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IKHTILAF AL-FUQAHA AND ITS IMPORTANCE IN LEGAL PLURALISM: AN ANALYSIS IN THE LIGHT OF SEERAH

*Zainab Moin[1]

[1]Lecturer Islamic Studies Department, Fatima Jinnah Women University, Rawalpindi, Punjab, Pakistan.

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ABSTRACT

This paper discusses the phenomenon of Ikhtilaf al-Fuqaha (juristic disagreement) in Islamic jurisprudence and its contributory role to legal pluralism in the Islamic legal tradition. As opposed to the contemporary view that sees disagreement as an indication of fragmentation, Ikhtilaf between jurists has traditionally enriched the dynamism, richness, and versatility of Islamic law. By placing this phenomenon within the context of the Seerah (Prophetic biography), the paper analyzes how the Prophet Muhammad (MAY ALLAH BLESS & PEACE BE UPON HIM) promoted dialogue, tolerated reasonable differences of opinion, and cultivated a culture of respectful intellectual pluralism among his followers. With reference to classical jurisprudential texts, recent scholarship, and some case studies in early Islamic society, this paper contends that Ikhtilaf is not only unavoidable but also essential for legal pluralism. The study continues to examine the mechanisms that the classical jurists evolved to handle disagreement and how these mechanisms can be applied to modern Muslim communities coping with modern legal and moral problems. The study concludes by calling for the renewal of adab al-Ikhtilaf (ethics of disagreement) today and providing pragmatic measures to institutionalize this tradition in plural legal systems.

*** Corresponding Author's Email:** *zainab.moin@fjwu.edu.pk*

INTRODUCTION

The idea of *Ikhtilaf al-Fuqaha* disagreement among Muslim juristic legal scholars has been an earmark of Islamic jurisprudence from its inception. Instead of reflecting on weakness or division, *Ikhtilaf* is regarded by numerous classical and contemporary scholars as a token of mental robustness and God's mercy (Kamali, 1991). The Prophet Muhammad (MAY ALLAH BLESS & PEACE BE UPON HIM) himself established the ethical grounds for disagreement, as indicated in several instances in the Seerah where there were disagreements among the companions regarding interpretation but were still confirmed to have been sincere and to have had correct legal reasoning. This article examines the sociological and epistemological value of *Ikhtilaf* in Islamic law and its essential contribution towards the development of legal pluralism in various Islamic societies. Islamic law, unlike codified secular systems, emerged from a dynamic interpretative process involving multiple sources Qur'an, Sunnah, Ijma (consensus), and Qiyas (analogical reasoning) and multiple interpretative voices. This multivocality is reflected in the existence of different *Madhahib* (schools of law), each offering unique legal methodologies and rulings while remaining within the broader framework of *Shari'ah.*

In the ideologically diversified and globalized world of the present, in which Muslims exist as majorities and minorities in a variety of political regimes, the ideals of *Ikhtilaf* may provide a sound basis for the integration of domestic diversity and interaction with other legal orders. Yet the contemporary discourse of Muslims is frequently simple-minded in its comprehension of classical *Ikhtilaf* and the ethics that lay behind it, and thus results in an unyielding and intolerant legal culture. This paper seeks to revisit the origins of *Ikhtilaf al-fuqaha*, more specifically through the Prophetic Seerah, to show how early Muslims dealt with differences without

compromising on unity. It shall also examine the role of juristic disagreement in legal pluralism, not just in the Islamic tradition, but in general multicultural and multi-religious societies as well. The Seerah lends support to the normative and historical grounds to suggest that respectful and principled disagreement was not just allowed but even sometimes welcomed by the Prophet (MAY ALLAH BLESS & PEACE BE UPON HIM), thus making instituting Ikhtilaf as an integral part of Islamic legal culture.

The core argument of this paper is that Ikhtilaf al-fuqaha, if based on good faith reasoning (ijtihad) and moral dialogue (adab al-Ikhtilaf), constitutes a crucial device for maintaining legal pluralism and addressing the changing realities of Muslim communities. This argument will be supported through examples from classical times, Prophetic sayings, and contemporary uses.

LITERATURE REVIEW

Scholarship on *Ikhtilaf* has greatly developed from classical juristic literature to academic analyses in the contemporary period. This literature review will scan primary classical literature, mainstream legal theorists, and contemporary scholars on Islamic legal pluralism.

Classical Juristic Discourse

The earliest Muslim jurists understood *Ikhtilaf* as an inevitable outcome of human engagement with divine texts. Al-Shafiʿi (d. 820), in his foundational work Al-Risala, emphasized that differences in interpretation arise due to linguistic ambiguity, the complexity of hadith authentication, and diverse legal methodologies (Al-Shafiʿi, trans. Khadduri, 1961). Similarly, Ibn Qudamah (d. 1223) in Rawdat al-Nazir elaborated on the nature of *ijtihad* and how it justifies divergent rulings among *mujtahids*. Ibn Taymiyyah (d. 1328) recognized the legitimacy of *Ikhtilaf* and its foundation in the honest search for truth. In Raf` al-Malām, he writes about different kinds of legal differences and gives an outline to grasp how scholars may differ without fault (Ibn Taymiyyah, 2004).

Ethical Frameworks: Adab al-Ikhtilaf

Al-Ghazali (d. 1111), in Ihya' Ulum al-Din, stressed *adab* (ethics) in learned disagreement. He cautioned against partisanship and called upon scholars to be humble, invoking the Prophetic tradition: *"The difference of my Ummah is a mercy"* (though contested on grounds of authenticity, it represents a commonly held legal culture) (Kamali, 1991).Shah Waliuallah al-Dihlawi (d. 1762), in Al-Insaf fi Bayan Sabab al-Ikhtilaf, offered one of the most preponderant treatises on the historical and epistemological reasons for juristic disagreement. He identified variation as a function of social, linguistic, and intellectual factors and advocated *Tawassum* (moderation) in legal discussion (Al-Dihlawi, 2007).

Modern Interpretations

Muhammad Hashim Kamali (1991) in Principles of Islamic Jurisprudence gives a full account of the reasons and importance of *Ikhtilaf*. He points out how pluralism is entrenched within Islamic epistemology and emphasizes that contemporary legal reform has to be based on the ethical teachings of *Ikhtilaf*. Wael Hallaq (2004) contends that Islamic law's pluralist ethos was progressively eroded under colonial and post-colonial codification schemes. He laments the loss of *ijtihad* and the exclusion of *Madhhab*-based plurality in favor of legally controlled polities. Mohammad Fadel (2007) examines how *Ikhtilaf* can be used to underpin modern constitutional pluralism and democratic dialogue. He contends that pre-modern Islamic law prefigured many current legal pluralist theories, albeit under divine sovereignty. In the modern world, writers such as Tariq Ramadan (2009) highlighted the importance of restoring the spirit of *Ikhtilaf* to tackle new challenges such as bioethics, gender justice, and minority *fiqh*. Ramadan's writing puts special emphasis on the incorporation of ethical pluralism into the *Maqasid*-oriented approach.

Seerah-Based Approaches

Researchers like Muhammad Hamidullah (1974) and Akram Nadwi (2010) highlight the importance of the Seerah in Islamic legal theory. Hamidullah in “The Muslim Conduct of State” made an observation of how the Prophet (May Allah Bless & Peace be upon Him) endured different legal views among his companions, which formed the basis of legal pluralism in subsequent generations. Nadwi (2010) provides many examples of disagreement between companions (e.g., at the Battle of the Trench or calculating Salat times) as evidence of intellectual openness promoted by the Prophet. This rich fabric of scholarship reveals that *Ikhtilaf al-fuqaha* is not a purely theoretical issue but a thoroughly historical and ethical fact that remains relevant to diverse Muslim societies today.

IKHTILAF AL-FUQAHA: THEORETICAL FOUNDATIONS

Defining Ikhtilaf al-Fuqaha

Ikhtilaf al-Fuqaha involves valid juristic disagreement among competent scholars in obtaining legal decisions from Islamic sources. This is a product of *ijtihad*, which is the intellectual effort of jurists to understand the foundational texts (Qur'an and Sunnah) in view of contextual realities (Kamali, 2003). The defining characteristic of *Ikhtilaf* is that it arises from good faith efforts to discern divine will, and thus is distinguishable from *Ikhtilaf* based on political factionalism or personal vanity, about which classical thinkers were so often critical. The Qur'anic principle of employing reason and consultation (*shura*) affirms the practice of educated disagreement*:". And consult them in affairs. Then when you have decided, put your trust in Allah."* (Qur'an 3:159).The well-known hadith also confirms the reward for honest *ijtihad*: *"When a judge gives a ruling and tries to come to a right decision and he is right, he has two rewards. If he makes a mistake, he still has one reward"* (Sahih al-Bukhari, 6919). Therefore, *Ikhtilaf* between *fuqaha* is not a straying but an accepted manifestation of epistemic humility and divine grace.

Causes of Juristic Disagreement

Various reasons support *Ikhtilaf al-fuqaha*, which Shah Waliuallah al-Dihlawi (2007) methodically classified: Linguistic Ambiguity: Arabic words can have more than one meaning, and variations in linguistic interpretation could result in different legal verdicts.

Authenticity of Hadith: Scholars might disagree in accepting a hadith depending on their criteria of *isnad* (transmission chain) or *matn* (textual coherence).

Conflictual Evidence: Where there are more than one text that seems contradictory, scholars follow different approaches in reconciling them.

Methodological Variance: Varying the use of *Qiyas, Istihsan*, or *Maslahah* tends to create legal pluralism between schools.

Contextual Understanding: Jurists can interpret a text in varying ways based on regional, cultural, or political contexts.

As an example, the *Hanafi* and *Shafiʿi* conflict that the act of touching a woman makes wudu void is based on how they interpreted Qur'an 5:6 and what *lamastum al-nisa'* ("you touched women") means.

The Role of Madhahib in Institutionalizing Ikhtilaf

The establishment of legal schools (*Madhahib*) like *Hanafi, Maliki, Shafiʿi*, and *Hanbali* was an organic consequence of *Ikhtilaf al-fuqaha*. These schools are organized methodologies (not sectarian factions) which introduced order and uniformity to legal argumentation (Hallaq, 2004). Each *madhhab* had internal mechanisms to embrace differences using principles like *tarjih* (preference), *takhyir* (permissible preference), and *talaqqi bil-qabul* (regional acceptance). Legal pluralism in the Sunni tradition was, therefore, not a cause of disintegration but an indicator of sophistication in jurisprudence. Jurists like Imam Malik freely acknowledged other people's validity, once stating his legal conclusions were *"correct, but subject to error; and those of others are erroneous, but possibly correct"* (Kamali, 1991, p. 222).

THE SEERAH AS A FORCE IN SHAPING TOLERANT LEGAL DISCOURSE

The Prophet Muhammad's (MAY ALLAH BLESS & PEACE BE UPON HIM) Seerah provides a normative framework for managing and fostering *Ikhtilaf*. Being the origin of Sunnah and legal precedent, the Seerah provides an example of a variety of responses of the Prophet to disagreements among his companions, most of which emphasize tolerance, flexibility, and sympathy in matters of law.

Prophetic Acceptance of Valid Differences

One of the well-known instances is the Banu Qurayzah incident. The Prophet told his companions: *"Do not pray 'Asr until you reach Banu Qurayzah"* (Sahih al-Bukhari, 946).

Some of his companions took the command literally and delayed prayer until they reached there, even after sunset. Others took it contextually and prayed in time, arguing that the Prophet's purpose was haste, not tardiness in prayer. When both groups reported to him, both were validated by the Prophet, suggesting that genuine differences motivated by good faith argumentation were permissible (Ibn Hajar, 1997).

Differing Legal Practices among Companions

The Prophet also allowed friends to keep their variant forms of practice in non-essentials, such as raising the hands during prayer (*rafʿ al-yadayn*), prayer

postures during *tashahhud*, and ways of reciting the Qur'an. These variants continued without any effort to impose uniformity, illustrating the fact that the Prophet tolerated diversity where no harm was caused (Kamali, 2003).

Educational Methodology and Ethical Disagreement

The Prophet encouraged a setting in which companions could pose questions, question one another, and use their intellect. The case of Mu'aadh ibn Jabal, when the Prophet sent him to Yemen, is enlightening. The Prophet inquired of him how he would make judgments, and Mu'aadh said: *"By the Book of Allah. If not found in it, then by the Sunnah. If not found in it, then I will use my own opinion (ijtihad)." The Prophet commended him, saying, "Praise be to Allah who has guided the envoy of His Messenger"* (Abu Dawud, 3592). This incident emphasizes not just the legitimacy of *ijtihad* but the confidence placed on its moral and legal integrity when practiced in sincerity and knowledge.

CASE STUDIES OF JURISTIC DISAGREEMENT IN THE PROPHETIC PERIOD

The following case studies from the Seerah demonstrate how *Ikhtilaf* was both tolerated and institutionalized during the Prophet's time.

Case Study 1: Tayammum and its Application

During a journey, a companion named Ammar ibn Yasir performed *tayammum* (dry ablution) by rolling in dust and praying. Later, the Prophet taught him a simpler method: wiping the face and hands. Despite Ammar's apparent mistake, the Prophet did not invalidate his earlier prayer, recognizing his sincere intent (Sahih Muslim, 368).This case shows how *ijtihad*, even if incorrect, is still valid if rooted in honest reasoning and necessity.

Case Study 2: Disagreement on Qiblah Direction

Before the revelation to face the Kaʿbah (Qur'an 2:144), Muslims prayed toward Jerusalem. When the change was revealed, some communities were unaware and continued facing Jerusalem for a time. When informed, they adjusted without being condemned. This highlights that differences based on timing, awareness, or access to knowledge are accommodated within the Prophetic model.

Case Study 3: Zakat Distribution

When sending Mu'aadh to Yemen, the Prophet gave him broad guidelines on zakat collection and distribution but left implementation details to his discretion. Later, Caliphs such as Umar and ʿAli issued context-based rulings on zakat, reflecting the Prophet's precedent of flexibility and context-sensitivity (Hamidullah, 1974). These and other examples illustrate that *Ikhtilaf* was not only tolerated but often necessary to accommodate different contexts, knowledge levels, and circumstances.

MANAGING LEGAL DIVERSITY: MECHANISMS FROM CLASSICAL JURISPRUDENCE

One of the greatest things about the Islamic legal tradition is how it institutionalizes *Ikhtilaf* in systematic mechanisms. Classical jurists not only tolerated disagreement but created instruments to deal with it in a positive way. This section discusses major jurisprudential principles that made legal diversity possible without compromising on unity.

The Principle of Tarjih (Preponderance)

Tarjih is the methodology of giving precedence to one juristic opinion over another due to more compelling evidence or legal argumentation. This approach recognizes the legitimacy of multiple options while providing a hierarchy of preferences (Kamali, 2003). For instance, in the *Hanafi* school, scholars would compare the view of *Abu Hanifa* with those of *Abu Yusuf* or *Muhammad al-Shaybani* and come to favor the most contextually relevant view. The usefulness of *tarjih* lies in two aspects: it is flexible without total relativism and it facilitates coherence within the methodology of the school.

The Concept of Takhyir (Permissible Choice)

Takhyir presents to the legal subject an opportunity for choice between two equally valid opinions. This had been a frequently employed concept in cross-*madhhab* settings, particularly where there were several schools existing side by side. Ibn Qudamah (2007) recognized the validity of taking on another school's opinion when fulfilling a legal or communal interest, as long as the choice was not based on caprice (*talaqqi bil-ra'ghbah*).For example, the Ottomans institutionalized *takhyir* by permitting *qadis* to borrow from several schools to meet changing needs, particularly in family law, finance, and administration (Hallaq, 2009).

The Role of Urf (Custom) and Maslahah (Public Interest)

Custom (*ʿurf*) and public interest (*Maslahah*) were used as mechanisms to reconcile jurisprudential variations with local realities. *Maliki* jurists specifically were famous for prioritizing Medinan custom while making rulings (Keller, 1991). This enabled legal frameworks to be responsive and in touch with social change without abandoning tradition. For instance, decisions on Muslim Spanish commercial practices were quite different from those in Iraq because of local *ʿurf* but were both legitimized under diverse *madhhab* systems.

Institutionalized Legal Pluralism in Islamic Governance

Traditionally, Islamic courts functioned under this pluralistic system. Judges appointed during the Abbasid, Mamluk, and Ottoman eras were frequently educated in more than one school and were granted discretion. The Ottomans even possessed a complex court system in which litigants had the option to decide under what school their case would be tried (Zaman, 2010).This model eschewed the stiffness of a unified legal code and provided for jurisprudence to be context-sensitive, ethically oriented, and intellectually vibrant.

IKHTILAF AND LEGAL PLURALISM IN CONTEMPORARY CONTEXTS

In contemporary legal systems, especially in Muslim countries or diaspora contexts, *Ikhtilaf* has the potential to be an effective vehicle for legal accommodation of diversity, maintenance of identity, and facilitation of legal innovation. It is realized, though, only when *Ikhtilaf* is realized in its classical ethical matrix and not manipulated towards political or sectarian ends.

Relevance in Muslim Minority Contexts

Muslims in non-Muslim majority nations tend to have peculiar legal challenges. In such cases, *Ikhtilaf* enables jurists to pursue opinions that tend towards minority demands without violating central doctrines. For instance, the European Council for *Fatwa* and Research tend to take positions from various *Madhahib* in order to suit the demands of Muslims in the West, including judgments on mortgages or burial customs (Kamali, 2009).The *darurah* concept also allows for the relaxation of some legal opinions but only to the extent that the jurist invokes the wide *Ikhtilaf* ambit and not fixed interpretations.

Modern Examples of Legal Pluralism

Malaysia: The state officially recognizes the *Shafiʿi* school but admits opinions from *Hanafi* and *Maliki* schools to respond to new challenges in finance and family law (Shuaib, 2001) ***Pakistan:*** The Council of Islamic Ideology has traditionally given opinions that include the thoughts of different *Madhahib*, like giving women the possibility to serve as judges based on *Hanafi* exceptions. ***South Africa:*** Islamic courts have settled family and inheritance cases among Muslims through cross-*madhhab* flexibility, prioritizing the communal ethic over formalism (Moosa, 2003). These examples highlight that legal pluralism via *Ikhtilaf* is not just a relic of history but a practical strategy in resolving contemporary legal complexities.

Interaction with Secular Legal Systems

Interaction with secular legal systems must involve a sensitive approach that is considerate of Islamic jurisprudence and civic law. Revival of *Maqasid al-Sharīʿah* (*Maqasid*) has assisted many scholars in reconciling conventional rulings with contemporary human rights constructs. Scholars such as Jasser Auda (2008) contend that *Maqasid* methodology is itself an outgrowth of the plurality of *Ikhtilaf*, in moving beyond literalism to ethical universality. Legal pluralism in this perspective is not merely compatible with Islamic values but required for a dignified Muslim presence in the contemporary world.

CHALLENGES AND MISUSES OF IKHTILAF

Although *Ikhtilaf al-fuqaha* has traditionally been an indicator of legal maturity, it has also been prone to misuse and misapplication. Various issues have arisen in contemporary times.

Sectarianism and Political Instrumentalization

In most Muslim societies, *Ikhtilaf* has been used to legitimize sectarianism. What began as an intellectual disagreement between scholars has become a badge of factionalism? This is antithetical to the Prophetic *adab al-Ikhtilaf*, wherein discrepant views were tolerated, not criticized. Political regimes have even employed selective fatwas in a bid to solidify power and undermine the organic, scholarly character of *Ikhtilaf*. The monopolization of fatwa bodies by the state in Egypt, Saudi Arabia, and Iran illustrates this (Hallaq, 2004).

Fatwa Shopping and Legal Evasion

The proliferation of cyber fatwa sites allows it to be convenient for one to pick and choose rulings that conform to personal whim, something classical jurists warned against. This tames the ethical gravity of *ijtihad* and converts legal pluralism into moral relativism. Taymiyyah (2004) deplored this trend, warning against the tendency of those who *"wander among the ideas of scholars like bees wander among flowers, not in pursuit of truth but comfort."*

The Decline of Usul al-Fiqh Education

Contemporary Islamic universities and seminaries occasionally prioritize memorization above teaching *Usul al-fiqh*, the science that supports *Ikhtilaf*. Without serious study of *Usul*, scholars today might take sides without knowing their methodological grounds. This cognitive weakening has contributed to shallow fatwas and the neglect of juristic tradition, which complicates Muslims' appreciation of the richness and reasoning of permissible differences.

CONCLUSIONS

This paper has posited that *Ikhtilaf al-fuqaha* is not just a historical phenomenon of Islamic law but an essential, ethical, and intellectual pillar of legal pluralism today. Tracing its roots in the Seerah of Prophet Muhammad (MAY ALLAH BLESS & PEACE BE UPON HIM), *Ikhtilaf* was nurtured as a means of God's mercy, scholarly investigation, and social adaptability. Through an exploration of its theoretical foundations, historical expressions, and everyday examples in classical and contemporary settings, the current paper has demonstrated that *Ikhtilaf* makes Islamic law capable of adapting, changing, and responding to a variety of human experiences. Rather than a weakness or lack of unity, juristic disagreement, when practiced with *adab* and based on *Usul*, makes Islamic law more legitimate and ethically sound. It avoids legal authoritarianism and provides room for critical thought, contextual awareness, and cross-cultural discussion.

The Prophet's Seerah provides a prophetic role model of dealing with disagreement in gracious and wise ways. In accepting varied legal opinions among his followers and motivating *ijtihad*, the Prophet established a jurisprudence of tolerance that has formed the background for Islamic law to thrive across civilizations. Classical jurists built upon this framework through institutions like *tarjih, takhyir*, and *Maslahah*, enabling Islamic law to thrive across civilizations. In our times, *Ikhtilaf* has to be retaken not as an instrument of disintegration but as a source of legal and moral rejuvenation. Institutions have to train scholars in the ethics and methodology of differing. Legal councils and juristic institutions have to encourage pluralism, not stifle it. Above all, Muslim communities have to accept the diversity of opinion as a mark of strength, not weakness.

The legacy of *Ikhtilaf al-fuqaha*, if rekindled in spirit and form, can offer an immensely strong model for solving present day ethical dilemmas be these in bioethics, minority rights, environmental justice, or gender equality while being true to the divine purposes of Islamic law.

REFERENCES

Auda, J. (2008). Maqasid al-Shariah as philosophy of Islamic law: A systems approach. International Institute of Islamic Thought.

Al-Dihlawi, S. W. (2007). Al-Insaf fi bayan sabab al-ikhtilaf. Dar al-Nafa'is.

Al-Shafi'i, M. I. (1961). Al-Risala (M. Khadduri, Trans.). Islamic Texts Society.

Fadel, M. (2007). Public reason as a strategy for principled reconciliation: The case of Islamic law and liberal democracy. The University of Chicago Law Review, 74(3), 859–906.

Hallaq, W. B. (2004). Authority, continuity, and change in Islamic law. Cambridge University Press.

Hallaq, W. B. (2009). Shari'a: Theory, practice, transformations. Cambridge University Press.

Hamidullah, M. (1974). The Muslim conduct of state. Sh. Muhammad Ashraf.

Ibn Taymiyyah, A. (2004). Raf' al-malām 'an al-a'immat al-aʿlām. Dar Ibn Hazm.

Kamali, M. H. (1991). Principles of Islamic jurisprudence. Islamic Texts Society.

Kamali, M. H. (2003). Freedom of expression in Islam. Islamic Texts Society.

Keller, N. H. (1991). Reliance of the traveller: A classic manual of Islamic sacred law. Amana Publications.

Moosa, E. (2003). Muslim family law in South Africa: Paradoxes and possibilities. Human Sciences Research Council.

Nadwi, M. A. (2010). Al-Muhaddithat: The women scholars in Islam. Interface Publications.

Shuaib, F. (2001). Legal pluralism in Malaysia. Journal of Legal Pluralism and Unofficial Law, 33(47), 99–120.