

The Reason for the Disagreement between the Scholars of Fundamentals of Jurisprudence (Uṣūl Al-Fiqh) on the Definition of “Al-Fiqh”: A Fundamental Study of the Terminology

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Abstract

This research clarifies the reason behind the disagreement on the multiplicity of the definitions of the scholars of Islamic law on the term "al-Fiqh" and this is considered one of the very intricate issues for specialists in the science of "Uṣūl al-Fiqh" (Fundamentals of Jurisprudence). In the first topic, the word "al-Fiqh" was defined lexically and technically, and the meaning of "the reason for the Uṣūlī disagreement" according to the scholars was also highlighted, and in the second topic the reasons for the disagreement on the various definitions was discussed, and the conclusion includes the statement of the impact of the Arabic language and the maxims of Uṣūl al-Fiqh on the disagreement on the fundamental jurisprudential issues.

Keywords: *Disagreement, Jurisprudence, Fundamentals.*

1. INTRODUCTION

The knowledge of the reasons 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 reasons 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 reasons, 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).

In order to shed lights on the reasons behind the disagreements in the science of Uṣūl, this paper was written and titled:

“The reason for the disagreement between the scholars of Fundamentals of Jurisprudence (Uṣūl Al-Fiqh) on the definition of “al-Fiqh”: a fundamental study of the terminology”

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1.1. Research Problem:

The research problem lies in the following points:

- What is the meaning of reason for the disagreement on matters of Uṣūl?
- What is the definition of “al-Fiqh” lexically and technically?
- What is the reason for the various definitions of the term “al-Fiqh”?

1.2. Research Aims:

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

1.3. Research Importance:

The importance of the topic manifests in the following:

- That knowing the reasons 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 reasons 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 Plan:

It includes an introduction and two topic and a conclusion:

- Topic One: The Connotation of the Word “al-Fiqh”, divided into three sub-topics:
- Sub-Topic One: The Connotation of the Word “al-Fiqh Lexically.
- Sub-Topic Two: The Connotation of the Word “al-Fiqh” Technically.
- Sub-Topic Three: The Definition of the Reason for the Uṣūlī Disagreement.
- Topic Two: The Reason for Disagreement on the Issue, divided into two sub-topics:
- The Reason for Disagreement on the Word “al-Fiqh” Lexically.
- The Reason for Disagreement on the Word “al-Fiqh” Technically.

1.6. 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-FIQH", divided into three sub-topics:

2.1 THE CONNOTATION OF THE WORD "AL-FIQH LEXICALLY.

There is no dispute among scholars that what is meant by the title "al-Fiqh al-Akbar" (the greater jurisprudence) in the classical Islamic literature refers to the Science of Creed (al-'Aqīdah), and there is no disagreement among scholars that also that when the word "Fiqh" is used without the adjective "al-Akbar" it stands for the title of the science of the Sharī'ah which is related to ḥalāl and ḥarām.

There is no disagreement among the scholars of Arabic that the word "al-Fiqh" generally denotes understanding in the lexical sense.

The disagreement between scholars is on limiting the connotation of the word "al-Fiqh" to understanding the purpose of the speaker or the intention of the speaker, because the limitation therein has no evidence according to the linguists.

In explaining the meaning of the word "al-Fiqh" lexically, the scholars have diverse opinions, the most famous of which are four:

The first opinion: that the word "al-Fiqh": means understanding, which is meant to be an absolute understanding, whether it is an understanding of precise things, or an understanding of clear things, and whether it is an understanding of the purpose of the speaker or of others (Rabī'ah: 1993), this is the opinion of a group of the scholars of Uṣūl (Al-Āmidī, 2003, Ibn 'Aqīl, 1999, Isnawī, 1999, Al-Hindī, 1995, Al-Shawkānī, 2000).

The evidence for this opinion is the use of the word "Al-Fiqh" to denote the absolute understanding in the following verses:

1- Almighty Allāh says: "The seven heavens and the earth and whatever is in them exalt Him. And there is not a thing except that it exalts [Allāh] by His praise, but you do not understand (tafqaḥūna) their [way of] exalting" [Al-Isrā':44]

Therefore, since Fiqh can only be achieved basically by practicing what elevates to it, the use of verb formula "tafa'ul" that shows difficulty becomes inevitable, so that its meaning denotes the difficulty in the acquisition of Fiqh - i.e.: the understanding of the religion - and this is a pointer to the fact that that understanding of the religion is a delicate matter that could not be easily achieved (Ibn Āshūr, 1984).

2- The Almighty says: "And We have placed over their hearts coverings, lest they understand it (yafqaḥūhu), and in their ears deafness." [Al-Isrā':46]

While it was established in the context of monotheism that they were wallowing in foolishness, he turned to the head the people of understanding, and said, referring to the prophecy in conjunction with "Lā yafqaḥūn" (they do not understand), underscoring the fact that they do not understand the voice of the speaker talk less of the voice of the situation (Beqā'ī, N D).

3- And Almighty Allāh says "So what is [the matter] with those people that they can hardly understand (yafqaḥūn) any statement?" [An-Nisā':78]

4- And Almighty Allāh says: "They said, "O Shu'ayb, we do not understand (mā nafqaḥū) much of what you say, and indeed, we consider you among us as weak." [Hūd:91].

The second opinion: That Fiqh is the understanding and perception of subtle and hidden things, whether it is the purpose of the speaker or for others, and this is the opinion of some of the scholars of Uṣūl (Shīrāzī, 1988, Al-Qarāfī, N. D), al-Ṭūfī: «This requires that al-Fiqh is more specific than knowledge (al-‘Ilm), this is the difference between the two according to their attachment» (al-Ṭūfī, 2003), and they substantiated this by saying:

- That the jurists have technically designated the word Fiqh to the theoretical sciences (al-Qarāfī, N. D), and this means that it can only exist in the as an abstract thought, and therefore it is not suitable to say: I gained the fiqh that two is more than one (al-Bāḥusayn, 1988).

This designation does not have any proofs lexically - i.e.: the designation of Fiqh to the intricate hidden understanding -, and what they mentioned that it is correct to say: “I gained the Fiqh of (understood) your words”, and it is not said: “I gained the Fiqh of (understood) the sky and the earth”, is because Fiqh is related to the meanings and not the sensed, and heaven and earth are then not related to Fiqh.

The above justifications can be refuted with two proofs:

- The first: The words of Almighty Allāh: “So what is [the matter] with those people that they can hardly understand (yaḥqāhūn) any statement?” [An-Nisā’:78], this verse stated that their understanding of any discussion - even if it is clear - is called Fiqh.

- The second: The words of Almighty Allāh: “They said, "O Shu‘ayb, we do not understand much of what you say, and indeed, we consider you among us as weak. [Hūd:91], this verse is clear in connotation, because most of what Shu‘ayb says was clear (Seyyid, N. D).

The third opinion: That Fiqh is to understand the purpose of the speaker (al-Bāḥusayn, 1988, Al-Rabī‘ah, 1993), and Ibn Mufleḥ expressed this in another words by saying, it is: “knowing the intention of the speaker” (Ibn Mufleḥ, 1999), this is the opinion of some the scholars of Uṣūl (Al-Rāzī, 1998, Al-Jurjānī, 1985), and they substantiated this by saying:

- That the meaning of Fiqh lexically is reserved for a special understanding, which is to understand the speaker's words, without his action, which makes it uninclusive of all types of understanding (al-Namlah, 2009).

The fourth opinion: That Fiqh is knowledge (al-‘Ilm), and this is the opinion of Imām al-Ḥaramayn al-Juwaynī (1996), and Abū Ya‘lā (1993), and Elkia Harāsī, and their proofs are as follows:

- The Arabs do not separate in their words between the statement of someone: «Faqahtu shayh» and his statement: «‘alimtuḥū» (i.e. both means I knew it), although the scholars of Sharī‘ah have specified the Fiqh with a particular knowledge out of humility and technicality (al-Juwaynī, 1996).

There are those who combined the meaning of both knowledge (al-‘Ilm) and understanding (al-fahm) in the lexical meaning of Fiqh, this is the opinion of al-Ghazālī in his “Al-Mustaṣfā” (N. D), as well as Abū al-Khattāb (1985) in “Al-Tamhīd” who expressed it in other words by saying: «Fiqh lexically is: cognizance (al-Ma‘rifah) and understanding (al-Fahm), it is said: «faḥiḥtu kalāmak» if you know and understand it, and it is said: «faḥiḥtu al-kalām» i.e.: I knew and understood it, all are of the same meaning» (al-Kalwathānī, 1985).

Safī al-Dīn al-Hindī said: "Whoever says that it means understanding and knowledge, if he means it is the literal meaning of both, then this is invalid, because synonymy is not the default" (al-Hindī, 1995).

2.2. SUB-TOPIC TWO: THE TECHNICAL CONNOTATION OF THE WORD “AL-FIQH”.

There is no disagreement among scholars that the literal meaning of the Science of Fiqh is specific to the Science of the Sharī’ah, and there is no disagreement that the Science of Fiqh is the legal rulings derived from the proofs of the Sharī’ah.

However, the disagreement on the concept of Fiqh lies in whether it is the knowledge (al-‘Ilm) of the rulings of the Sharī’ah? Or it is cognizance (ma’rifah) of the rulings of the Sharī’ah? Or is it the legal rulings themselves? This is the point of disagreement.

The scholars of Uṣūl al-Fiqh differed on the technical definition of Fiqh into three schools of thought:

The first school: Defined Fiqh as «al-‘Ilm (the knowledge)» of the practical legal rulings acquired from their detailed proofs, and this is the opinion of several scholars of Uṣūl (al-Juwaynī, 1979, al-Gazālī, N. D, Ibn Qudāmah, 2002, al-Āmidī, 2003, al-Qarāfī, N. D, al-Zarkashī, 1992, al-Shawkānī, 2000 al-Laknawī, 2002), and their proof is as follows:

- That knowledge is a precaution against conjectures in legal rulings, because although conjectures may be referred to as Fiqh in the colloquial parlance, it is not the same as Fiqh in the lexical and the technical parlance of Uṣūl, as Fiqh therein is the knowledge of it or knowledge of its application based on peremptory perception, even if it is presumptive in itself (al-Āmidī, 2003).

The second school: Defined Fiqh as «al-Ma’rifah (the cognizance)» of the legal rulings, this is the opinion of some scholars of Uṣūl (Ibn Barhān, 1983, Ibn al-‘Arabī, 2002, al-Ṭūfī, 2003, al-Murdāwī, 2000), and attributed to the earlier scholars (al-Ṭūfī, 2003), and al-Murdāwī (2000) mentioned that it is in agreement with the definition of the Ḥanbalī jurists, and their proof is as follows:

- That knowledge of the human being is borne out of ignorance, and cognizance necessitates a previous ignorance, while knowledge does not, and that is why Allāh is described as the Knowledgeable (‘Ālim), and He is not described as the cognizant (‘Ārif) (Ibn al-Mubarrid, 2000).

The third school: Opined that the concept of Fiqh is not related to neither knowledge nor cognizance, and that what is meant by Fiqh is the legal rulings themselves, and their proof is as follows:

- That the knowledge or cognizance of Fiqh is not the same as Fiqh itself, hence it is not included in its essence, and what is not included in its essence could not be an entity in its definition (al-Murdāwī, 2000), and the definition of the essence (al-māhiyyah) is: reference to the rational matter regardless of the external existence.

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

3.1. THE REASON FOR DISAGREEMENT ON THE WORD “AL-FIQH” LEXICALLY.

The reason for the disagreement on the issue is due to two reasons:

The first reason: Could be traced to the disagreement on the issue of differentiating between the meaning of knowledge (al-‘Ilm) and the meaning of understanding (al-fahm), and this reason is from matters of linguistics and lexicology.

Whoever chose the opinion that differentiate between meaning of knowledge and the meaning of understanding may submit that Fiqh is knowledge in addition to

understanding, and whoever goes to say that there is no distinction between the meaning of knowledge and the meaning of understanding, may submit that Fiqh is the same as understanding.

This reason is related to the first, second and third schools of thought with the fourth school as well.

There are scholars who did not differentiate between knowledge and understanding and took both to be of the same meaning, Abū al-Khattāb (1985) pointed out this when he stated that understanding and knowledge are one.

Al-Zarkashī (1992) chose that what is meant by these terms and meanings is the same thing. According to him, Fiqh is knowledge of something and the understanding of it, and the obvious is that what he meant by both is the same, which is understanding, because it interpreted understanding with the cognizance about something with the heart, and the cognizance of something with the heart is in reality the knowledge of it (Ibn Sīdā, 2000, al-Zarkashī, 1992).

This opinion was criticized by Safī al-Dīn al-Hindī when he said: "Whoever says that it means understanding and knowledge, if he meant it is the literal meaning of both, then this is invalid, because synonymity is against the default" (al-Hindī, 1995).

There are those who differentiate between the meaning of understanding and knowledge, so they did not combine between them in the definition of Fiqh as they only chose of them instead.

There are some scholars who opines that understanding takes precedence over knowledge, Al-Āmidī said: "The most likely is that understanding is different from knowledge, as understanding is the quality of the mind in terms of preparing it to capture all the commands that comes through it, even if the one who is characterized by it is not a scholar such as the clever commoner, therefore every scholar understands and not everyone that understand is a scholar" (al-Āmidī, 2003).

Also, there are some scholars who are of the opinion that knowledge takes precedence over understanding, because Fiqh is knowledge of the consequence of the speech after meditation, and therefore it is not right to say: «Allāh is a Faqīh (jurist)», because He is not attributed to meditation, and you say to someone you are addressing: «Try and understand (tafaqqah) what I and saying» i.e.: meditate to know it, and it is used only on the meaning of speech (al-Bāḥusayn, 1988).

Perhaps the most preferred opinion is that one the espouses that Fiqh in its lexical connotation is the absolute understanding (al-Bāḥusayn, 1988).

The second reason: Could be traced to the lack of verification and proper research.

This reason is related and peculiar to the third opinion.

Whoever says that Fiqh is the understanding of the purpose of the speaker from his words, or the cognizance of the intention of the speaker, then the reply would be there is no evidence for such from the linguistic perspective, it is just a restriction of the absolute without an evidence, and because facts form the classical Arabic lexicons do not support their opinions (al-Bāḥusayn, 1988).

3.2. THE REASON FOR DISAGREEMENT ON THE WORD "AL-FIQH" TECHNICALLY.

The reasons for the disagreement on the issue are three:

The first reason: Could be traced to the disagreement on the issue of whether Fiqh (Jurisprudence) is a matter of certainty or speculation. This reason is related to the maxims of Fundamentals of Jurisprudence.

Hence, whoever argues that Jurisprudence is a speculation may argue that it is not correct to limit jurisprudence to "knowledge" (al-Bāḥusayn, 1988), because knowledge is the rule of the definitive mind that corresponds to reality from evidence, and jurisprudence is not (al-Isnawī, 1999, Zuhayr, N. D).

Jurisprudence is derived from the textual proof, and as such it is speculated, because if the textual proof is differed upon, such as *Istiṣḥāb* (clinging to the default), it only gives speculation, and the ones upon which there is agreement between the scholars are: the Qur'an, the Sunnah, consensus (al-Ijmā') and legal analogy (al-Qiyās).

As for legal analogy, it is clear that it does not give other than speculation, and as for the consensus, because it reached us through individuals, it is also considered to be speculative, and as for the Sunnah it was narrated by individuals then it only can only give speculation, and for one narrated conventionally it is considered to be definitive in its text like the Qur'an, but its connotation will be considered speculative; Hence, Jurisprudence is considered speculative, because it is derived from the speculative proofs.

If it is speculative, then it is not correct to define Jurisprudence as «al-'Ilm (knowledge)» of the rulings, but rather it ought be defined as «al-Zan (the speculation)» of the rulings, because speculation is different from knowledge, as speculation is the realization of the most likely part, while knowledge is a definitive perception that suits the reality based on evidence, and thus the definition of Jurisprudence as al-'Ilm is a definition of it with a contrast, so it is invalid, because among the conditions of a definition is that it suits the level of the defined (al-Isnawī, 1999, Zuhayr, N. D).

Hence, whoever opines that Jurisprudence is definitive may argue that it is correct to define Jurisprudence as "al-'Ilm" (knowledge), because the definitive is a proof equal to the knowledge and not more general than it, and the proof has produced a definitive fact, which makes it a definitive due to the proof, thus it becomes equal with knowledge.

Therefore, Imam al-Ḥaramayn al-Juwaynī (1996) pointed out and said: "If it was said, what is the Fiqh? We would reply: In the terminology of scholars of the Sharī'ah it is defined as: knowledge of the rulings binding the legal liability, if it was said: Most of the issues of the Sharī'ah are speculations, we would reply: the speculative is not from the Jurisprudence, but Jurisprudence is the knowledge of the obligation to act when the speculation arise, and this is why the versed scholars would say: the narrations from individuals and the analogies of Jurisprudence does not necessitate action by themselves, rather action is only obligatory on what makes the action compulsory, which are the conclusive proofs regarding the obligation to act when narrating the individual narrations or applying the analogies" (al-Juwaynī, 1996: 4).

Based on the foregoing, Fiqh is the knowledge of the definitive legal rulings not the speculative, and the speculative rulings are regarded knowledge in the jurisprudence parlance, Ibn al-Hummām said: «And Fiqh is the taṣdīq of the actions of the legally liable which are not meant to be creed from the definitive legal rulings with the proficiency in deduction» (Ibn al-Hummām, 1932), and the meaning of ratification (al-taṣdīq) is: the definitive perception, whether necessary or theoretically, right or wrong, it encompasses all forms of definitive perceptions (Ibn Amīr al-Ḥāj, 1996).

The second reason: Could be traced to the disagreement on the issue of al-Ḥukm (the ruling), is it definitive or speculative? This reason is related to the maxims of Fundamentals of Jurisprudence, and the same explanation made on the previous reason is also applicable here.

The third reason: Could be traced to the issue of differentiating between knowledge (al-'Ilm) and cognizance (al-Ma'rifah), which is related to matters of linguistics.

The meaning of differentiating between knowledge and cognizance is as mentioned by al-Ṭūfī: “As for cognizance, it was said: it is the same as knowledge, and it was said: there is a difference between them, which is that cognizance necessitates a precedent of ignorance, unlike knowledge, and this is why this term is not used for the Almighty Creator, so it is not said: God is cognizant of such, as such He is cognizant, unlike knowledge, He is the Knowledgeable, and some other statements were made regarding between the two” (al-Ṭūfī, 2003).

There is disagreement among the scholars regarding differentiating between knowledge (al-‘Ilm) and cognizance (al-Ma’rifah), along three opinions:

First: that there is an absolute generality and specification between them, cognizance is more specific than knowledge, because cognizance is the knowledge of the reality of something detached from any other thing, while knowledge can be compound and detailed (al-‘Askarī, N. D), every cognizance is a knowledge, but not every knowledge is a cognizance, and the Arabic word Ma’rifah (cognizance) denotes the distinction of the known from others, unlike knowledge, it does not denote other than another form of specification.

Second: that there is a partial generality and specification between them, as cognizance is specific to what was preceded by ignorance, and as such it is more specific than knowledge, as knowledge includes what was preceded by ignorance and what was not preceded by ignorance, hence knowledge is more general in that regard.

Also, cognizance can be in form of both certainty and speculation, and this makes it more general than knowledge, while knowledge is specific to what is in fact certain.

And the third: that there is difference between cognizance and knowledge, as cognizance is used for the mere perception that has without the ruling, in contrary to knowledge, as knowledge is related to perception and confirmation (al-Ḥamad, 2010).

Fiqh is considered as confirmation, not just a perception, hence whoever differentiates between knowledge and cognizance would define Fiqh with knowledge, and would criticize whoever defines it with cognizance due to this difference, which is the difference of contrast.

And whoever did not differentiate between them and defined Fiqh as cognizance makes no distinction between them. Hence, al-Muṭī’ī (1924) pointed out that what is meant by cognizance and knowledge in the technical definition are of the same meaning, which is the absolute acquaintance that includes the perception and the confirmation, and he noted that the difference between cognizance and knowledge was not really intended to influence the technical connotation.

4. RESEARCH CONCLUSION

The following are the major findings of the foregoing paper:

- The importance of the Uṣūlī research into the reasons for the disagreement between scholars and their impact on the practical issues of Jurisprudence.
- Part of the reasons for the Uṣūlī disagreement could be traced to the Arabic linguistics, and this explains the reality of the interplay between the science of Fundamentals of Islamic Jurisprudence (Uṣūl al-Fiqh) and the Arabic language.
- Part of the reasons for the Uṣūlī disagreement could be traced to the issues and maxims of the Science of Islamic Jurisprudence.

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