The Salaf Scholars’ Response towards differences of Legal Opinion in Islamic Law

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Abstract

A Prophetic hadith states that the best of people were in my time, and then the time after that, and then the time after that. Of course, it is a question for Muslims or non-Muslims, why the Prophet stated it. The above statement can certainly be seen from the ethics and academic reasoning of the post-Prophet generation. Maturity in arguing and accepting criticism is seen in the legal opinion of Ulama, especially in scientific ethics when there are differences of opinion with mutual respect and respect and usually concluded with a sentence if it is right then it is my mazhab and if it is wrong please leave it.

Keywords: differences of legal opinion, Islamic law, mazhab, Salaf scholars

1. Introduction

God created man in different conditions in terms of his thinking potential. Therefore, the existence of differences and diversity in thought, including in matters of fiqh, is a sunnah of Allāh. This difference in fiqh is an unavoidable necessity. This is where differences of interpretation arise among scholars regarding various matters of possible understanding, including various opinions in responding to legal issues. As a result, there are different ijtihad rulings on various issues, and each of these discourses aims to find the truth.1

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In the history of the development of Islamic law, differences of opinion regarding the ruling of legal issues had occurred among the Companions of the Prophet when the Prophet was still alive.\(^2\) However, the difference of opinion was soon reconciled by returning to the Prophet. After he passed away, there often arose among the Companions differences of opinion in ruling on specific issues. Differences of opinion among the Companions of the Prophet were few because the problems that occurred then were less than those that arose in subsequent generations. Differences of opinion among the Companions and Tābi‘īn, did not address problems classified as the basics of religion. These include \(mā\ \text{min}\ \text{al-}dīn\ \text{bi}\ \text{al-}ḍarūrah\) [what is already known in religion without the need for proof] and the matters on consensus and which are shown by a text is \(qat‘i\). Furthermore, it is essential to know the causes of differences of opinion among the fuqahā’ of the salaf; the generation of Muslims during the time of the Companions, Tābi‘īn and Tābi‘ut Tābi‘īn among the Mujtahid Imams in matters of fiqh and their attitudes to differences of opinion on issues of \(al-ikhtilāf\ \text{al-fiqhiyyah}\).

2. **The causes of differences of opinion in Islamic law**

The occurrence of differences of opinion in determining Islamic law occurred in the early days of Islam among the Companions of the Prophet, which was caused by human factors, as well as other factors due to particular aspects related to religion. This causative factor has evolved throughout the growth of Islamic law in the following generations.\(^3\)

Mujtahid always strives to devote his energy and mind to finding the law of Allah in dealing with and resolving problems that require explanation and confirmation of the law.\(^4\) Their primary basis and retrieval source are the same: the Qur’an and Sunnah. However, sometimes their findings differed, and each acted according to the results of his ijtihad, which he thought was correct and appropriate. Scholars agree that the Qur’an and Sunnah are the primary sources of law. However, they differ on how to draw normative messages from the sharia

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\(^2\) Jasser Auda, *Maqasid Al-Shari’ah as Philosophy of Islamic Law* (International Institute of Islamic Thought (IIIT), 2022).


texts \textit{[al-	extit{nuṣūṣ} al-	extit{shariah}]} into a specific set of applicable legal rules. Thus the problem lies in something other than the status and position of the two primary sources, but instead in the differences in interpretation and how to apply them in life. Ahmad Amīn states that the difference is rooted in the different levels and degrees of rationality used in drawing legal conclusions from the sources.\footnote{Aḥmad Amīn, \textit{Duḥā Al-Islām}, ed. Maktabah an-Nahdah Al-Misriyyah (Cairo, 1990), 51.}

For the generation that lived long after the prophetic period, in addition to differences in approach to interpreting existing sources. Issues of authenticity and validity of information about the life of the Prophet also became a problem in itself, which deals with it gave birth to many perspectives, methods, and approaches so that it became a factor that also influenced the emergence of \textit{ikhtilāf} (difference, diversity) among scholars.\footnote{Abī al-Fatḥ al-Asmandī al-Samarqandī, \textit{Tharīqah Al-Khilāf Bain Al-Aslāf} (Beirut: Daar al-Kutub al-Ilmiyah, 1990), 21.}

Much literature reveals the factors that cause ikhtilāf among scholars. Romli SA, in his book \textit{Muqaranah Mazahib fil Ushul} identifies factors, both individually and together, which are the root of the differences in scholarly opinions in matters of Islamic law, which are summarized from various books.\footnote{S A Romli and S A Romli, “Muqaranah Mazahib Fil Ushul,” 2016.} Some of the differences are:

\begin{itemize}
  \item[a.] Differences of opinion regarding the meaning of specific vocabulary are found in Shari’ah texts. This is because, like other languages, Arabic also contains many \textit{musytarak} words (homonyms), that is, words that simultaneously have more than one lexical meaning or a type of ambivalence in meaning in their other forms. The word \textit{quru’}, for example, according to the scholars of Hijaz, means to be pure (not menstruating), while the scholars of Iraq interpret it with menstruation, each with their arguments. These differences have implications in understanding Q.S. al-Baqarah [2]: 228, which deals with the issue of ‘iddah, a grace period during which a woman divorced by her husband can remarry someone else;
  \item[b.] Differences relating to hadith issues. These differences may occur due to: (1) The existence of a hadith report that reaches certain scholars but does not reach other scholars. (2) Differences in assessing the quality of a particular hadith such that some scholars consider it valid
\end{itemize}
and can be used as a legal basis while others consider it invalid; thus, a hadith is accepted as proof by certain scholars but rejected by others. (3) Different criteria determine which traditions can and cannot be practiced. This is because some scholars set certain conditions that are not required by other scholars so that even though they may agree on the validity of a hadith in terms of its narration, they differ on whether its meaning should be or can be applied in the present life or not.

c. Differences in the use of language rules in understanding the text. For example, some scholars think that the word ‘āmm implies a definite meaning qaṭ’ī al-dalālah in the absence of takhṣīs, while others believe that the word ‘āmm is basically ẓannī.

d. Differences in the conclusions reached in narrating contradictory arguments (at-ta’arūḍ bain al-adillah).

e. Differences of opinion on using qiyās in drawing legal conclusions (istinbāt). This is a wide-ranging difference of opinion that occurs not only between those who approve of qiyās and those who reject it but also among scholars who approve of the use of qiyās, namely in the intensity, scope, and requirements of its use.\(^8\)

d. Differences in the use of legal sources outside the text (dalīl naqlī). In the study of Islamic law, there are two types of arguments of shari’ā law, namely dalīl naqlī and dalīl ‘aqīlī. The definition of naqlī arguments is textual arguments contained in the Qur’an and Sunnah or textually conveyed arguments (manṣūṣah). In contrast, ‘aqīlī arguments are based on reasoning, often called jihādiyyah arguments. Scholars differed on the use of ‘aqīlī arguments, as some accepted specific ‘aqīlī arguments while others did not. Among these ‘aqīlī arguments are istihsān, al-maṣlahah al-mursalah, istiṣlāh, al-’urf, shar’u man qablanā, qaul aṣ-ṣaḥābī, and ‘amal ahl al-madīnah.

g. Different perceptions of the ‘illat used in the application of the qiyās method.

h. There is a difference of opinion on the issue of nasakh, which is the abrogation or replacement of a ruling with a new ruling that comes later. Some scholars think that there is nasakh in Shari’ah law, while

others reject the existence of nasakh. Among the scholars who accept it, there is also a difference of opinion on whether the nasakh is between a verse of the Qur’an, a hadith, a verse of the Qur’an, and a hadith or a hadith and a verse of the Qur’an. There is also a difference of opinion regarding applying the nasakh in detail to certain verses or traditions.

The points of the differences of opinion among the scholars above can be classified into four parts. First, differences in aspects related to sources or legal arguments; Second, differences in opinion due to linguistic factors of the Arabic language; Third, differences in environmental conditions and social developments in the domicile of each scholar; Fourth, intellectual differences or intelligence, character, and personality, as well as knowledge and social insight of the scholars.

3. The Ethics of Ikhtilaf among the Companions of the Prophet

Differences of opinion are common and natural, so the previous fuqahā’ have determined healthy and wise attitudes towards the issue of ikhtilāfiyyah.9 At the time of the Prophet (peace be upon him), no difference of opinion led to division. It is because, at that time, the Companions always referred to the Prophet. They immediately submitted the matter to the Prophet if there was a dispute. Patiently and wisely, he explained the problem and opened the way to Allah’s guidance.10

Ṭāhā Jābir Fayyāḍ al-‘Ulwānī in his book Adāb al-Ikhtilāf fī al-Islām describes the attitude of the Companions in differing opinions during the prophetic era,11 namely:

a) The Companions tried as much as possible not to cause disagreement so that there were not many problems. They even neutralized something that happened following the instructions and guidance of the Prophet. It was done by not opening up opportunities for prolonged debate, which could lead to division;

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10 Habib.
b) If there was any disagreement among the Companions, they quickly quelled it and brought the matter in dispute to the Kitāb of Allāh and the Messenger of Allāh;

c) They firmly commit to their submission to the laws of Allah and the Prophet;

d) Each of them realizes that a person’s or his brother’s opinion contains an understanding just as he also has his own understanding. Thus, they protect the honor of their brother and refrain from being fanatical about their own opinions;

e) They always adhere to piety and abstain from the control of lust. They were more concerned with what they were trying to achieve in their differences of opinion. Thus, there is no need to impose their will and cleverness of tongue because what they seek is the essence of the truth;

f) They always require themselves to adhere to Islamic morals by maintaining good speech and abstaining from speech that hurts or injures the hearts of their interlocutors. In addition, they are willing to listen to the opinions and views expressed by others;

g) They always try to purify their will and motivation with humility. Hence they can exercise will and earnestness in discussing a matter. They display a noble disposition and respect for others. They do not insist that others accept their opinion or that it is more appropriate.

After the death of the Prophet, the Companions experienced many differences of opinion on various issues. However, the *ikhtilāf* that occurs between them is accompanied by Islamic ethics. The existence of differences of opinion among the Companions in matters of fiqh has existed since the lifetime of the Prophet and was even given a rightful place and direction, as summed up in his phrase: *ikhtilāfu ummatī raḥmah* [differences among my people should be a blessing].  

For example, *ikhtilāf* during the Companions’ time is what happened between ‘Umar ibn al-Khattab and ‘Abd Allāh ibn Mas‘ud. ‘Umar was known

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by the Companions for his wisdom and genius. In his position as a mujtahid, according to Ibn Qayyim, ‘Umar ranked first among the seven Companions of the Prophet who gave many fatwas. ‘Abd Allāh ibn Mas‘ud was one of the Companions with whom ‘Umar shared many activities. There was much agreement between ‘Abd Allāh ibn Mas‘ud and ‘Umar in their ijtihad, but there were also many differences of opinion between them on various issues. Ibn Qayyim said the two men differed on approximately one hundred issues. Ibn Mas‘ud thought that if a man says to his wife, “You are forbidden to me,” he should regard it as an oath of ilā’ (forbidding himself from having anything to do with her), whereas ‘Umar thought that one divorce should be granted. Another issue concerns a man who commits adultery with a woman and marries her. Ibn Mas‘ud believed that the two people were always in a state of adultery even after the marriage contract, but ‘Umar was not of that opinion. According to ‘Umar, the first mixing (before the marriage contract) is adultery, while the mixing after the marriage is halal.

Although the two Companions of the Prophet had many differences of opinion, their mutual humility and respect for one another were evident in their daily lives. Ibn Mas‘ud once said, “Verily, ‘Umar knows the Kitāb of Allāh and His Shari‘ah better than me.” On the contrary, one day, Ibn Mas‘ud came to ‘Umar, who was sitting down. When ‘Umar saw Ibn Mas‘ud from a distance, ‘Umar said, “Indeed he is preserved by his wisdom and knowledge.”

We also find Ibn Mas‘ud’s statement in one of his fatwas: “I say about this with my opinion (ra‘y), if it is true it comes from Allah, but if it is false then it comes from me and Shaytaan. Allah and His Messenger are not responsible for it.” Similarly, to the addition of the sentence at the end of ‘Umar’s fatwa made by his secretary, it was said: “This is the decision of Allah and the opinion of ‘Umar,” ‘Umar then said: “Your words are the worst. Say that this is ‘Umar’s opinion; if it is right, it is from Allah, and if it is wrong, it is from ‘Umar.”

With attitudes like the above, it can be understood that the Companions are likelier to say an opinion (fatwa) as their personal opinion. Such a statement, in addition to illustrating the caution of the Companions not to say anything in the name of Allah and His Messenger, also implies that every opinion is bound

14 Al-‘Ulwānī, Adāb al-Ikhtilāf, 63.
by human relativity, which may be right and may be wrong. Seeing such a reality, one must be open to appreciating and respecting the opinions of others. The attitude of the Companions towards differences of opinion in fiqh matters (including their ijtihad tradition) was then used as an example by the succeeding generations scattered in various areas of Islamic rule at that time.

4. Ethics of *Ikhtilāf* among Fuqaha’ during the Tabi’in period

The generation that inherited the knowledge and wisdom of the Companions were the Tābi’īn. Most of them were used to doing ijtihad and issuing fatwas under the testimony of the Companions of the Prophet. They have also been educated under the tutelage of the Companions and educated in the manners and behavior of the Companions. They adhere to the method of the Companions in making legal decisions, so that they do not go outside the lines of the Companions’ manners when they disagree. A remarkable example of the ethics of dissent during the time of the Tabi’in is seen in a scholarly letter sent by an Egyptian imam and faqīh, al-Lais ibn Sa’d to Imam Mālik. In the letter, al-Lais expressed his views in polite and subtle language on various issues on which he disagreed with Imam Mālik. Given the length of the letter, it is sufficient to quote some of the key passages relating to the ethics of dissent that have always been respected by the salaf scholars. As stated by al-Qaradhawī, the contents of Surah al-Lais are:

“May prosperity be upon you. Praise be to Allah, there is no God but He. Amma ba’d. May Allah forgive us and you, and reward you well, here and in the Hereafter. I have received your letter informing me that you are well. This pleases me very much and I hope that Allah will continue to grant you this prosperity and perfect it by giving you help to be grateful for it. Indeed, news has reached you that I have issued a fatwa to the people that contradicts what the people in your place follow. I fear for myself that people will rely on my fatwas, because most people follow ahl al-Madīnah, which we all know is the place of the hijrah and the revelation of the Qur’ān. What you have written about it is, inshā Allāh, correct and I appreciate it very much. I have not found a more disliked ‘ālim than myself who gave an odd fatwa (against the majority) and the ‘ulama of Madīnah who have passed are more worthy of respect than me, and their fatwas are more worthy of being followed than mine. Praise be
to Allah, the Lord of the universe, with whom there is no partner. Imam al-Lais then mentions some of the differences that occurred between him and Imam Mālik on several issues, such as, combining prayers when it rains at night, trial by one witness and oath, giving precedence to the prayer over the sermon in performing the istisqā’ prayer, and many other issues of ikhtilāf. Then at the end of his letter he stated: “I have abandoned many of these things. I hope that Allah’s guidance (taufiq) will continue to be bestowed upon you. I wish you a long life so that you can benefit mankind. I am not afraid of losing someone like you, although I always wanted to be with you until death. I am writing this letter with an open heart. Let us ask Allah to reward us and complete His favors.”

5. The Ethics of Ikhtilāf among the Four Imams of the School of Jurisprudence

Furthermore, in the history of the growth and development of Islamic law, there is a period referred to as the period of ijtihad and the golden age of Islamic fiqh. This period gave birth to the famous mujtahid imams, especially those known as al-a’immah al-arba’ah, namely Abu Hanifah ibn Nu’man (80-150 H/699-767 M), Malik ibn Anas (93-179 H/712-795 M), Muhammad ibn Idris asy-Syafi’i (150-204 H/767-820 M) dan Ahmad ibn Hanbal (164-241 H/780-855 M).

During this period of ijtihad and advancement of jurisprudence, the sportsmanship of the mujtahids was generally high and the attitudes of most of the adherents of each of the existing schools of jurisprudence also seemed to be relatively objective. Without each mujtahid acknowledged the strengths of the other and recognized his own shortcomings.

The Imams of the madhhab have differed on ijtihaad issues, just as the Companions and the Tabi’in before them differed. For example, ad-Dahlawi (1114-1176 AH/1702-1763 AD) in his book al-Inṣāf fī Bayān Asbāb al-Ikhtilāf recounts the attitude of the early scholars towards the issue of ikhtilāf al-fiqhiyyah as follows:

“Indeed, the Sahaabah, the Tabi’in and the scholars after them recited the Basmalah in prayer out loud and some recited it silently, and some recited the Qunut prayer at dawn and some did not recite it. Some perform

Ablution after they have had an ulcer, nosebleed, or vomited, while others do not repeat their ablution, and so on. Despite this, they still prayed in congregation together, one as imam and the other as ma’mum. For example, Abu Hanīfah and his students, ash-Shāfi’i and his students, and others all prayed behind the Imams of Madīnah who were Mālikī, even though they did not recite the basmalah either openly or secretly. Imam ash-Shāfi’i once prayed the dawn prayer near the grave of Imam Abu Hanīfah, but he did not recite the qunūt at dawn, so when asked by his students he replied: “I left the qunūt out of respect for the opinion of the teacher who said that it is not recommended to recite the qunūt at dawn, even though the teacher had passed away. Imam ash-Shafi’i then said, “Perhaps I have inclined to the school of the people of Iraq.” Caliph al-Manṣur during the time of the Banu ‘Abbas once asked Imam Mālik for permission to copy the book of al-Muwaththa’ (Imam Malik) in large numbers and to distribute it to several major cities so that people would not disagree on jurisprudence based on that book alone, but Imam Mālik refused and said, “O Amir al-Mu’minin, you should not do that, because the people have already acquired some opinions, have heard some traditions and received some narrations, and each people (group) has a different opinion, so let them each hold on to the opinions that they choose.”

Abu Hanifah considered knowledge of ikhtilāfāt al-fiqhīyyah important, and he said:

“The one who is more knowledgeable is the one who knows more about the different opinions of the fuqaha’, because knowing the different opinions of the scholars concerning the issues that they dispute will lead to the truth for the one who is able to analyze and research the various arguments and the methods that they use. Thus he will know which arguments are weak and which are strong.”

18 Muḥammad Abū Zahrah, Muḥādarah fī Tārikh Mazāhib al-Fiqhīyyah (Kairo: Matb} a’ah al-Madānī, t.t.), h. 63.
Ahmad ibn Hanbal also said:

“A person should not give a fatwa unless he knows the opinions of previous scholars on shar‘i fatwas (concerning the issue in question), and knows the madhhab to which they adhere.”

From the above description, the attitude of the imams of the madhhab towards the issue of ikhtilafat al-fiqhiyyah is very clear and tolerant. The differences between them are basically intended to seek the truth based on the texts of the Qur’an and Sunnah and not based on lustful desires, so as to strengthen the harmony that has been established between them. The following are some of the confessions and statements made by the Imams of the four madhhabs regarding the results of their ijtihad and their ethic.

a. Imam Abu Hanīfah said:

“If the hadith is correct then that is my school of thought. No one should adhere to my opinion until he knows from where I derive my reasoning, and if I say something that contradicts the words of Allah and the Sunnah of the Messenger, then leave my words”

b. Imam Mālik said:

“I am only a human being, I may be right and I may be wrong, so examine my opinion, if it is in accordance with the Book of Allah and the Sunnah of the Messenger then take it and if it is not then leave it”

c. Imam asy-Syāfi‘ī said:

“Explain what I said, or what I did not say, in the words of Allah’s messenger, if I said something that contradicts the words of Allah’s messenger, then say what the words of Allah’s messenger said”

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19 ad-Dahlawī, al-Insāf, h. 105.
20 Ibn ‘Abidīn, Hāsyiyyah, h. 63.
[ Whatever opinions I hold, whatever jurisprudence I formulated, if it contradicts the Sunnah of the Prophet, then the Sunnah of the Prophet is correct].

d. Imam Ahmad ibn Hanbal said:

Do not follow me, nor Mālik, nor ash-Shāfi‘ī, nor al-Auzā‘ī, nor as-Saurī. Take the law from where they took it.²³

These are the attitudes, expressions and opinions of the Imams of the madhhhab who are very wise in their actions and wise in their views on issues that are still within the scope of ikhtilāf al-fiqhiyyah. However, if examined from the attitudes and expressions of the words of the Imams, they actually teach Muslims, including those who later become followers of the madhhhab to not just stop following or accepting (taqlīd). In other words, the imams of the madhhhab are open to the opinions of the scholars, regardless of whether they are right or wrong. Rather, the statements of the imams of the madhhhab show an open attitude to being tested for their opinions, of course, for those who have sufficient scientific capacity to assess their opinions.

6. Conclusion

The ethics of dissent among the fuqahā’ as-salaf on the issue of ikhtilāf al-fiqhiyyah, as exemplified above, provides guidance on the actual scientific ethics of dissent with respect and honor for other opinions. A respect that does not prevent them from being open to the possibility of error for them and the possibility of truth for others.

The emergence of ikhtilāf among scholars has important implications for the lives of Muslims, both individually and collectively. Theoretically, ikhtilāf actually has a positive meaning, as there are more alternative legal concepts that can be chosen to be practiced, so that Islamic law as a whole will have a high adaptability to every situation. However, there are some people who view ikhtilāf as a form of deviation and in many cases it has led to disputes, disputes, hostility, rifts and setbacks among Muslims themselves.

In addressing the diversity of opinions, it is very necessary to have a positive reciprocal view between different parties. In addition, it is also necessary to have a critical attitude towards each opinion. The development of the tradition of critical thinking in the early days of Islamic development has been one of the keys to success in the development of a superior civilization and bequeathed priceless intellectual treasures. This is because in an atmosphere of difference they still uphold scientific ethics and noble manners towards others.

Reference: