East African Scholars Journal of Education, Humanities and Literature
Abbreviated Key Title: East African Scholars J Edu Humanit Lit
ISSN 2617-443X (Print) | ISSN 2617-7250 (Online) |
Published By East African Scholars Publisher, Kenya

OPEN ACCESS

DOI: 10.36349/easjehl.2019.v02i08.003 Volume-2 | Issue-8 | Aug-2019 |

Review Article

Disagreement among Muslim Jurists: A wake-up call

Dr. Zayyanu Musa Dogon Daji[1] and Dr. Abubakar Bako[1]

Department of Islamic Studies, Faculty of Arts and Islamic Studies, Usmanu Danfodiyo University, Sokoto, Nigeria

*Corresponding Author
Dr. Zayyanu Musa Dogon Daji

Abstract: Islamic Jurisprudence enjoys varieties of disagreement in many acts of *Ibadah* which is *Rahmah* (Mercy) for the entire Muslims *Ummah*. This paper highlights the validity and the degree of differences of opinions among four major Muslims Jurists (Maliki, Hanafi, Shafi'i and Hanbali) with a view to show the reasons and significance of the differences of Juristic opinion for Muslims world over.

Keywords: Disagreement, Muslim Jurists, and Juristic opinion.

INTRODUCTION

Disagreement among scholars is Rahma (mercy) for Muslims as it help provides verities of solutions to a problem (s) in existence and the differences among them was not in Qur`an and Hadith but it lies mostly on tiny issues of *Shari`ah*.

We have witness how the four schools of Islamic jurisprudence had firmly established themselves within the Muslim community internationally, However, in the past and present, there have been people who are and were critical of the schools of jurisprudence. Some are even inclined to refer to these schools as 'sects' or something that should be eradicated from the Muslim society. The four schools do not oppose one another as is the case with some Christian denominations. The Catholics may not pray in a Protestant Church and vice versa. It is reported from 'Umar Bn Abd 'Al-Aziz' who said,

I don`t desire and wish that the companions of the Prophet (S.A.W) don`t disagree. If there was only one view, people would have been restricted and limited. In reality these people are scholars who ought to be followed. If a person followed any one of them, then this is the *Sunnah (*A. sakhawi, p.32*)*.

Disagreement is welcome, but this is not a general ruling. The disagreement that is beyond the confines of the shari`ah and is not based on the acceptable proof is unacceptable.

It is possible to classify the causes of disagreement in jurisprudence into three categories:

- Disagreement because of the nature of people and their innate differences.
- Disagreement because of the nature of the text.
- Disagreement because of the nature and implication of the Arabic Language (Z. Mustapha, 1967).

Some of the most important reasons for disagreement amongst the jurists without restricting these differences to a specific area or stage will be highlighted.

The following are some of the reasons for disagreement:

- A certain companion may have heard a verdict or ruling on a particular matter while another may not have been aware of the ruling and the latter then applied *ijtihad.* This *ijtihad* sometimes conformed to the *Hadith* and at other times it may not have conformed. There are times when the *Hadith* may have not reached him at all. This also illustrate that the scholars varied in their knowledge of the *sunnah*. It may be said that every single *Hadith* did not reach every *Mujtahid.*
  - It is reported that bn Mas`ud was asked about the dowry of a woman whose husband had passed away without fixing any amount for her. He was not aware of any ruling from the Prophet (S.A.W) in this matter. This

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Journal homepage:
http://www.easpublisher.com/easjehl/

Article History
Received: 15.07.2018
Accepted: 28.07.2019
Published: 14.08.2019

continued for one month and after persistence from the people, he ruled that she should be given a dowry equivalent to the woman of her social standing. She had to complete the waiting period and she was entitled to inherit. Ma`qil bi Yasir confirmed that the Prophet (S.A.W) ruled in the same way in another incident. Bn Mas`ud was overjoyed at the thought of having ruled exactly as the Prophet (S.A.W) had done (A.s wahi. 1986). it is reported that Abu Hurairah was initially of the view that whoever awakes in a state of impurity, then he is not compelled to fast. He was informed by, some of the wives of the Prophet (S.A.W) of the contrary and he retracted his view (Z. Mustapha, 1967).

- As already mentioned, there were times when a given companion was unaware of the *Hadith* initially, bn Amr instructed the women to untie their hair when taking a bath. Aishah (R.A) heard this and exclaimed in objection, "Why doesn`t Bn Amr order them to shave off their hair!" (she said this implies that there was no need for them to untie their hair) (A.s wahi. 1986).

- Sometimes they differed over the apparent implication of an action they saw the Prophet (S.A.W) do. Some may have regarded it as an act of worship, while others may have regarded it as merely permissible (*mubah)*. On leaving Arafat, the Prophet (S.A.W) stopped at a place called Abtah. Abu Hurayrah and bn Umar regarded this as an act of worship and devotion and thus one of the *sunnah* practices of hajj, while Aisha regarded it as coincidence and not a *sunnah (*Ibid.p.27*).*

- Scholars may have differed because of their different conclusion and assumptions on what they observed the Prophet (S.A.W) do. When the Prophet (S.A.W) performed *hajj*, some scholars, "maintained that he performed *Tamattu* (to combine the practice of *Hajj* and *Umrah* by doing the Ihram separately for each of the two), while others maintain that he perfumed *Qiran* (to combine the acts of *Hajj* and *Umrah* in a single journey) (A. Jafar. 1997).

- Sometimes the disagreement was because of the apparent incorrect retention of a *Hadith.*bn Umar reported that a deceased person is punished because of his family`s crying over their loss. 'Aishah disapproved and maintained that the Prophet (S.A.W) passed by a Jewish woman who had passed away while her family were mourning. The Prophet (S.A.W) said: "they are crying over her, but she is being punished in her grave." She maintained that the punishment was not connected to crying (Ibid).

- They differed in the manner they tried to reconcile between two apparently contradictory issues or narrations. The Prophet (S.A.W) prohibited anyone from facing the *Qiblah* while relieving oneself. Some scholars maintained that this ruling is a general one and was not abrogated. On the other hand, the companion, Jabir saw the Prophet (S.A.W) relieving himself while facing the *Qiblah*. This happened a year before the Prophet (S.A.W) passed away. Bn Umar saw him relieving himself with his back to the *Qiblah* while facing sham. Some scholars deduced that the prohibition is confined to open areas like the desert and not to build up areas.

  - It must be noted that abrogation necessitates that one knows the date of the incident, the statement of the Companions and the statement of the Prophet (S.A.W).

- Sometimes differences arise from the very nature of the Arabic language. The word *Qur'*an verse 228 of surah Al-Baqarah. This word means both period of cleanliness and the period of bleeding during a woman menses. Because of this, the jurists differed over the duration of the waiting period of a divorcee.

- The scholars differed over the reason or ratiolegis (*illat)* that resulted in a particular ruling. An example of this is standing for bier. Some maintained that is was done out of respect for the Angels that are present. Others maintained that it was done because of the severity of death. While other believed that the Prophet (S.A.W) stood when the body of a jew carried past him. He did this because he did not wish that a disbeliever be higher than him. Dr. fathi Durayni regards this as one of the most important factors contributing to differences between the jurists (K.albagh dadi. p.37).

- The scholars differed over some of the conditions and requirements that render a *Hadith* as authentic or not. Continuity in the chain of transmission is necessary to render a *Hadith* as authentic. The scholars however differed over the actual application and understanding of this condition. Imam Bukhari and others maintain that it is essential for the narrator and his teacher to have met even if it was only once. While Imam Muslim and others say that the mere possibility of meeting is sufficient. The subsequent result of this difference is that Imam Muslim may classify a *Hadith as Sahih* and Imam Bukhari may not. Thus the jurists that adopted Imam Muslim`s view will accept the *Hadith* as evidence in an issue of jurisprudence, while those who adopt Imam Bukhari`s view may not. Likewise, they differed

over the credibility and integrity of the narrators of the *Hadith (*Ibid p.54*).*

- Is authenticity of *Hadith* a pre-requisite for acting upon it? The scholars agreed that if and when a *Hadith* is authentic or good, then it is acceptable as evidence. However, a *Hadith* that is weak may be used to establish and prove that something is desirable. This is the view of majority of the scholars. There are however some scholars that permits the usage of a weak narration in issues of jurisprudence. In fact some have preferred in to analogical reasoning.

- They differed over the documentation of the words of the Prophet (S.A.W) and the subsequent literal and figurative transmission of the *Hadith.*

- In a *Hadith* reported by Abu Dawud, the Prophet said: 'whoever performs the *Janazah Salat* in the mosque, then there is no harm." (*falashay`ealayh)* while the narrations reported by Abd Al-Razzaq in his *Musannaf* is as follows: whoever pewrforms the *Janazah Salat* in the mosque, then there is nothing for him "(*fala shay lahu)* (Ibid p.73).

    - Imam Shafi`i and others adopted the first narrations and therefore permitted the *Janazah Salat* in the mosque. Imam Abu Hanifah adopted the narration in the *musannaf* and therefore discourage the prayers for the deceased in the mosque.

- The differences that arose because of the precision and correct spelling of a word in Arabic or even the diacritical signs on the last letter of the word.

    - A good example of the above is if a sheep is slaughtered following the correct Islamic procedures and out of its belly a dead lamp or fetus is found. It is permissible to consume this with or without slaughtering it?

    - The *Hadith* (*Dhakat al-jan dhakat Ummihi).* This *Hadith* is reported in the nominative and the accusative form, that is the second *Dhakat* may be read with a *Dammah* or a *Fathah.* Whoever reads it in the nominative form, then slaughtering the mother would suffice and thus it would be permissible to consume the fetus without slaughtering it. This is the view adopted by Imam Shafi`i.

    - While those who read in the accusative form that it is necessary to slaughter the fetus as well before it can be consumed. This is the view adopted by Imam Abu Hanifah (Ibid).

- Sometimes the *Hadith* may have reached a jurists together with its cause with the results the jurist understood its implication and ruled accordingly. It may have reached another jurist without the cause, thus his understanding may differ and subsequently his verdict may also differ.

CONCLUSION

It is now clear that Muslims in Nigeria and even beyond should stop jumping onto conclusion over any jurisprudential issue without convincible and reliable evidence as this paper shows that differences among the jurists occurs over the years and will forever continue to be repeating itself, and differences over a jurisprudential issue does not mean the jurists are in conflict no, it rather paves way for having multiple solutions of a new problems for Muslim ummah.

End Notes

1. A. sakhawi, al-maqasid al-hasanah, dar-al-qiblah, Jeddah (nd) p.32
2. Z. Mustapha, (1967). al-madkhal al-fiahi al-aam, np,np, ,p.2.2
3. A.s wahi. (1986). alinsaf fi bayan asbab alikhtilaf, daral nafa`s Beirut, p.23
4. Ibid.p.27
5. A. Jafar. (1997). history of Islamic legal theories, cambridge university press, cambridge, p.259.
6. Ibid
7. K.albagh dadi, alfaqih wa al-mutufiqqih vol 2, dar al-nafaiis, no. 26 np, np, nd p.37
8. Ibid p.54
9. Ibid p.73
10. Ibid

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