly driven by sincerity of purpose in his efforts at deriving rulings. Despite his exceptional knowledge of the Prophetic tradition, he used to be circumspect in answering questions posed to him; he would ask the questioner to come back later for his verdict. To him, every legal question should be addressed with every sense of care and attention as no legal issue is simple. When a disciple made a remark about a legal issue considering it simple, Imam Malik was furious and retorted: "simple and easy! There is no simple legal issue. Are you not aware that Allah said in the Qur'an: "soon shall we reveal unto you a heavy statement" (Muzammil: 25). Knowledge is ever weighty, especially the one about which there will be accountability on the Day of Reckoning"³¹. It was also on record that Imam Malik refrained from issuing religious verdicts (*fatawa*) for many years until about fifty teachers of Hadith and Fiqh in Madinah declared him eligible³².

The same sense of sincerity is also noted in Imam Shafi' when he voluntarily became the student of Imam Malik whose book (*Muwatta'*) he had memorized ever before they both met. Imam Shafi' studied the science of Hadith under the instruction of Imam Malik and he owed his mastery of the science to him. Though their relationship was that of teacher-student, there existed between the duo mutual love and respect that is hard to come by in subsequent centuries. This same good relationship between teacher and student was the case with Imam Shafi' and Imam Ahmad as the latter studied under the former. Though Imam Ahmad was his student, Imam Shafi'i would not cease to acknowledge the fact that Imam Ahmad was more knowledgeable than him when it came to the science of Hadith. When necessary, Imam Shafi' would call upon Imam Ahmad to address difficult Hadith issues³³. All the four jurists displayed sense of sincerity of purpose and burning passion and desire to attain the truth and the correct position of the Lawgiver in specific legal issues. Common human problems such as ego never stopped them from accepting the truth wherever it might be found. Imam Shafi' was highly skilled in the art of argumentation and he would silence his opponents especially from the school of Abu Hanifah. Nevertheless, he was never proud as to arrogate to himself the absolute truth. Rather, he used to assume that some elements of truth could be in the submissions of his opponents, while his submissions could also contain some elements of error³⁴.

2. Unanimous Agreement on the authority of the Qur'an, Sunnah, *Ijma'* and Qiyas

Despite the divergent opinions of the four leading jurists on various issues, they nevertheless agreed on the authority of the Qur'an, Sunnah, *Ijma'*, and Qiyas as primary sources of Islamic law. Understandably, they regarded the Qur'an and Sunnah as impeccable sources through which rulings are derived. Imam Abu Hanifah was wrongly accused of undermining the authority of Sunnah in favour of *qiyas*, a rational approach. But this is against the reality; in actual fact, he had high regard for the Sunnah and was

³⁰ Muhammad Z. Asadullah al-Makkiy, *Muqaddimah fi Mustalaht al-Fuqaha' 'an al-Ahkam al-Shar'iyyah wa a'immati madhahibihim al-Arba'ah*, Al-Idarah al-'ammah li al-Thaqafah wa al-Nashr, Makkah, 2009, p.82-83

³¹ Muhammad Z. Asadullah al-Makkiy, *Muqaddimah fi Mustalaht al-Fuqaha' 'an al-Ahkam al-Shar'iyyah wa a'immati madhahibihim al-Arba'ah*, Al-Idarah al-'ammah li al-Thaqafah wa al-Nashr, Makkah, 2009, pp.82-83

³² Muhammad H. Khan, *The Schools of Islamic Jurisprudence*, p.80

³³ Abu Zuhrah, *Tarikh Madhahib*, Dar al-Fikr al-'Arabi, Saudi Arabia, 1987, p.112

³⁴ Abu Zuhrah, *Tarikh Madhahib*, Dar al-Fikr al-'Arabi, Saudi Arabia, 1987, p.113

ever ready to use it if it was confirmed by him to be authentic. He was once reported to have said: "if the tradition is confirmed to be authentic, that is my position"³⁵.

Abu Hanifah was so wrongly accused because of stringent conditions he set for the acceptability of Hadith. Also, he had little access to Hadith because he was based in Iraq, unlike other jurists especially Imam Malik who was based in Madinah where he had unhindered access to Prophetic traditions. Nevertheless, as stated above, he would accept a tradition provided it was authentic based on his terms and conditions. However, he would prefer a perfect form of *qiyas* to a tradition about which he had doubt. But as long as the tradition was authentically established, he would prefer it, be it *mutawatir* or *ahad*, to *qiyas*³⁶. Aside the four standard sources, Imam Abu Hanifah would use his initiative (*Ijtihād*) to address legal problems. This can be vividly understood in the following statements he made concerning his method of deriving rulings:

I refer to the Qur'an if there is a relevant text. Otherwise, I refer to the Sunnah. If I cannot find relevant texts in the Qur'an and Sunnah, I refer to the statement of the Companions.... if it is the statement accredited to Ibrahim, al-Sha'bi..., then I would undertake *Ijtihād* like those jurists did³⁷

As for Imam Malik, he too was an upholder of the sanctity and authority of the Qur'an and Sunnah. His extraordinary commitment to the Prophetic traditions made him a defender of the Hadith. He was reported to have said:

I am but a mortal; I err some time and get it right some other time. So, examine my opinions; anything that conforms to the Qur'an and Sunnah in them you should take it. But discard anything that contradicts the Qur'an and Sunnah³⁸.

In the same vein, Imam Shafi' was renowned for his resolute reliance on the Prophetic tradition. He was noted for condemning those who applied *qiyas* in an excessive way at the expense of the Prophetic tradition. Concerning his acknowledgement of the primacy of the Sunnah he said:

If there is a Prophetic tradition that is contrary to my statement or my principle, the Prophetic tradition is the way to go and that is my position too. If you observe in my book something that contradicts the Prophetic tradition, you should embrace the Prophetic tradition and discard what I had said³⁹.

Finally, Imam Ahmad Ibn Hanbali was equally committed to the methodology of his forerunners. He was particularly passionate about the status of the Prophetic tradition as an impeccable source of the Islamic law after the Qur'an. Among the four notable jurists in Islamic law, he was more renown in his commitment to the Prophetic tradition. He travelled far and wide to learn the science of Hadith. He was able to meet and study under virtually all known scholars of Hadith in Baghdad, Basrah, Kufah, Makkah, Madinah, and Yemen. His curiosity for the study of Hadith made him a regular pilgrim to the sacred House of Allah, thereby combining the worship and study in one trip⁴⁰. He was reported to have made the following statement: "Whoever rejected the Prophetic tradition is on the

³⁵ Muhammad Z. Asadullah al-Makkiy, *Muqaddimah fi Mustalaht al-Fuqaha' 'an al-Ahkam al-Shar'iyyah wa a'immati madhahibihim al-Arba'ah*, Al-Idarah al-'ammah li al-Thaqafah wa al-Nashr, Makkah, 2009, p.68

³⁶ Muhammad Z. Asadullah al-Makkiy, *Muqaddimah fi Mustalaht al-Fuqaha' 'an al-Ahkam al-Shar'iyyah wa a'immati madhahibihim al-Arba'ah*, p.68

³⁷ Muhammad A, *Tarikh al-Tashri' al-Islami*. Cairo: al-Maktabah al-Tijariyah al-Kubra, 1970, p.169

³⁸ Muhammad Z. Asadullah al-Makkiy, *Muqaddimah fi Mustalaht al-Fuqaha' 'an al-Ahkam al-Shar'iyyah wa a'immati madhahibihim al-Arba'ah*, p.69

³⁹ Muhammad Z. Asadullah al-Makkiy, *Muqaddimah fi Mustalaht al-Fuqaha' 'an al-Ahkam al-Shar'iyyah wa a'immati madhahibihim al-Arba'ah*, p.68

⁴⁰ Abu Zuhrah, *Tarikh Madhahib*, Dar al-Fikr al-'Arabi, Saudi Arabia, 1987, p.123

verge of destruction”⁴¹. His dedication to the study of the Sunnah and its defence earned him this appellation: Imam ahl al-Sunnah (the leader of the upholders of the tradition).

3. Promotion of *Ijtihād* and Rejection of *Taqlid*

The emergence of the schools of Islamic law was largely possible owing to the espousal and practice of *Ijtihād* by the four major jurists. Having understood the primary sources of the Shari’ah, coupled with their familiarity with their respective environments and prevailing customs, all the four leading jurists were readily qualified to undertake *Ijtihād*. This they did especially regarding issues about which the primary sources are silent, or where the texts are speculative in their meanings. To arrive at the correct or approximate position of the Lawgiver, they engaged in *Ijtihād* using different methods and tools such as *istihsan*, *maslahah*, *sadd al-dhari’ah*, *urf*, among others. They derived inspirations from relevant Qur’anic verses and Prophetic traditions that encourage the use of intellect to understand and apply the divine law.

Ijtihād is an intellectual exercise undertaken by the qualified jurist with a view to deriving rulings from the sources of Islamic law. It means striving to the utmost to discover the law from the texts through all possible means of valid interpretation⁴². And there are different categories of *mujtahid* based on the intellectual capacity of those who are qualified to undertake *Ijtihād*. There is an independent jurist (*mujtahid mutlaq*), there is also an associate jurist (*mujtahid muntasib*), and there is a jurist within a particular school of law (*mujtahid fi mazhab*). The first category of *Ijtihād* was occupied by all the four major jurists as they were able to lay down their respective juristic methodologies and principles which they followed in their *Ijtihād* process. They considered *Ijtihād* a necessary practice to ensure that every legal issue is addressed within the purview of Islamic law.

They followed through the process of *Ijtihād* and arrived at positions that best appealed to their intellectual capacity. Yet, each of them had a large heart to tolerate and even accommodate dissent and opposing opinions from fellow colleagues and even from their disciples. Among the leading jurists, Imam Abu Hanifah was reputed for promoting what can be considered as freedom of expression and the right to disagree as he used to debate legal issues with his disciples in his study circle. After everyone had made their contributions, he would then draw his conclusion from submissions of his disciplines. This approach enabled his disciplines to be well exposed to principles and techniques of personal independent reasoning which positioned them to be regarded as independent jurists in their own right. Among his disciplines who were trained on this method were Abu Yusuf and Muhammad al-Shaybani,⁴³ the latter, later on, taught Imam Shafi’, exposing him to juristic principles and *Ijtihād* methodologies of Imam Abu Hanifah.

Standing against the concept of *Ijtihād* is *taqlid*. While *Ijtihād* is a necessary condition for the continued relevance and existence of Islamic law, its opposite, *taqlid* is antithetical to the functionality of Islamic law, hence, its rejection by all the leading jurists.

Unlike *Ijtihād*, *taqlid* portrays the Islamic law as being stagnant and ineffective to address novel legal problems, because it obstructs the pathway to making fresh efforts at addressing novel issues. It is wrongly premised on an assumption that the past jurists had provided legal solutions to foreseeable and unforeseeable legal problems. Most especially, the fourth century of Islamic calendar witnessed a large number of advocates of *taqlid* who believed that the existing four schools of Islamic law had addressed all legal issues. This led to a proclamation that the gate of *Ijtihād* has been closed. But this claim was rejected by major jurists at that time as well as those that came afterwards. Among others, Imam al-

⁴¹ Abu Zuhrah, *Tarikh Madhahib*, Dar al-Fikr al-‘Arabi, Saudi Arabia, 1987, p.123

⁴² Imran Ahsan Khan Nyazee, *The Methodology of Ijtihād*, The Other Press, Kuala Lumpur, 2002, p.9

⁴³ Abdulkareem Zaydan, *al-Madkhal li Dirasah al-Shari’ah al-Islamiyyah*, Mu’assasah al-Risalah, Beirut, 1981, p.159

Suyuti was a fierce opponent of the closure of the gate of *Ijtihād* as he dedicated a whole book to the rejection of the idea⁴⁴. All Sunnis are unanimous in giving *Ijtihād* an important place in legislation through *Ijma* or other sources⁴⁵.

Of course, the claim of the closure of *Ijtihād* gate stands rejected given the fact that all the four jurists whose schools were being promoted did not approve of *taqlid*. At their various study circles where they had many disciples, they never for once promoted the idea of *taqlid*. In addition to their practice of *Ijtihād*, they used to encourage their disciples to also undertake it. In turn, they were vehemently opposed to *taqlid* and discouraged from it. In practice and statements, they rejected *taqlid* forbidding their followers against following them blindly. As observed earlier, Imam Abu Hanifah adopted a method that allowed his followers to make their contributions to the legal issues. He never forced a particular verdict on them despite the fact that he was their master. This enabled his followers like Abu Yusuf and Muhammad al-Shaybani to become jurists per excellence, as previously noted.

In an unequivocal manner, Imam Malik could be considered as being the representative of all other jurists as regards the rejection of *taqlid*. He was reported to have made the following statement: "Never imitate neither Malik, nor al-Shafi', nor al-Awzai', nor al-Thawri. Explore the way they had explored (Undertake *Ijtihād* like they had undertaken it)" ⁴⁶.

In the final analysis, it should be clear that all schools of the Islamic law converged on such lofty principles and that all aspired to arriving at the best ruling that represents the higher objective of Law-Giver, namely *maslahah* (human welfare). Some of the secondary sources peculiar to the four schools of law are articulated in different terms, yet in application, some of them are the same. A representative example here is *Istihsan* adopted by Imam Abu Malik and *Istislah* by Imam Malik. Each of the two principles is about setting aside the ruling based on methodical analogy in favour of the judgement of a competent jurist. This is necessary if the application of the analogy would lead to negative consequences (*mafasid*). So, to avoid such, Abu Hanifah would prefer *Istihsan*, while Imam Malik would go for *Istislah*. As such, there is no great distinction between the two principles as the aim of both is to reduced the rigidity of law in the interest of public good or welfare, which is the basic aim of Islamic legislation⁴⁷.

Conclusion

Diversity is a natural outcome of difference in thinking and understanding which is peculiar to mankind. This explains why there are many schools in Islamic law with different verdicts on the same legal issues affecting all human endeavours. Though these schools are many and diverse, but only four of them are extant and popular to this day. These are Hanafi, Maliki, Shafi'i, and Hanbali schools of thought with each of them being adopted in various countries of the world. Each of these schools adopts a peculiar juristic principle as a methodology of *Ijtihād*. This diversity, it must be emphasized, does not suggest tension, dichotomy or existence of any fundamental divergence among these schools. In fact, this diversity is a manifestation of divine mercy in the Muslim community. Areas of divergence among the schools of Islamic law do not affect fundamental issues in Islam as all jurists of the respective schools unanimously agreed on certain fundamental principles. These include their sincere desire and purpose as well as their committed quest

⁴⁴ See Jamal al-Din al-Sayuti, *Ar-Radd 'la man Akhlada ila al-ard Wa Jahila Annal-Ijtihād fi kulli 'asr fard*, Dar Ibn Hazm, Beirut, 1983

⁴⁵ Al Haj A.D Ajijola, *Introduction to Islamic Law*, Adam Publishers, New Delhi, 2018, p.89

⁴⁶ Muhammad Z. Asadullah al-Makkiy, *Muqaddimah fi Mustalaht al-Fuqaha' 'an al-Ahkam al-Shar'iyyah wa a'immati madhahibihim al-Arba'ah*, Al-Idarah al-'ammah li al-Thaqafah wa al-Nashr, Makkah, 2009, p.69

⁴⁷ Muhammad H. Khan, *The Schoools of Islamic Jurisprudence*, p.85

for the truth. They also had regard for the impeccable sources which include the Qur'an and Sunnah and other sources like Ijma' and Qiyas. Finally, they equally promoted the use of *Ijtihād* and rejected the blind imitation i.e *taqlid*. In essence, here lies the unity in diversity which is the main thrust of this paper.

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