

The Disagreement between the Scholars of Fundamentals of Jurisprudence (Uṣūl Al-Fiqh) on the Definition of “AL-AṢL”: A Fundamental Study of the Term

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Abstract

This paper addressed the explanation of the causes for the disagreement on the various definitions of the scholars of Islamic law on the term “Uṣūl”, as this is deemed among the very intricate issues among the specialists on the science of “Uṣūl al-Fiqh” (Fundamentals of Islamic Jurisprudence). In the first topic, the term “al-Aṣl” was defined from the lexical and the technical perspectives, in addition to the explication of the connotation of term “cause for the Uṣūlī disagreement”, according to the scholars, and in the second topic the causes for the argument on the several definitions was discussed, and the conclusion was regarding the influence of the Arabic language and the maxims of the science of Uṣūl on the disagreements regarding issues of Uṣūl.

Keywords: Uṣūl, Islamic Jurisprudence, Scholars.

1. INTRODUCTION

The knowledge of the causes behind disagreements between the scholars is among the most significant sciences that a competent jurist and juris-consult and the judge should know, including being cognizant of the connotations and the consequences therein, because ignorance of such is deemed unacceptable from them. Hence, some scholars have maintained that no one will be regarded a jurist until they know the matters of disagreement and its causes and impacts on the applied matters of jurisprudence and related issues. Al-Subkī said: “Also, a jurist should not trivialize what we have been narrating in terms of strange aspects, odd opinions, and intricate differences, by claiming that the extant juristic opinion is suffice, because it should be known that this is what lead to the loss of knowledge, I mean, mentioning only the extant opinion. Because when one does not get himself acquainted with the science of disagreement and its causes, such person cannot definitely be regarded a jurist, rather he can only be regarded a mere transmitter of other people’s jurisprudence, he could neither produce the ruling of a new matter from the existing one, nor relate the future with the present, or attach the witnessed with the unseen, such person will easily make mistakes, and his errors will be numerous, and knowledge will be far from him” (Subkī, 1992, 1: 319).

1.1. Research Problem

The research problem lies in the following points:

- What is the meaning of cause for the disagreement on matters of Uṣūl?
- What is the definition of “Uṣūl” lexically and technically?

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- What is the cause for the various definitions of the term “Uṣūl”?

1.2. Research Aims

- Introducing the connotation of the term “Uṣūlī disagreement” (or disagreement on matters of Uṣūl).
- Explanation of the definitions of “Uṣūl” from the lexical and the technical perspectives.
- Explanation of the cause for the disagreement on the various definitions of the term “Uṣūl al-Fiqh”.

1.3. Research Significance

The importance of the topic manifests in the following:

- That knowing the causes of difference of opinion reveals the efforts of the scholars in reaching the truth, and that these efforts were not informed by mere whims, rather they were meant to reveal the plain truth.
- Discovering the opinions of the scholars and their proofs, and how they derived the point of reference from the proofs they put forward in order to substantiate their point of view in the matters of difference.
- The topic’s novelty, as it focuses on the causes for the disagreement on issues of Uṣūl al-Fiqh.

1.4. Literature Review

Through my study of the available literature, no previous study in the field of fundamentals of jurisprudence that addressed the scholarly debates on this issue was found.

1.5. Research Methodology

- In collecting scientific material, I followed the induction method by studying the books of the Fundamentals of Islamic Jurisprudence and extracted what is related to the subject from them for proper use in the paper.
- Definition of scientific terms that need to be defined.
- I attributed the texts that I quoted to their source, and if I quoted the text, I put it in quotation marks." If there is omitted speech in the quoted speech, I put dots in place of the deleted speech "...".

2. THE CONNOTATION OF THE WORD “AL-AṢL”, divided into three sub-topics:

2.1. THE CONNOTATION OF THE WORD “AL-AṢL” LEXICALLY.

There is no dispute among scholars that the meaning of “al-Aṣl” according to the linguists is limited to four meanings: the first meaning: the bottom of something and its basis, and the second meaning: is the reputable family lineage, the Arabs would say: he has no “aṣl” and no “faṣl”, meaning: he has no reputable family origin, and the third meaning is: what the existence of something is based on, such as the father is the origin of the child, and the river is the origin of the stream, while the fourth meaning is: the brain (Ibn Fāris, 1979, Al-Rāzī, 1999, Ibn Manzūr, N.D) .

However, it is pertinent to note that the disagreement among the scholars on the meanings mentioned by the scholars of Uṣūl in their books was not found in the classical Arabic lexicons.

The scholars of Uşūl have mentioned several meanings for the word “al-Aşl”, and some scholars have extended them to ten meanings (Al-Bāḥusayn, 1988). In this paper, the discussion shall be limited to the most prominent of those meanings, which are as follows:

The First Opinion: The thing upon which something is built and branched, this is the opinion of several scholars of Uşūl (Al-Başrī, 1984, Al-Tamhīd, 1986, Al-Eejī, 2003), and in the another expression by Al-Zarkashī, he said it is: the thing from which others branched, and he attributed it to Al-Qaffāl Al-Shāshī (Al-Zarkashī, 1992, 1: 16).

The Second Opinion: The thing that the existence of something depends on, this is the opinion of some scholars of Uşūl, it was chosen by Al-Ṭūfī who substantiated his opinion that whatever is a branch of another thing is definitely dependant on it for existence, not that everything that depends on another thing for existence is necessarily a branch of such thing (Al-Ṭūfī, 2003).

The Third Opinion: The thing that is needed, this is the opinion of some of the scholars of Uşūl (Al-Rāzī, 1997, Al-Armawī, 1988, Al-Hindī, 1995).

The Fourth Opinion: The thing from which another thing emanated from, meaning: what the thing originated from. This is not comprehensive, because it is specific to what something emanated from, thereby excluding what did not emanate from it (Al-Namlah, 2009). However, this is the opinion of some of the scholars of Uşūl (Al-Qarāfī, 1995, Al-Armawī, 2006, Al-Hindī, 1995).

Al-Isnawī (1999) mentioned a similar meaning when he said: “al-Aşl” is the origin of something, while he neither attributed it to anyone nor consider it preponderant.

In summary, the relationship between all the meanings and opinions, whether the ones mentioned by linguists or those of the scholars of Uşūl, is either comprehensive or partial, as follows:

Firstly: Whoever defines al-Aşl as honor and reputable family origin is only considering a partial meaning of “al-Aşl” (Al-Bāḥusayn, 1988).

Secondly: Whoever defines “al-Aşl” as what the existence of something is based on, or what it emanated from, or the origin of something, or what is needed, or what others branched from, or rely upon, or others are built upon, the aim in such case is to define “al-Aşl” in its comprehensive sense, in which all parts are involved (Al-Bāḥusayn, 1988).

A careful consideration of these definitions which aim at the comprehensive meaning will reveal that they are also covered by the connotation of the thing upon which others are built, because whatever others are built upon can have branches, and is qualified to be relied upon, and will be needed, and will be an origin for others and will yield fruits, and will lead to knowing others: irrespective of whether this actually happened or it did not happen but will happen in the future (Al-Namlah, 2009).

2.2. THE CONNOTATION OF THE WORD “AL-AŞL” TECHNICALLY.

The discussion of this issue will be from two perspectives:

The First Perspective: Discussing the issue in terms of the meanings agreed upon by the scholars of the science of Uşūl.

The Second Perspective: Discussing the meanings that are subject of disagreement between the scholars of Uşūl.

Consequently, after this introduction comes the explanation of the subject of disagreement in this issue:

The scholars of Uşūl are of consensus that the meaning of the original idiomatically goes into four meanings: the first: the proof, the second: the universal rule, the third: the most correct, and the fourth: the default.

But they differed in the fifth meaning, which is: the model that is used in analogy, is this meaning correct or not? The opinions of the scholars on the issue will be divided into two parts in this paper:

Part One: The opinions of the scholars on the meaning of “al-uṣūl” technically.

Scholars have mentioned five meanings for “al-Aṣl”:

The First: The proof (al-dalīl), as they would say: the aṣl of this issue is the Qur’ān and Sunnah, i.e., its proof, and this usage is what is meant in the science of Uṣūl (Al-Futūḥī, 1993).

The Second: the most correct (al-rājiḥ), also called the preponderant (al-rujḥān), as they would say: the aṣl of speech is the literal not the metaphor (Al-Futūḥī, 1993).

This definition was not disputed by anyone, because it is often applied in Sharī’ah rulings, because it is necessary to act on what is most likely to be preponderant or correct (Al-Namlah, 2009).

The aṣl is expressed within the parlance of this meaning as the predominant on the Sharī’ah (al-gālib bi shar’), and this is what Al-Zarkashī also alluded to, and it is also agreed upon among the scholars, because it is the same meaning as the most correct and the preponderant.

The Third: the default (al-mustashḥab), like saying: the conflict between the aṣl (the default) and the fortuitous (Al-Eejī, 2003, Al-Zarkashī, 1992), like we say: whoever is sure of purity and in doubt about its invalidity, the aṣl is purity, i.e. sticking to the default status which is purity (Al-Bāḥusayn, 1988), and there is no disagreement on this meaning by any of those who approved of the proof of sticking to the default (al-istiṣḥāb) among the scholars (Al-Namlah, 2009).

The Fourth: the universal rule (al-qā’idah al-kulliyah) or the continuous rule (al-qā’idah al-mustamirrah), it is said: consuming the dead animal (that was not properly slaughtered) is contrary to the aṣl, i.e.: contrary to the continuous case. This meaning is also agreed upon, because the continuous rule must be applied in as much there is no obstruction to it, either in form of specifiers or reliefs.

The aṣl is also referred to as the worship (ta’abbud), as we would say: the obligatory of purity due to a release from the internal body is contrary to the aṣl, meaning: it could not be established through analogy, also due to having the same meaning as the continuous universal rule.

The Fifth: the model instance in legal analogy, which is the opposite of the branch in matters of legal analogy (al-qiyās), which is called the model instance (al-maqīs ‘alayhā).

Part two: the opinions of the scholars on the fifth meaning of al-aṣl (the model instance) technically:

There are two opinions by the scholars on the matter:

The first opinion: that the model instance is regarded a meaning of the aṣl.

The second opinion: that the model instance is not considered a meaning of the aṣl, this is the opinion of Al-Qarāfī, and this why he said: «They call it aṣl, and it is not one of these divisions. Therefore, al-Uṣūl (sing. aṣl) are of four connotations that are different in definition and concept, and the word is the common factor between them» (Al-Qarāfī, 1995).

2.3. THE DEFINITION OF THE CAUSE FOR THE UṢŪLĪ DISAGREEMENT.

No specific definition of the “causes of disagreement” as a technical term is found in the literature of the past scholars, because there is no known with that title in the past, and there are no peculiar writings of the past scholars on it, but one could glean the causes

through their statements on matters of disagreement whenever they make reference or allude to them while discussing the opinions with their proofs.

The causes of disagreement are therefore an intrinsic part of the science of disagreement, the science of disagreement should then be defined as an art and science on its own with its distinct literature, and what has been mentioned before is only a definition of disagreement in terms of perception and occurrence.

If we look at the causes of disagreement in general, we find that Dr. Fahd Al-Wad’ān has defined the causes of disagreement as a title for the science of the causes of disagreement, he said: What is meant by the causes of disagreement is: ways and means leading to the occurrence of conflict between scholars, which are the subject of dispute between scholars (Al-Wad’ān, 2008: 81)

As for those who defined the causes of disagreement in particular, either regarding the science of Uṣūl or regarding jurisprudence, we find Dr. Maḥmūd Maḥrān who defined the causes for the disagreement related to jurisprudence, where he said: Causes for the disagreements of jurists: are the issues that led to the existence of disagreements between the jurists, i.e.: the existence of which requires the existence of the disagreement (Maḥrān, ND).

With regard to those who defined the causes of disagreement related to the science of Uṣūl, we find Dr. Fahd Al-Wad’ān who said: If the dispute is related to the science of Uṣūl, then the meaning of the causes of the disagreement is: the ways and means leading to the occurrence of disagreement between the scholars on matters of the fundamental of jurisprudence, and this is realized through the roots of those differences and the motives behind them (Al-Wad’ān, 2008: 81).

Some other scholars said regarding what is meant by the cause of disagreement: it is the meaning that led to the disagreement on a matter (Āl-Muḡīrah, 2005: 169).

All the previous definitions are too elaborate and long, and they are in fact a diagnosis and description of the cause of the disagreement only, and the definition I consider most appropriate for the causes for the jurisprudential and fundamental disagreement in my opinion, after it became clear that the cause of disagreement is part of the science of disagreement, is: what leads to the subject of disagreement in the fundamental and off-shoot jurisprudential issues, and the proofs of the scholars regarding their opinions on them.

Therefore, I say regarding the definition of "the cause of the disagreement on matters of Uṣūl" is: what leads to the subject of dispute in the matters of fundamentals of jurisprudence, and the proofs of the scholars regarding their opinion on them.

3. THE CAUSE FOR DISAGREEMENT ON THE ISSUE, divided into two sub-topics:

3.1. THE CAUSE FOR DISAGREEMENT ON THE WORD “AL-AṢL” LEXICALLY.

The cause is due to one cause, which is the disagreement in the question of: Are these meanings contrasting and different in fact and reality? This cause is related to linguistic issues.

Whoever opines that the meanings are contrasting and opposite in fact and reality may argue that there are multiple meanings of al-aṣl lexically.

And whoever opines that contrast only exists in the facts not in the reality may argue that there is no necessary multiplicity among the meanings of al-aṣl lexically.

Hence, the contrast between these usages does not necessitate the multiplicity of meanings, rather these usages are deemed a form of expansion and embellishment in the

true sense, because the Arabs are known for using words interchangeably due to closeness in concepts without regard any factor that may suggest contradiction (Mirza Ḥabībullah, 1895, Al-Bāḥusayn, 1988).

This cause also follows the meaning that revolves around transmission and metaphor, as well as its revolving around the shared meaning and metaphor (Mirza Ḥabībullah, 1895, Al-Bāḥusayn, 1988).

3.2. THE CAUSE FOR DISAGREEMENT ON THE WORD “AL-AŞL” TECHNICALLY.

The disagreement is due to one cause, which is the disagreement on the question of: What is the meaning of al-Aşl in legal analogy according to the scholars of Uşūl? For instance, in case of deriving the ruling of the fermented wine from the ruling of alcohol through the process of legal analogy, what will be considered the aşl? Is it the text (proof)? Or the alcohol itself? Or the immutable ruling of alcohol?

Al-Zarkashī alluded to this cause when he said: "Due to the fact that the model instance is not an additional meaning, there is a disagreement regarding the aşl (origin) in legal analogy; is it the subject of the ruling, or its proof, or its ruling? Whatever it may be, it could not be an additional meaning, because if the origin of the analogy is its proof, then it is the previous meaning, and if its subject or ruling both are also called proofs metaphorically, hence, the origin does not digress from the meaning of the proof" (Al-Zarkashī, 1992, 1: 17)

Undoubtedly, the ruling is the prohibition, and the scholars have agreed that the reason of prohibition in the alcohol, which is the intense intoxication, is not the origin.

The scholars of Uşūl however disagreed on determining the meaning of the aşl in legal analogy on four opinions, which are:

1. The first opinion: that it is the subject of the ruling being used as the model and object of comparison, this opinion was attributed to the majority of the jurists and several theologians (Al-Āmidī, 2003, Al-Eejī, 2003, Ibn Amīr Al-Ḥajj, 1996, Al-Futūḥī, 1993).

2 – The second opinion: that the aşl is the ruling of the subject, i.e. the text indicating the ruling, because the aşl is what the ruling of the branch is adapted from and referenced to, and this is only achieved using the same ruling of the alcohol in case of its analogy for the ruling of the fermented wine, this opinion is attributed to the theologians also and the Mu'tazilah (Al-Āmidī, 2003, Ibn Amīr Al-Ḥajj, 1996, Al-Futūḥī, 1993).

3. The third opinion: that it is the ruling of the text and its reason (Ibn ‘Aqīl, ND, Al-Futūḥī, 1993).

4 – The fourth opinion that the aşl is the same ruling of the subject, it is the same ruling found in the origin, because it is the one on which the ruling of the branch is derived, this was chosen by Şafī al-Dīn al-Hindī who attributed it to a group of versed jurists and theologians, it is also the opinion of Al-Rāzī, and Sirāj al-Dīn al-Armawī (Al-Rāzī, 1997, Al-Armawī, 1988, Al-Hindī, 1995).

And the explanation of this is that: alcohol itself is the aşl according to the proponents of the first opinion, but for the proponents of the second opinion, alcohol is not the aşl, but the evidence that indicated its prohibition, and according to the proponents of the third opinion: the aşl is the prohibition of alcohol with intoxication, and as for the proponents of the fourth opinion: the aşl is only the prohibition of alcohol.

If we consider the aşl as what another thing is built upon, it is then correct to refer to the aşl as all of the subject of the ruling, its proof and the ruling itself, because the subject of the ruling is the origin of the text and the ruling as they both rely on it for existence, and the text is the origin for the knowledge of the ruling, as the ruling is premised on it, and the ruling of the origin is the foundation for the ruling of the branch, hence, it is its aşl.

Thus, the disagreement is mere verbal, because the analogy depends on each of these three factors.

If we consider the *aşl* as: what is independent by itself, and does not need others, even if nothing is built on it, the reference to "the subject of the ruling" as the *aşl* is most preferable, due to the existence of the attribute of its independence from the text and the ruling, as both two are the one in need of it.

4. CONCLUSION

At the end of this research, I conclude with the following findings:

- The importance of research on the science of fundamentals of jurisprudence regarding the causes of disagreement and its impact on the branches of jurisprudence.
- Some of the causes for the Uşūlī disagreement are traceable to the lexical connotation, and this explains the reality of the relationship between the science of fundamentals jurisprudence and the Arabic language.
- Some of the causes for the Uşūlī disagreement are traceable to issues and maxims of the fundamentals of jurisprudence.

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