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## THE DIVERSITY OF JURISTIC SCHOOLS: ITS EMERGENCE AND STATUS IN ISLAMIC JURISPRUDENCE

Mustapha Guealia\*

**Abstract.** This article discusses the issue of the emergence of the juristic schools (madhhabs) in the Islamic world, clarifying that the appearance of these schools was not the result of disputes or division among Muslims, but rather came as a natural response to their ever-renewing needs through the ages. For the leading scholars and imams exerted themselves in understanding the religious texts and established firm principles and foundations, which helped anchor and organize Islamic jurisprudence. Thus, the madhhabs became comprehensive intellectual schools that enriched Islamic thought and contributed to preserving its legal heritage. Moreover, it is clear that these madhhabs played an essential role in unifying references, as they provided scholars with a strong source from which they organized fatwas and rulings, so it became possible for Muslims to return to them when seeking out the legal ruling on new issues. In addition to this, the flourishing of authorship in fiqh and the increase of debates among the followers of the schools contributed to deepening legal awareness and broadening the horizons of research. At the same time, it is necessary to point out some of the negative aspects that accompanied adherence to madhhabs, such as the spread of madhhab fanaticism at times, and the decline of the spirit of ijtihad and the closure of some minds to new emerging issues. Despite these phenomena, the presence of followed madhhabs remained a scholarly necessity, as they balanced the diversity accepted in Sharia with adherence to the principles, and preserved the intellectual and juristic unity of the ummah. Finally, the importance of the juristic schools emerges today more than ever, as they form a link between the heritage of the nation and its present, and provide a solid foundation from which contemporary scholars exert themselves to address new issues in a disciplined spirit that abides by the well-established rules of ijtihad.

**Keywords:** History of Fiqh, Madhhab diversity, Ijtihad, Islamic heritage

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## МНОГООБРАЗИЕ ПРАВОВЫХ ШКОЛ: ИХ ВОЗНИКНОВЕНИЕ И МЕСТО В ИСЛАМСКОЙ ЮРИСПРУДЕНЦИИ

Мустафа Гуалия\*

**Абстракт.** В данной статье рассматривается вопрос возникновения правовых школ (мазхабов) в исламском мире. Подчёркивается, что появление этих школ не было следствием разногласий или раскола среди мусульман, а стало естественным ответом на постоянно обновляющиеся потребности общества на протяжении различных исторических эпох. Выдающиеся учёные и имамы прилагали значительные усилия к пониманию религиозных текстов и выработали прочные принципы и основы, которые способствовали укреплению и систематизации исламской юриспруденции. Таким образом, мазхабы превратились в целостные интеллектуальные школы, обогатившие исламскую мысль и сыгравшие важную роль в сохранении её правового наследия. Кроме того, очевидно, что данные школы сыграли ключевую роль в унификации правовых источников. Они предоставили учёным надёжную основу для вынесения фетв и юридических постановлений, благодаря чему мусульмане получили возможность обращаться к ним при поиске правового решения новых вопросов. Наряду с этим, расцвет авторства в области фикха и увеличение научных дискуссий между последователями различных школ способствовали углублению правового сознания и расширению исследовательских горизонтов. В то же время необходимо указать на некоторые негативные явления, сопровождавшие приверженность мазхабам, такие как распространение мазхабного фанатизма в отдельные периоды, ослабление духа иджтихада и закрытость к рассмотрению новых возникающих проблем. Несмотря на это, существование признанных правовых школ оставалось научной необходимостью, поскольку они обеспечивали баланс между допустимым в Шариате многообразием и соблюдением основополагающих принципов, а также сохраняли интеллектуальное и юридическое единство уммы. Наконец, значение правовых школ в современную эпоху проявляется с особой силой, поскольку они служат связующим звеном между наследием уммы и её настоящим, предоставляя прочную основу, на которой современные учёные могут прилагать свои усилия для решения новых вопросов в рамках дисциплинированного иджтихада, основанного на устоявшихся правилах.

**Ключевые слова:** история фикха; разнообразие мазхабов; иджтихад; исламское наследие

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## FİQHİ MƏZHƏBLƏRİN MÜXTƏLİFLİYİ: ONLARIN YARANMASI VƏ İSLAM HÜQUQUNDAKI MÖVQEYİ

### Mustafa Qualiya\*

**Abstrakt.** Bu məqalədə İslam dünyasında fiqh məzhəblərinin (məzhəblərin) yaranması məsələsi araşdırılır və vurğulanır ki, bu məzhəblərin meydana çıxması müsəlmanlar arasında ixtilaf və ya parçalanmanın nəticəsi olmamış, əksinə, zaman keçdikcə yenilənən ehtiyaclara verilən təbii və elmi cavab kimi formalaşmışdır. Böyük alimlər və imamlar dini mətnləri dərinlənən anlamaq üçün ciddi səylər göstərmiş, möhkəm prinsiplər və əsaslar müəyyən etmişlər ki, bu da İslam fiqhinin sabitləşməsinə və sistemləşməsinə mühüm töhfə vermişdir. Beləliklə, məzhəblər İslam düşüncəsini zənginləşdirən və onun hüquqi irsinin qorunmasında mühüm rol oynayan əhatəli elmi məktəblərə çevrilmişdir. Eyni zamanda aydın olur ki, məzhəblər hüquqi istinadların vahidləşdirilməsində mühüm rol oynamışdır. Onlar alimlərə fətvaların və şəriət hökmlərinin tərtibində möhkəm elmi mənbə təqdim etmiş, yeni məsələlərdə şəri hökm axtaran müsəlmanların bu məzhəblərə müraciət etməsini mümkün etmişdir. Bununla yanaşı, fiqh sahəsində müəllifliyin genişlənməsi və məzhəb ardıcılıqları arasında elmi müzakirələrin artması hüquqi şüurun dərinləşməsinə və tədqiqat üföqlərinin genişlənməsinə səbəb olmuşdur. Bununla belə, məzhəblərə bağlılıqla yanaşı bəzi mənfə halların da meydana çıxdığını qeyd etmək zəruridir. Belə ki, bəzən məzhəb təəssübkeşliyi yayılmış, ijtihad ruhu zəifləmiş və yeni ortaya çıxan məsələlərə qarşı bəzi düşüncə qapanmaları müşahidə edilmişdir. Buna baxmayaraq, məzhəblərin mövcudluğu elmi baxımdan zəruri olmuşdur; çünki onlar Şəriətdə qəbul edilən müxtəlifliyi əsas prinsiplərə sədaqətlə tarazlaşdırmış və ümmətin elmi və fiqhi birliyini qoruyub saxlamışdır. Nəhayət, fiqh məzhəblərinin əhəmiyyəti bu gün daha da qabarıq şəkildə üzə çıxır. Onlar ümmətin irsi ilə onun bu günü arasında mühüm bir körpü rolunu oynayır və müasir alimlərə yeni məsələləri möhkəm ijtihad qaydalarına əsaslanaraq nizamlı və məsuliyyətli şəkildə həll etmək üçün etibarlı bir zəmin yaradır.

**Açar sözlər:** fiqhın tarixi; məzhəb müxtəlifliyi; ijtihad; İslam irsi

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## 1. Introduction

Praise be to Allah, the Lord of the Worlds, and prayers and peace be upon the noblest of messengers, our Prophet Muhammad, and upon all his family and companions.

As for what follows:

Sometimes, the word “madhhab” (school of jurisprudence) is connected in people’s minds with negative images, and the reason for that is due to sectarian bigotries that characterized some periods in the history of Muslim jurists. Many times, the sources, refutations, debates, and various books have documented those negative aspects. Also, this word became associated with rigid imitation (taqlid) of the ijthad (juristic efforts) of earlier scholars, which might give an impression that there is no longer a need for continual ijthad, deep research, and sound academic verification.

But such negative linking has totally hidden the central role and the great virtue that the fiqh schools presented for Muslims and their outstanding service to Islamic law. We actually cannot understand this virtue unless we imagine if the history of Islamic jurisprudence reached us empty of those documented followed schools, be it those that vanished away or those that remained and continued across the eras. So, how would have been the state of Islamic jurisprudence then? Surely it would have turned into a scattered group of ideas and opinions.

And with this importance of the fiqh madhhabs that is not hidden, the question that comes up is: why were there several madhhabs while all of them came from one origin? And what are the causes that led to the emergence of the juristic schools?

In my attempt to answer this problem, I talked about four topics:

**First topic:** The meaning of school multiplicity.

In it, I mention what is meant by this term, and distinguish it from things that may be mistaken for it.

**Second topic:** The history of the emergence of Islamic jurisprudence and juristic schools.

Here, I mention a historical glimpse about fiqh and how it originated and developed until it became as it is today, headed by a set of juristic madhhabs.

**Third topic:** The factors that led to the multiplicity of juristic schools.

In this, I mention the most important reasons that led to the formation of madhhabs and the factors that helped with that.

**Fourth topic:** The benefits of the multiplicity of schools and the response to those who criticized it. In this one, I list the benefits gained by the Ummah from the emergence of these schools and show the error of those who faulted the madhhabs and their plurality.

As for the aims of the study, they are:

- To demonstrate the concept of sectarian (school) plurality and show its origin in Islamic history.
- To get familiar with the reasons of emergence and development of the madhhabs.
- To show the position of fiqh disagreement, and to mention what faults or slanders it.

In my research, I relied on the analytical-inductive method; by collecting the texts related to the topic and following the sayings of earlier and later scholars, then analyzing them and comparing them to our contemporary reality, with benefit from modern academic studies.

And I followed the following methodology for these topics:

1. Writing Quranic verses in the Uthmanic script, with the name of the Surah and the verse number.
2. Referencing the Prophetic hadiths mentioned in the thesis: if the hadith is in the two Sahihs or one of them, I sufficed with referring to its source; if it is in other books, I mention its documentation from the famous collections of Sunnah and point to the ranking of some scholars regarding it.
3. Citing the athar (companions’/early generations’ reports) within the research.
4. Preparing an index for the sources and references used in the research.

Allah is the One who grants success; there is no Lord besides Him, and praise be to Allah, the Lord of the Worlds.

## **2.The First Topic: The Meaning of School Multiplicity**

The term “madhhab multiplicity” (ta’addud madhhabi) is a compound idafah term. It is preferable to define it by looking at each of its words individually, then by the whole phrase as a technical compound.

### **The First Requirement: Defining “madhhab multiplicity” Individually (the idafah and the idafah to it):**

#### **First Branch: Definition of Ta’addud (“Multiplicity”):**

Ta’addud (multiplicity) in language: It is a form of the verb meaning “to count”; the root ‘Ayn and Dal is an original root and does not go outside the meaning of counting, which involves enumeration, and preparing something, and to these two, all the matter of the word returns [Ibn Faris, 1972, p.362].

It is said in Arabic: “‘Addadtu al-shay’ ‘adda” (I counted a thing, counted and enumerated it). Allah the Almighty said: [“But We are only counting for them a [limited] number.” [Maryam: 84]], meaning: every breath is counted and has an appointed number. Also, “So-and-so is among the righteous,” meaning he is included among them [Al-Khalil, n.d., p.79].

And ta’addud (multiplicity): means abundance; “ta’addada al-shay’” means it became numerous [Majma’ al-Lughah al-‘Arabiyyah, 1972, p.587], and “ta’addadat al-mushkilat”: the problems increased and became more than one [Ahmad Mukhtar ‘Abd al-Hamid, 2008, p.1464], and from it comes “multiplicity of wives”.

#### **Second Branch: Definition of Madhhabi (“School-related”, adjectival):**

Madhhabi in language: it is relative to “madhhab”, which with a fatH on the “m”, means “going forth in a matter”; for example, it is said: “dhahaba madhhaban hasanan”: he aimed for and took a good way [Ibn Faris, 1972, p.29].

Al-madhhab (also) means place one goes to perform ablution; in the hadith: “Whenever he went to the madhhab (latrine), he went far away” [Ibn Majah, n.d., p.331; Abu Dawud, 2009, p.1; Al-Nasā’ī, 1986, p.17; Al-Albani, 1998, p.861].

Madhhab technically: as appears from the original language, it means a path or a place of going. Then, in technical definition, it became a recognized concept regarding

“what an Imam of ijtiḥad-based rules has concluded” [Al-Hattab, 1992, p.24; Ibrahim al-Laqqani, n.d., p.221].

It also can refer to a belief or doctrine adopted by someone, for example: “dhahaba madhhaba fulan”, he followed his way; or “he adopted a certain opinion in religion” [Al-Fayumi, n.d., p.210]. For jurists, madhhab means the juristic methodology that a mujtahid scholar followed, which distinguished him from other jurists and led him to a set of rulings in applied law (‘ilm al-furu‘) [‘Umar al-Ashqar, 1998, p.45].

Al-Qarafi defines the Maliki madhhab as: "The Madhhab of Malik is what he distinguished in the subsidiary legal rules of ijtiḥad, and what he distinguished from the causes, stipulations, and impediments and the evidentiary proofs underlying them" [Al-Qarafi, 1995, p.195]. And the relation between the linguistic and technical sense is that these matters resemble roads; so the term “way” (tareeq) is also used, as in: "The way of Malik and his approach," just as his madhhab; and the road is a place of going, so it is transferred from the term for “place” [Al-Hilali, 2007, p.94].

With this understanding, scholars have presented several definitions- some of the most notable are:

- That which “a person says with proof and dies while holding to that saying” [Aal Taymiyyah, n.d., p.533].

The apparent implication here is that if the mujtahid retracts from his opinion, he is no longer attributed to it.

- That which “he affirms, either certainly or probably with proof, and which is known from his statements or writings and compositions, and is transmitted to us certainly or probably” [Aal Taymiyyah, n.d., p.533].

By “his writing and composition” is meant whether the statement is explicit or derived from his general words.

Thus, for example, the madhhab of Imam Ahmad ibn Hanbal is the sum of the rulings and juristic issues he adopted and those added by his followers in accordance with his rules and methodology [Mayyara, 2008, p.12].

This definition expands the scope of madhhab to include the opinion and its like [Al-Turki, 2002, p.14], whether spoken by the Imam or by any of his trusted associates or followers who adhere to his principles [Al-Khalifi, 1993, pp.45-46].

- That which “the Imam arrived at from ijtiḥad-based rulings” [Al-Hattab, 1992, p.24; Ibrahim al-Laqqani, n.d., p.221].
- That which is “the approach followed by a mujtahid in extracting ijtiḥad-based rulings from their detailed evidences” [Haytham Hilal, 2003, p.286].

The last two definitions emphasize that a madhhab applies only to ijtiḥad-based rulings pursued through exertion, and rules outside the domain of ijtiḥad- those with certainty in their evidence and establishment- are not considered part of any madhhab [Al-Qarafi, 1995, p.194]).

Based on the above, the favored definition of madhhab is: “The statements of the Imam in ijtiḥad-based religious issues, what is like his statement, the extraction rules

he followed, and what was deduced from his saying or method” [Khalid al-Ruwaita‘, 2013, p.73].

Note: The term “madhhab” as used by later Imams often refers to what is held for issuing fatwas, through a form of synecdoche, as in the Prophet’s saying: “Hajj is (standing at) ‘Arafah” [Ahmad ibn Hanbal, 2001, p.64; Ibn Majah, n.d., p.3015; Al-Tirmidhi, 1996, p.904; Al-Nasā’ī, 1986, p.3016; Al-Albani, 1998, p.606]; because that is the most important part for the jurist giving a legal opinion [Al-Hattab, 1992, p.24].

### **The Second Requirement: Defining “Madhhab Multiplicity” as a Technical Term**

What is meant by madhhab multiplicity is: “The diversity of approaches followed by the mujtahid Imams in deriving legal rulings from their detailed proofs.”

Each Imam had followers who adhered to his approach in extracting rulings, and thus the juristic schools multiplied and varied.

Muhammad Abu Zahra says: “Fiqh opinions differed, and from that difference, schools of law formed; then these schools became crystallized and turned into juristic madhhabs” [Abo Zahra, n.d., p.288].

It is important to note that by madhhab multiplicity, we mean the diversity of schools of law- not the multiplicity of views and reports within one madhhab.

Scholarly custom has been to regard disputes between juristic schools as high-level disagreement, while those within a single madhhab are considered lower-level disagreement.

### **3.The Second Topic: The History of the Emergence of Jurisprudence and the Juristic Schools**

The appearance of Islamic jurisprudence (fiqh) began gradually during the life of the Prophet ﷺ and in the era of the Companions. The reason for its early emergence among the Companions was the urgent need for people to know the rulings of new events, and this need for fiqh persisted in every age to regulate people’s social relations, determine the rights and duties of every person, fulfill renewed benefits, and prevent both inherent and sudden harms and corruption [Wahbah al-Zuhayli, 1991, p.18].

Islamic jurisprudence, like many Islamic sciences, did not take its final form- which distinguishes it from other disciplines of Sharia- until the end of the second century. In the time of the Prophet, the Companions, and the early Followers, fiqh was not an independent science separated from other religious sciences, although its general principles existed since the time of the Prophet ﷺ.

It is thus clear that Islamic fiqh passed through several stages. Authors and scholars have differed in counting these stages and determining their boundaries: some summed them up as four, saying that fiqh emerged and formed, then grew and matured, then stopped and stagnated [Abd al-Wahhab Khallaf, n.d., p.5], while others specified up to eight stages [Mustafa al-Zarqa, 2004, p.161].

Perhaps the most suitable way to clarify the real roles that fiqh has passed through is to divide its periods according to its emergence and development, strength and weakness, within the history of Islamic thought [Manna‘ al-Qattan, 2001, p.23]. When examined from this perspective, its stages are as follows:

- First Stage: The era of legislation during the Prophet's time ﷺ and the time of the Rightly Guided Caliphs.
- Second Stage: The foundational stage of fiqh, covering fiqh work in the Umayyad era, with attention to the school of Hijaz and the school of Iraq.
- Third Stage: The stage of fiqh renaissance, foundation of the schools, documentation of hadith and fiqh.
- Fourth Stage: The era of imitation and closing the gate of ijtihad ('independent reasoning') after the schools became established.
- Fifth Stage: The stage of fiqh awakening and religious reform in contemporary times, in which the gate of ijtihad is being reopened.

Alternatively, the stages can be divided based on political and social events that influenced Islamic jurisprudence, into the following periods [Ali Jum'a, 2001, p.349]:

- First Stage: The era of legislation, from the Prophet's mission until his death in 11 AH.
- Second Stage: Fiqh in the time of the Rightly Guided Caliphs, 11–40 AH.
- Third Stage: Fiqh in the era of the Followers (Tabi'in).
- Fourth Stage: Fiqh from the early second century to the middle of the fourth century.
- Fifth Stage: Fiqh from the middle of the fourth century until the fall of Baghdad in 656 AH.
- Sixth Stage: From the fall of Baghdad until the present time.

I have chosen to go with this latter division; so, relying on Allah, I will explain the stages of Islamic fiqh in the following requirements:

### **First Requirement: The Era of Prophethood**

It was the era of inception and formation, lasting twenty-two years and a few months, from his mission until his death ﷺ.

Despite its short years, this era had enormous impact; it left us the texts of rulings in the Qur'an and the Sunnah, several general legislative principles, and guided people to many sources and indications by which one can know the ruling of things not directly addressed, thereby leaving the basis for complete legislation [Abd al-Wahhab Khallaf, n.d., p.9].

The source of legislation in the Prophet's time ﷺ was revelation, in its two kinds: the recited, which is the Qur'an, and the non-recited, which is Sunnah. Legislation was therefore either divine revelation in both meaning and wording- represented by the Qur'an, which Allah sent down to our Prophet ﷺ - or divine revelation in meaning but not in wording- represented by the Sunnah of the Messenger ﷺ, since the words of the hadith are his own, but their meaning is from revelation; as Allah the Almighty said:

**“Nor does he speak from [his own] desire. It is only a revelation revealed” [An-Najm: 3-4]**

So, Allah alone is the legislator, and His Messenger is the explainer of His law: **“And We sent down to you the Reminder (Qur'an) that you may explain to the people what was sent down to them” [An-Nahl: 44].**

There was no need then for ijthad or deduction, let alone for laying down rules for these. If an incident arose needing a legal ruling, the matter was either that a ruling had already been revealed to him, and he would then tell them; or if not, he would wait for revelation, which would soon come to clarify the ruling. Sometimes, he would reflect on what had already been revealed; if he arrived at a ruling, he would tell them; then, if it was right, Allah approved it, and if not, Allah would show him the correct answer [Abd al-Wahhab Khallaf, n.d., pp.15-16; Abu Zahra, n.d., p.227].

Examples:

- The Prophet ﷺ was asked about giving charity with domestic donkeys. He said: **“Nothing has been revealed to me about them except this singular, comprehensive verse: ‘So whoever does an atom’s weight of good will see it, and whoever does an atom’s weight of evil will see it.’ [Az-Zalzalah: 7-8]”** [Al-Bukhari, 2002, p.7351; Muslim, 2013, p.987] This was the Prophet’s reasoning using a general Quranic verse for a particular case.
- Hadith of Abu Huraira: The Messenger ﷺ addressed us and said: **“O people, Allah has made Hajj obligatory upon you, so perform Hajj.” One man asked: “Is it every year, O Messenger of Allah?” The Prophet remained silent until the question was asked three times. He then said: “If I had said yes, it would have become obligatory, and you would not be able to do it.”** [Muslim, 2013, p.1337].

The Prophet ﷺ could have answered “yes,” but he refrained.

Al-Nawawi commented after mentioning this hadith:

**“His words ‘If I had said yes, it would have become obligatory’ indicate—and this is evidence for the correct view—that the Prophet ﷺ could exercise independent reasoning (ijthad) in rulings, and his judgment did not always have to be based on revelation.”** [Al-Nawawi, 1392, p.101]

- The hadith of Abu Huraira says: “When Allah opened Mecca for His Messenger ﷺ, he stood among the people, praised Allah and glorified Him, then said: [Indeed, Allah withheld the elephant from Mecca and gave victory to His Messenger and the believers. And it was not permissible for anyone before me; it was permitted for me for an hour, and it will not be permitted for anyone after me. So, its game should not be frightened, nor should its plants be cut, nor is its fallen property lawful except for a claimant. And whoever is killed has two choices: either compensation or retribution.] Abbas said: Except for al-idhkhir, O Messenger of Allah, for we use it in our graves and houses. So the Messenger ﷺ said: Except for al-idhkhir.” [Al-Bukhari, 2002, p.1349; Muslim, 2013, p.1355]

From the apparent text, it looks as if the Prophet ﷺ made an exception by himself, indicating that revelation had not been sent at that moment, as there were no signs of its descent.

Al-Qarafi commented, “This indicates that when his need for it was explained, he permitted it.” [Al-Qarafi, 1995, p.436]

The Companions, during the life of the Prophet ﷺ, received rulings from him; but if absent from his presence or unaware of a ruling for a case, they would exert themselves and try to deduce the ruling, and the Prophet ﷺ even encouraged them to do so, whether in his presence or not. He said, “If a judge judges and strives and gets

it right, he has two rewards; if he judges and strives and gets it wrong, he has one reward.” [Al-Bukhari, 2002, p.7352; Muslim, 2013, p.1716].

- The Companions would quickly present their *ijtihad* to the Messenger ﷺ; if correct, he approved, blessed, and prayed for the one who did it, and if it was wrong, he rejected and clarified its invalidity. An example:
- Hadith from Ibn Umar: The Prophet ﷺ, on the day of the trench, said, “Let none of you pray *Asr* except at Banu Qurayza.” [Al-Bukhari, 2002, p.4119; Muslim, 2013, p.1770].

The Companions made *ijtihad* in this event and had differing practices—some prayed on time, others delayed until reaching Banu Qurayza. The Prophet ﷺ did not criticize either party, acknowledging their *ijtihad*.

- Hadith from Abdullah bin Amr: “I had a wet dream on a cold night during the battle of Dhat al-Salasil, so I feared that if I bathed, I would die. So I performed *tayammum* and led my companions in *Fajr* prayer. They mentioned it to the Prophet ﷺ, and he said, ‘O Amr, did you lead your companions in prayer while you were *junub*?’ I told him what prevented me from bathing, saying: I heard Allah say, [‘And do not kill yourselves. Surely Allah is Merciful to you.’ [An-Nisa: 29]], so the Messenger ﷺ smiled and did not say anything.” [Ahmad ibn Hanbal, 2001, p.336; Abu Dawud, 2009, p.334; Ibn Hajar, 1390, p.454].

Amr ibn al-As deduced a ruling by the general meaning of the verse to justify praying after *tayammum* to protect himself from harm. This is an example of the principle of generality in *usul al-fiqh*, and the Prophet ﷺ approved it; moreover, his smiling indicated more than mere approval- it showed admiration for such understanding and practice [Al-Jassas, 1994, p.39].

Therefore, the reality of the Companions’ *ijtihad* during the Prophet’s life goes back to the first category: as if the ruling is issued by the Prophet ﷺ through his approval, invalidation, or cancellation.

### **The Second Requirement: The Era of the Companions**

This historical period began with the death of the Prophet ﷺ and extended until almost the end of the first century of Hijrah. It can be described as the era of legislative interpretation and the opening of the doors of deduction for cases with no explicit textual evidence. The prominent Companions made many pronouncements to interpret legal texts in the Qur’an and Sunnah; these became important references for interpretation and clarification. They also gave many fatwas for new cases that had no specific texts, which formed the foundation for further *ijtihad* and deduction [Abd al-Wahhab Khallaf, n.d., p.30].

During this period, the Companions followed the approach the Prophet ﷺ laid out regarding deduction and *ijtihad*. When matters arose in judgment, fatwa, *ijtihad*, or legislation, they would first refer to the Book of Allah - if the ruling was clear and explicit there, they would follow it exactly. If they did not find it, they turned to the Sunnah, asking those who knew about the Prophet’s practice. If the answer was found in the Sunnah, they followed it. If not, they investigated and exercised *ijtihad*, deducing the ruling based on the knowledge and personal abilities they possessed. If they unanimously agreed on a ruling, this was regarded as “Consensus” (*ijma’*) - the

third major source of Islamic law. If not, it remained as an issue of *ijtihad* and deduction, in which they might use analogy, or consideration of public interest, or other methods [Abd al-Wahhab Khallaf, n.d., p.33; Abu Zahra, n.d., pp.233-234; Muhammad al-Zuhayli, 2006, p.44].

Many examples have reached us from this era:

- Abu Bakr’s ruling to fight those who refused to pay *zakat*, taking analogy from those who refused to pray- since both prayer and *zakat* are principles of the religion [Al-Bukhari, 2002, p.1411; Muslim, 2013, p.20].
- Umar’s ruling to execute a group for killing a single individual, justified by the public interest for which *qisas* (retaliation) was prescribed: If exact numerical equality between killer and killed were required, people would take advantage and escape punishment [Malik ibn Anas, 1991, p.248].
- Ali’s ruling in the case of the person who drank alcohol: he ordered eighty lashes, by analogy with the punishment for slander, explaining his reasoning, “If he drinks, he raves, and if he raves, he slanders, and the punishment for slander is eighty lashes” [Malik ibn Anas, 1991, p.45; Al-Nasā’ī, 2001, p.137; Al-Daraqutni, 2004, p.196].

Ali based his *ijtihad* here on a fundamental principle: blocking the means (*sadd al-dhara’i’*), treating alcohol as a means to slander- whatever leads to the forbidden is also forbidden, and it shares the same punishment as set for slander in the Qur’an:

**“And those who accuse chaste women and do not produce four witnesses- flog them with eighty lashes” [An-Nur: 4].**

The Companions also debated the waiting period (*‘iddah*) for a pregnant woman whose husband had died, quoting:

**\*\*“And for those who are pregnant, their term is until they deliver their pregnancy.” [At-Talaq: 4].**

This verse clearly states the *‘iddah* for a pregnant woman ends at childbirth, even if it is within a week. The wording covers both divorced and widowed women. But this seems to conflict with another verse: **“And those who are taken in death among you and leave wives behind- they shall wait by themselves for four months and ten days.” [Al-Baqarah: 234].**

Some Companions, like Ibn Mas‘ud, ruled that the *‘iddah* for a pregnant widow ends with delivery, supporting his view that “the small Surah of Women (At-Talaq)” came after the “big Surah of Women (Al-Baqarah)” [Al-Bukhari, 2002, p.4532]. This is a recognized principle: the later text abrogates or qualifies the earlier- explained by later jurists as an *usuli* rule [Muhammad al-Zuhayli, 2006, p.47].

Jurisprudence in this period was not codified formally but was transmitted as individual cases through oral narration- except for a few written letters containing some judgments, like Umar b. al-Khattab’s letter to Abu Musa al-Ash‘ari regarding judiciary.

### **The Third Requirement: The Era of the Followers (Tabi‘in)**

This era begins with the death of the Companions- a period between year 90 and 100 of Hijrah. In it, the students of the Companions rose to prominence, such as Sa‘id ibn al-Musayyib (the jurist of Medina and narrator from Umar), Urwah ibn al-Zubayr,

al-Hasan al-Basri, ‘Ata’ ibn Abi Rabah (jurist of Mecca), Ibrahim al-Nakha‘i (jurist of Kufa), and many others.

During this time, the so-called “seven jurists of Medina” emerged: Ibn al-Musayyib, ‘Urwah ibn al-Zubayr, al-Qasim ibn Muhammad, Abu Bakr ibn Abd al-Rahman ibn al-Harith, Abd Allah ibn Abd Allah ibn Utbah ibn Mas‘ud, Sulayman ibn Yasar, and Kharijah ibn Zayd ibn Thabit.

The Followers continued in the way of the Companions, relying on revelation as the primary source- meaning the Qur’an and Sunnah- and also based their jurisprudence on the consensus of the Companions, which was easier to identify in their time.

It was in this era that the statement of a Companion became recognized as a source for legal rulings in cases where there was no textual evidence.

This era witnessed many new cases and circumstances due to the expansion of the Islamic state, and the *ijtihad* of the Followers covered many of the society’s newly arising needs. Some new principles became evident, such as relying on a Companion’s statement as a source of law when there was no text, considering public interest for legal deduction when no text was available (as seen among Sa‘id ibn al-Musayyib and most of the people of Medina), while others like ‘Alaqa and Ibrahim al-Nakha‘i and the jurists of Iraq generally depended on analogy- extracting the legal reasoning (*illah*) from the original ruling, and applying it to new cases; they thus extended the ruling of a text to inferred branches [Muhammad al-Zuhayli, 2006, p.48].

#### **The Fourth Requirement: The Era of Codification and the Independent Imams**

This period extended from the beginning of the second century after Hijrah until the middle of the fourth century. It is considered a turning point in the history of Islamic jurisprudence, as it witnessed the emergence of the major juristic schools and the beginning of systematic and organized codification of *fiqh*. Thus, this era is regarded as the time of intellectual growth and the maturity of legislation [Al-Khalifi, 1993, p.24].

This period saw the rise of numerous renowned imams and scholars, known for their extensive knowledge and precise legal verdicts, who taught students that spread their opinions and schools of thought. Among the most prominent were: al-Awza‘i, Sufyan ibn ‘Uyaynah, Ishaq ibn Rahwayh, Abu Hanifa al-Nu‘man, Malik ibn Anas, Muhammad ibn Idris al-Shafi‘i, Ahmad ibn Hanbal, Dawud al-Zahiri, and others.

Some of these imams were distinguished by the presence of followers who focused on detailing their opinions and preserving their schools, which contributed to their spread and continuity.

During this time, the movement of juristic authorship flourished. Imam Malik wrote the “*Muwatta*”, which combined prophetic hadiths arranged by legal chapters, and was one of the earliest works to collect both hadith and *fiqh*. Imam al-Shafi‘i wrote “*al-Risalah*” on *usul al-fiqh*, as well as other treatises later collected in his book “*al-Umm*”. Judge Abu Yusuf al-Hanafi compiled “*al-Kharaj*”, while Muhammad ibn al-Hasan al-Shaybani authored many books that established the foundations of the Hanafi school. These works formed the cornerstone of Islamic jurisprudence in subsequent ages.

#### **The Fifth Requirement: The Era of Stagnation and Imitation**

This period extended from the middle of the fifth century AH until the fall of Baghdad, around 656 AH. It was one of the most prominent periods in Islamic jurisprudence history. Scholars of this age came to believe that juristic schools had stabilized their principles and that their rules were sufficient to implement the Sharia, which led to confining fiqh within the texts and opinions of the founding imams. This resulted in the spread of harmful blind zealotry to particular madhhabs, and from its negatives was the prevalence of legal tricks (hiyal), which originally were legitimate outlets, but became a sign of deviating from the aims of Sharia and lack of clear conception of legal maxims. Muhammad Tahir ibn ‘Ashur said: “Neglecting the aims was the reason for great stagnation among jurists, and a tool for abolishing beneficial rulings, and the worst that came from it was the issue of legal tricks, which jurists pursued to varying degrees” [Ibn ‘Ashur, 2006, p.200].

This period was characterized by the flourishing of codified fiqh, with the emergence of condensed texts and their commentaries, the proliferation of marginal notes, and the authorship of fatwa books, as well as efforts to codify juristic rulings.

Nonetheless, this time also witnessed some scholars who challenged blind imitation and called for reviving juristic independent reasoning, among the most prominent being Shaykh al-Islam Ibn Taymiyyah and his student Ibn al-Qayyim, who left a strong impact on juristic thinking and legal renewal.

#### **The Sixth Requirement: The Modern Era**

This era ran from the fall of Baghdad until our time. The present era is distinguished by a noticeable movement for renewal in Islamic jurisprudence, seen in calls for activating independent reasoning and deduction, avoiding blameworthy imitation, and paying attention to new contemporary cases. Jurists of this age turned to authorship, which mostly became abbreviated to the point sometimes that meaning was lost and intents became obscure, with enigmatic phrases in briefs called “mutun” that required commentaries to clarify meanings and remove vagueness.

Alongside commentaries, marginal notes appeared- these are remarks and observations added to the commentaries.

But authorship was not restricted to these: fatwa books also appeared, containing answers to practical legal questions asked of jurists, compiled either by their authors or others, and organized by legal topics. These fatwas almost always included their scriptural evidence from the madhhab of the issuing jurist, or cited evidence from Qur’an and Sunnah, and sometimes from other sources, not limited to one madhhab’s proofs.

This era also saw the founding of universities and specialized institutes for Sharia sciences and their branches, awarding advanced academic degrees up to the doctorate level. Also, contemporary juristic works multiplied, with expert commentaries and research addressing particular fiqh issues in depth. In addition, juristic academies and institutes were founded, establishing the method of collective independent reasoning (ijtihād jama‘i) for addressing contemporary matters in a way that serves the higher objectives of Sharia and meets the practical needs of reality.

#### **4.The Third Topic: The Factors That Led to the Multiplicity of Juristic Schools**

The juristic schools - whether those that endured or those that faded - did not all arise at the same moment; rather, most emerged at roughly close periods, with the

main influential factor in their development being the scholarly circles and schools existing at that time. The imams and principal scholars of these schools graduated from these circles, and at the forefront were two main schools.

Al-Khattabi said: “I have seen that the people of knowledge in our time have formed two parties and split into two groups- those of hadith and tradition, and the people of fiqh and reasoning. Neither of these is independent of the other in terms of need, nor can any of them dispense with the other to reach its pursuit and purpose.”

Hafiz Ibn Rajab described this by saying: “So Allah, in His wisdom, arranged the preservation and safeguarding of the religion by appointing for people imams whom there was consensus regarding their knowledge, expertise, and having attained the desirable level in the rank of mastery of legal rulings and fatwa—among both the people of opinion and the people of hadith. So all the people depended on them for fatwas and returned to them to know the rulings. And Allah established those who would preserve their opinions and clarify their principles, so that the opinions, bases, and details of each imam became established, forming the reference point for returning to rulings and clarifying what is permissible and forbidden.”

As previously clarified, the foundation and starting point for both schools was essentially the opinions of the Companions and their method in handling new events, as well as the opinions of their students and their way of studying them. After the Companions dispersed throughout the provinces, some undertook teaching and spreading knowledge, students gathered around them who preserved their statements—as reported by ‘Ali ibn al-Madini—then these students provided fatwa after them, leading to the diversity of scholarly methodologies. This produced two major approaches:

- The first orientation: limiting oneself to the religious texts in their direct implications, without deep exploration of the reasons (‘ilal) and objectives (maqasid) behind them.
- The second orientation: combining adherence to religious texts with extensive enquiry into their underlying reasons and the Lawgiver’s intentions.

Over time, the difference between these two orientations deepened, widening the methodological gap, and crystallizing into the two schools of “tradition” (al-athar) and “opinion” (al-ra’y), each with its methods for interpreting evidence and deriving rulings. This is reflected clearly in the methodological foundations of the juristic schools that arose from them.

In this context, Sheikh Muhammad Abu Zahra notes that the diversity of legal schools was a direct factor in the differentiation of deduction methodologies within each school [Abo Zahra, n.d., p.288].

As for the reasons or factors that contributed to the origination of juristic schools, they can be traced to two main kinds- one relating to the evidence itself (which was the primary driver behind the formation of schools) and one relating to the followers of madhhabs (the main factor behind their survival and continuity); [I did not commit to mentioning examples in everything that will be explained, for fear of length.]:

### **The First Requirement: Reasons Related to the Evidence**

One of the greatest reasons leading to disagreement among jurists- and hence, to the diversity of their schools- was their disagreement regarding the evidences behind the rulings. Their disagreement over these evidences took several forms I mention in the following points:

### **First Branch: Their Disagreement Over the Authority of an Evidence**

That is, jurists disagreed over the very category of a piece of evidence- does it have legal authority or not? Accordingly, their branches differed and consequently their schools.

The differences in what they accepted as evidence, the varied ways of extracting rules from these sources, and the differing methodologies employed when evidences appeared to clash- all are factors that led to each jurist’s ijthihad being distinct and each school establishing its own path despite some overlap at times. This methodological diversity in reasoning and evidence alerted students to the distinct features of each imam, laying the foundation for the formation of independent legal schools, each marked by its particular principles and branches.

For example:

- If one mujtahid views an anomalous Qur’anic recitation as a proof and another does not, the consequence of that difference is necessarily the rise of different schools since their roots for deduction are different.
- If one regards the mursal hadith as evidence (with certain conditions) while another does not, this naturally produces diverse schools.
- If one holds that the practice of the people of Medina is a proof- even prioritizing it over solitary reports- while another disagrees, this too leads to diversity in their methodologies.

And the same applies to differences on whether analogy (qiyas), istihsan (juristic preference), the statement of a Companion, and the like are evidences or not.

### **Second Branch: Disagreement About the Establishment of Evidence**

Sometimes, the reason for jurists’ disagreements was their difference over whether a certain evidence was established, even though they agreed on accepting it if established.

- For example, some imams acted on a specific Quranic reading because, to them, it was established; whereas others denied that reading.
- Sometimes, a hadith would reach one jurist who would rule according to it, while another never received it and would differ with him.
- Sometimes, a hadith reached all of them, but some would consider it weak or abrogated and so not base rulings on it, while others would see it as authentic and acted upon.

### **Third Branch: Disagreement About the Indication of Evidence**

Some religious texts are categorical in indication, admitting only one meaning. Others are ambiguous, admitting several meanings and faces. This is where juristic ijthihad comes in, and their differences in this regard are due to several factors, most important among them:

A/ Linguistic ambiguity: This refers to a word used for two or more distinct meanings via the same expression, like the word “‘ayn” (which can mean the eye, a water spring, or gold). Another example: the word “‘qur” in Arabic can mean either

“purity” or “menstruation.” This ambiguity caused classical scholars to differ over the meaning in the Quranic verse:

**“And divorced women shall wait by themselves for three ‘quuroo’.” [Al-Baqarah: 228]**

B/ Diversity of comprehension: Jurists are not equal in their ability to understand and perceive; their capacities differ, and this is well known. So, jurists may all know the same evidence, but each may derive different meanings.

Examples include:

- The story of praying Asr at Banu Qurayza, where although all the Companions heard the hadith from the Prophet ﷺ, their understandings differed and thus their actions differed.
- Jurists differed about who is most eligible to lead prayer, the most knowledgeable or the one with the most memorization, based on different understandings of the hadith: **“The one most versed in recitation of the Book of Allah should lead the people.”** [Muslim, 2013, p.673]

C/ Contradiction of evidences: Sometimes evidences appear contradictory to the jurist; then, rulings may differ based on how the jurist chooses to reconcile that contradiction. Some try to combine them, others resort to preferential judgment (tarjih), and they differ also in how they do this.

Examples:

- Disagreement about marriage for someone in the state of ihram for Hajj or ‘umrah: Muslim narrated that the Prophet ﷺ said, **“A person in ihram should not marry, nor arrange marriage, nor propose.”** [Muslim, 2013, p.1409]

Most jurists (Malikis, Shafi‘is, Hanbalis) acted on the apparent prohibition, while Hanafis permitted it based on the hadith of Ibn ‘Abbas: **“The Prophet ﷺ married Maimunah when he was in ihram”** [Al-Bukhari, 2002, p.1837; Muslim, 2013, p.1410].

- Disagreement about performing the “greeting of the mosque” prayer at forbidden times: Two evidences seem to conflict. One is general for the time, specific for the prayer: **“When any of you enters the mosque, let him not sit until he has prayed two rak‘as”** [Al-Bukhari, 2002, p.1162; Muslim, 2013, p.714].

The other is specific for the time, general for prayer: **“There is no prayer after Asr until the sun sets, and no prayer after Fajr until sunrise”** [Al-Bukhari, 2002, p.593; Muslim, 2013, p.827].

Those who give precedence to the first general meaning allow the mosque greeting at those times; those who give precedence to the second, forbid it.

These are some of the causes of differences among jurists, and such differences produce scientific diversity and a rich legal heritage, leading to the variety of opinions and sometimes the creation of distinct schools around specific approaches [Khalid al-Ruwaiṭa‘, 2013, p.648].

### **Second Requirement: Reasons Related to the Followers of the Imams**

The emergence of legal schools was not, by itself, enough for their survival and spread. One of the very important factors for the preservation and dissemination of juristic schools was what Allah enabled for the imams in terms of students who

preserved, promoted, and developed the schools through documentation and independent reasoning, and what Allah decreed in terms of certain rulers adopting particular legal schools.

### **First Branch: The Distinguished Disciples**

The efforts of the imams' disciples in documenting and spreading their teachers' opinions and views caused people to become attached to this massive juristic heritage and rely on it instead of researching and deriving rulings themselves. Successive generations of these students kept doing the same, so that over time the opinions of each school became distinctive and took on their own character. Those who adhered to them became known, and these opinions thus formed a recognized school and a famous approach, which was studied, taught, and defended in preference to other views- sometimes even to the degree of prejudice and strict commitment to it as the only correct approach [Abo Zahra, n.d., p.289; Ali al-Khafif, 1996, p.253].

Muhammad al-Khudari said, "Those famous imams whose schools remained were blessed to have the most distinguished, sharpest, and most persuasive disciples. These students recorded the rulings they learned from their imam. Large numbers of students then learned from these disciples and spread their views among the people, who followed them out of trust in those giving the legal opinions" [Muhammad al-Khudari, 1960, p.326].

Perhaps the strongest evidence for the importance of dedicated disciples is that some madhhabs spread to regions the imam himself never visited, but his knowledge reached there through his students. For example, al-Shafi'i said about his student al-Muzani: "Al-Muzani is the supporter of my school" [Al-Shirazi, 1970, p.97; Al-Nawawi, n.d., p.107]. Conversely, some imams' schools disappeared even in the places they lived [Muhammad al-Dusuqi & Amina al-Jabir, 1999, p.158].

As al-Shafi'i said, "Al-Layth ibn Sa'd was more knowledgeable than Malik, but his students did not support his school" [Al-Asbahani Abu Shaykh, 1992, p.406; Al-Nawawi, 1996, p.74]. The reason: they did not devote themselves to documenting and spreading his opinions among the public, as Malik's did for him. Al-Layth's expertise in jurisprudence was not enough to ensure his madhhab's survival, because it lacked students to systematize and publicize it; thus, his role as a great mujtahid was forgotten, even if his name as a trustworthy hadith narrator lived on. Many of the Companions and Followers are similar- brilliant legal minds whose reasoning guided those who followed, but whose schools disappeared [Muhammad al-Khudari, 1960, p.329].

Muhammad Abu Zahra pointed out: "A major reason why some jurists' schools did not survive is that they lacked strong students who spread their views in different regions and supported them by documentation, examination, and collection" [Ahmad Taymur, 1990, p.30].

### **Second Branch: Rulers Endorsing Particular Juristic Schools**

Rulers' adoption and enforcement of certain juristic schools for judges and public officials was a major factor in the survival and propagation of those schools. This is clearly an external factor in the spread and endurance of madhhabs [Ali al-Khafif, 1996, p.253].

Examining Islamic history shows that a number of madhhabs gained the support of powerful rulers and states, who undertook their propagation, care, and dissemination—sometimes even to the point of fighting against other established schools. Ibn Hazm stated: “Two madhhabs at their beginning spread through governmental authority and power: the school of Abu Hanifa— because when Abu Yusuf became Chief Judge, he only appointed as judges people who followed or admitted to his system, from the farthest east to the edges of North Africa; likewise, Malik’s school among us, because Yahya ibn Yahya was influential with the rulers, whose word was decisive in nominating judges, and he only appointed his own students or those following his approach— and people are always seeking worldly benefit, so they adopted what would bring them advantage” [Al-Humaydi, 1966, p.383; Ibn Hazm, 1983, p.229].

When a state or ruler officially adopted a particular madhhab, it caused things like restricting judgeships and legal opinions to followers of that school, so no judgments or fatwas were issued except in its line. Muhammad al-Khudari wrote: “If a madhhab was backed by a king, or ruler, and judgeships were restricted to its followers, that would be a huge reason for its spread and for more scholars to specialize and propagate it” [Muhammad al-Khudari, 1960, p.328].

An additional outcome was that many students and scholars turned away from madhhabs not favored by the state and focused on those that were, seeking material benefit. Al-Hajawi observed, “Many a scholar in Syria or elsewhere, if required to take office in a place where the locals followed the Hanbali school, would have to switch from his original madhhab (maybe Shafi‘i) and become Hanbali for the job—this is not a problem in itself, but it reveals the negative aspect of madrasah fanaticism. In the East, for instance, there were endowments restricted to Shafi‘is or Hanafis, and schools that only allowed teachers from the four madhhabs. The same applied to major positions, both judicial and advisory” [Al-Hajawi, 1995, p.507].

For example, Imam Ahmad’s school became the least widespread among the four, and scholars attributed this to his followers emulating his renunciation of worldly honors and avoidance of politicians, focusing on piety rather than acquiring teaching posts— which limited the madhhab’s spread since its followers didn’t reach influential academic or official positions. Ibn ‘Aqil al-Hanbali commented: “This madhhab has, in fact, been ignored by its followers; because the students of Abu Hanifa and al-Shafi‘i, when they excelled, took up judgeships and other offices, these posts became a reason for them to spread their legal system, while Ahmad’s students, those few who reached high learning, devoted themselves to worship and asceticism, so they abandoned involvement in scholarly administration” [Ibn al-Jawzi, 1405, p.672; Ibn Rajab, 2005, p.348].

These are the main factors in the spread and persistence of madhhabs. Another closely related cause is that most of those whose madhhab died out were not residents of cities that attracted scholars; for instance, after al-Awza‘i, learning in Damascus shifted towards Medina and Baghdad, and in Egypt when Layth was active, it hadn’t yet become a scholarly center except for Malik’s disciples, who eventually overtook Layth’s group [Ahmad Taymur, 1990, p.30].

## **5.The Fourth Topic: The Benefits of Madhhab Multiplicity and the Response to Criticism of It**

There is no doubt that the followed juristic schools (madhhabs) are a sure way to knowing Islamic Sharia, in both its fundamentals and details. Because of these madhhabs, the Sharia was preserved and established as suitable for every time and place.

Some negative consequences occurred among some followers of particular madhhabs, due to their incorrect application of adherence (tamadhhub), but these do not justify abandoning the established madhhabs or considering people not in need of them. To clarify this, I will first mention the negative results that made some criticize madhhabs, then point out the positive results which the Ummah gained from their existence.

### **First Requirement: The Negative Results Accompanying the Existence of the Madhhabs**

Among the most prominent faults for which madhhabs were criticized are: madhhab fanaticism and the claim that the gate of ijthihad must be closed. I will mention both, explaining how adherence led to these problems, and refuting those who based their criticisms of madhhabs on them.

#### **First Branch: The Appearance of Madhhab Fanaticism**

Scholars of the madhhabs became focused on extracting rules based on their imams' principles and statements, and on explaining, teaching, or summarizing their books. Sometimes this went so far as to censure anyone who departed from the imams' views, even if still adhering to scriptural evidence, forgetting that these madhhabs were never intended to be taken as absolute religion, even when their opinions were weak—they are simply personal efforts and judgment, open to error and correction.

Ibn al-Qayyim said: “As for the fanatic who makes the statement of his master the yardstick to measure the Book [Qur’an], Sunnah, and the statements of the Companions, accepting what matches it and rejecting what is contrary, he is closer to condemnation and punishment than to reward.” [Ibn al-Qayyim, 2019, p.94].

Fanaticism often led its people to distort scriptural texts, rejecting sound ones and relying on weak ones.

Ibn Abi al-‘Izz al-Hanafi said about some fanatics in his school: “If one brings them a text opposed to the statement [of Imam Abu Hanifa], they interpret it in a way contrary to its meaning- only to avoid it” [Ibn Abi al-‘Izz al-Hanafi, 1405, p.30]

Similarly, Ibn Hazm described how some fanatics reacted: “They rejected every proof that contradicted their view; if it was a verse or hadith, they interpreted it with far-fetched readings and changed its meaning, entering into the Quran’s condemnation of those who ‘distort words from their places.’ If unable to do this, they said it was specific or abrogated or not acted upon” [Ibn Hazm, n.d., p.117].

Abu Shama al-Maqdisi said: “Fanaticism made some of them, when presented with an established text from Qur’an or Sunnah contrary to their madhhab, strive by every possible means- sometimes by far-fetched interpretation- to reject it in favor of their opinion, ignoring what ought to be accepted” [Abu Shama al-Maqdisi, 1403, p.100].

A painful example: In the biography of Asbagh ibn Khalil al-Maliki, “He was famous on the opinion of Malik and his companions; legal rulings revolved around

him in Andalusia for fifty years... He had no knowledge of hadith or its transmission, in fact, he kept away from it and attacked its people, and he was fanatically loyal to the opinions of Malik's companions, especially Ibn al-Qasim. His fanaticism reached the degree that he invented a hadith to support not raising the hands in prayer after the initial takbeer, and people discovered his lie" [Ibn al-Faradi, 1988, p.93].

Al-Qadi 'Iyad quoted some Malikis explaining Asbagh's behavior: "Asbagh did not intend to lie about the Prophet ﷺ, but simply thought he was supporting his madhhab" [Al-Qadi 'Iyad, 1983, p.252; Khalid al-Ruwaita', 2013, pp.1392–1393].

All these are errors. As Ibn 'Aqil said, it is obligatory for the madhhabs to submit to scriptural evidences- either adhere to the evidence, or correct the school accordingly, but not the other way around [Ibn 'Aqil, 1999, p.358].

### **Second Branch: Stagnation and the Call to Close the Door of Ijtihad**

The call to "close the door of ijthihad" appeared as a result of madhhab fanaticism and fear of ignorant intruders interfering with legal rulings. However, this claim is baseless: because new occurrences and events never cease, closing off ijthihad would mean preventing the discernment of God's rulings regarding them. What is truly needed is not to close the door, but to regulate ijthihad according to the conditions set down by scholars, so that it remains a correct means to understand the texts and apply them to reality, away from chaos and manipulation.

Moreover, whoever claimed that the door of ijthihad is closed, they themselves did so by ijthihad. The early imams never said so—so how could someone exert ijthihad in making this very claim, then declare that this is the last ijthihad to be accepted from the Muslims, and that the door is now closed after his own ijthihad?

Clearly, the claim to close the gate of ijthihad has several reasons, foremost among them being the sectarian bias that sees followers of madhhabs, no matter their knowledge, as unable to reach the level of the early scholars. Al-Shawkani said, regarding his contemporaries who were strict madhhab followers: "How astonishing it is, they were not satisfied... until they blocked for the Ummah of Muhammad صلى الله عليه وآله وسلم the door to knowing the Sharia from the Book of Allah and the Sunnah of His Messenger صلى الله عليه وآله وسلم, claiming there was no path or way to [the law]" [Al-Shawkani, 1396, p.63].

The cause of this claim [Mustafa al-Zarqa, 1995, pp.102-103]:

- Sometimes, it was out of concern for protecting the religion from being corrupted by the ignorant, so it was thought of as a preventive measure.
- Sometimes, it happened due to the compilation of the schools: their students and followers detailed, expounded, and hypothesized so extensively that they even addressed unlikely or imaginary cases—this led many people to believe that all that was needed was already present, so they abandoned the effort required for ijthihad.
- Sometimes, it was a result of enforcing judges to stick to a particular madhhab, making people think that the required fiqh was only available in the chosen madhhab, leading them to focus on studying just that.

These are the most significant reasons that led some to call for closing the door of *ijtihad*, and there is no doubt that the harm caused by this claim was far greater than what they feared would come to the law.

It led to atrophy and stagnation in *fiqh*, freezing it at the point reached by the earlier generations. New problems and questions were unable to find effective solutions from the scholars, creating the impression that Islamic law is limited and unable to keep up with the times.

As a result of this, some even called for abolishing or adding to *sharia*, and these individuals were actually the cause of such calls. Ibn al-Qayyim commented:

“They made the *Sharia* appear limited, unable to fulfill people’s interests, and blocked for themselves legitimate ways to distinguish right from wrong, disabling them even though they and others knew those ways were valid. They thought them incompatible with the law’s principles. This happened because of a kind of ignorance of the true nature of the *Sharia* and the correct way to connect it to reality. When rulers saw this and realized people’s affairs required something more than what these scholars took from the law, they invented new administrative rules for managing people- a major source of the later problems and widespread corruption, making things impossible to fix.” [Ibn al-Qayyim, 2019, pp.406-407]

Thus, the limited vision and false claims of these scholars pushed rulers in this direction, even though the *Sharia* actually had ample flexibility to address every real need through balanced application.

### **Second Requirement: The Positive Results Produced by the Existence of the Madhhabs**

From the previous section, it became clear that the above defects led some to criticize madhhabs entirely and absolutely, but this is baseless since the blame is with some followers, not in the schools or in adherence itself.

The best answer to critics is the positive effects gained by the Ummah through the existence of these madhhabs, and we cannot fully appreciate that unless we imagine Islamic jurisprudence throughout history, without any documented or followed madhhab, whether those that disappeared or remained—then, what would the state of Islamic law be? Surely it would be nothing but scattered fragments, as it was among early scholars and students before the era of codification [Al-Turki, 2002, p.19].

So it is essential to reveal the merits of well-documented and followed madhhabs, and generally, these advantages are as follows [Al-Turki, 2002, p.19; Khalid al-Ruwaiṭa‘, 2013, p.1311]:

#### **First Branch: The Emergence of Juristic Debates**

One of the important positive effects of adherence is the appearance of juristic and *usul* debates and disputations between proponents of different madhhabs—to argue for their positions and show their evidences. Engaging in debates is also beneficial for the debater themselves, allowing them to revisit what they have learned and to review their knowledge.

Ibn Khaldun observed: “There occurred among the followers of the four schools debates to establish the views of each of their imams. These debates operated according to sound principles and correct methodology, as each person would argue for the school that he was committed to, and debates were conducted in all areas of

sharia and every chapter of fiqh... In these debates, the rationales behind the views of the imams, the causes of their disagreement, and the points of their independent reasoning became clear, and this category of knowledge is called 'kilaafiyat'... It is, in truth, a most beneficial science" [Ibn Khaldun, 1981, p.578].

### **Second Branch: The Codification of Islamic Law and Its Facilitation for Students**

Thanks to the work of madhhab jurists in organizing, indexing, creating terminology, clarifying ambiguities, and filling in gaps, the followers of the major madhhabs advanced and diversified their writings, all for the sake of refining and developing the school. Their works, written in the idiom of their times, made each madhhab a fully developed juristic and methodological school.

Ibn al-Qayyim described how madhhab scholars systematized their schools: "The proponents of the madhhabs regulate their schools and define them with summaries that encompass what is permissible and forbidden according to their method" [Ibn al-Qayyim, 2019, p.148].

Many works left by these scholars reflect so many fields of knowledge that one must acknowledge the positive legacy of adherence to madhhabs.

Ibn Badran al-Hanbali said:

*"Know that our scholars have developed a variety of branches in their fiqh sciences, making its fruitful tree grow with many branches. They divided knowledge into subfields, wrote books for each branch, singled out those areas which disagreed with any of the other imams, and called this science 'disagreement' (khilaf), or sometimes titled it 'the individual positions.' They also combined related subjects under the principles they drew from usul al-fiqh, naming this field 'the principles' (al-qawa'id). For ambiguous issues with various legal rulings, reasons, and evidences, they called it 'the differences' (al-furuq). They also focused on the laws that change with social needs under the broader scope of 'public interest' (al-masalih al-mursalah), and called this 'government rulings' (al-ahkam al-sultaniyya). They listed what was invented by the people and fraudsters as 'innovations' (al-bida'), dealt with ethics under 'manners' (adab), wrote works in legal methodology (usul al-fiqh), and distinguished between what was rightly used for argument and what was not. They compiled hadiths from the main books and organized them by fiqh topics, named it 'the rulings' (al-ahkam), devoted books to inheritance law, to calculation, algebra, and even wrote treatises in theology and produced strong proofs supporting the method of the early generations. May Allah reward them well" [Ibn Badran, 1401, p.449].*

### **Third Branch: Avoiding Odd (Unaccepted) Opinions**

Not every statement made by a scholar is automatically considered a valid opinion; among the transmitted positions of some there are those regarded as odd or anomalous. The care taken by scholars and adherents to their schools has bestowed upon the core opinions- both foundational and practical- greater attention and verification. This does not mean the accepted madhhabs are totally free of odd opinions, but, rather, that anomalous views found within the major madhhabs are fewer than those attributed to early scholars whose views did not have dedicated followers to continue, serve, and clarify them.

On the other hand, leaders and scholars of the established madhhabs are often careful to point out which views within the school are considered anomalous.

If a person is not an adherent of one of the established madhhabs, even if he is independent and versed in *usul al-fiqh*, he risks choosing abandoned or anomalous opinions and, without realizing, may contradict consensus in some of his positions.

Ibn Wahb al-Misri made a famous wise statement about the status of the imams' opinions: “Anyone who is a hadith scholar but does not have an imam in jurisprudence is misguided; if Allah had not saved us with Malik and al-Layth, we would have been lost!” [Ibn Abi Zayd al-Qayrawani, 1983, p.119].

This is why, for example, Ibn Hazm became infamous for his eccentric isolated positions. Ibn Rajab warned: “Let a person beware of what happened after them [the major imams], for there were many new developments, and from among those who claimed to follow the Sunnah and Hadith, like the Zahiris, there were many who went further from the Sunnah because they diverged from the imams, interpreting the texts in a way nobody before them did, or taking up positions none of the early imams accepted” [Ibn Rajab, 2004, p.169].

#### **Fourth Branch: Facilitating Ijtihad for Later Jurists (from Codification until Our Era)**

This is achieved by providing a large reservoir of agreed-upon rulings, evidences, principles, and texts- which benefits jurists in two important ways:

- First, this juristic wealth guides the researcher in any new legal matter, no matter how novel.
- Second, it enables a madhhab adherent to advance through levels of mastery, reaching the rank of *ijtihad* themselves. If someone aspires to reach this level, they should follow a systematic path- which is easier and more direct by progressing through the ranks within a madhhab.

Looking at scholars known for reaching the rank of *ijtihad*, we see most of them advanced through a juristic school before attaining full mastery in Sharia.

This demonstrates that studying jurisprudence and its principles via adherence to a school, with attention to evidence and reasoning, is the norm among scholars and experts since the madhhabs became established. In fact, many reached the level of independent *ijtihad* by first mastering their own school.

Al-Qadi ‘Iyad, after encouraging students to train in madhhab study, said: “It is essential...that a student of knowledge begin by studying what the most knowledgeable among these [imams] established and elaborated, memorizing what he authored and collected, following his reasoning and inclining toward what he preferred. For if the student tried to seek the correct position in every issue through pure *ijtihad*, it would be impossibly difficult, as all the necessary faculties must be present together. Only after attaining the essential skills and completing the necessary expertise- when the student has become fit for *ijtihad*- should he then move to independent reasoning and leave imitative following behind” [Al-Qadi ‘Iyad, 1983, p.63].

#### **6.In summary**

The emergence of the juristic schools (madhhabs) was not the result of division or conflict; rather, it was an expression of mercy and facilitation, and an answer to the

Ummah's need for organizing Islamic law and systematizing methods of legal reasoning. The imams worked hard to establish defined principles and systematic methodologies in light of the religious texts- these created complete scientific schools, enriching Islamic thought, preserving juristic heritage, and providing a solid reference for Muslims over the ages.

These madhhabs played a major role in protecting the unity of the Ummah, combining legitimate diversity with strict adherence to the foundations of Sharia.

The importance of these madhhabs remains to this day- they are reservoirs of scientific knowledge that link the present of our community to its past, granting modern jurists a disciplined foundation to address new and emerging legal questions, continually guided by sound principles of *ijtihad*.

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