



Maliki Jurisprudential Differences Through Jurisprudential Corpora - Case studies from the Book of Purification -

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Abstract:

This research analyzes the status of jurisprudential discrepancies within jurisprudential corpora, serving as a tool for deduction and preference in Islamic jurisprudence. It seeks to elucidate the Maliki school's emphasis on distinguishing between other disciplines of jurisprudence by addressing several inquiries, including: What is the nature of jurisprudential differences? What is their connection to other sciences pertinent to jurisprudence specifically? To what degree did Maliki jurists emphasize their incorporation into their jurisprudential corpora? What was the effect of this on the codification of Maliki jurisprudence? The study illustrates some jurisprudential concerns from *Sharh Kitab al-Talqin* (The Commentary on the Book of Indoctrination) by al-Mazari and *al-Dhakhira* (The Provision) by al-Qarafi -may Allah have mercy on them all-.

Keywords: Al-Mazari; al-Qarafi; Corpora; Differences; Jurisprudence.

1. Introduction

All praise belongs to Allah. We extol Him, solicit His assistance, and implore His absolution. We seek sanctuary in Allah from the malevolence of our own selves and the depravity of our actions. Whom Allah directs, none can mislead; and whom Allah misleads, none can guide. I testify that there is no deity save Allah, singular and without associate, and I testify that Muhammad is His servant and Messenger.

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Islamic jurisprudence is one of the most esteemed sciences, as it enables an individual to discern the divine intentions of their Lord regarding permissible and prohibited matters. Many Muslim scholars have dedicated themselves to it throughout history and throughout many locations and nations because of its esteemed status. Despite the consistency of their fundamentals and evidence, their schools of thought and methodologies are distinct, resulting in varied methods and approaches. The diversity encompasses the methodology of juristic composition, both in hierarchical structure and thematic approach.

One strategy jurists employ in formulating legal principles is identifying the distinctions in jurisprudence. At times, they were designated for classification, while at other instances, they were integrated into commentary and footnotes in the jurisprudential corpora. To address various inquiries regarding the nature of jurisprudential differences, their origins, their connections to analogous issues, and the degree of interest exhibited by Maliki jurists in elucidating these distinctions and the factors that affect them, I have opted to examine the commentary on *al-Talqin* by Imam al-Mazari al-Maliki, owing to his robust foundation and extensive expertise in both the principles and subdivisions of jurisprudence. Hence, this research was entitled: "Maliki Jurisprudential Differences Through the Jurisprudential Corpora - Case studies from the Book of Purification."

The research comprised the subsequent structure:

- Introduction.
- Section One: Contains an explanation of the principal research terminology.
- Section Two: The genesis and evolution of jurisprudential differences, together with the principal Maliki corpora pertaining to them.
- Section Three: The correlation between jurisprudential differences and analogous issues.
- Section Four: An empirical examination of certain jurisprudential differences in the Book of Purification.
- Conclusion: It encompasses the principal findings and recommendations.

2. Terminology

2.1. Linguistic and Terminological Definition of "Differences":

Linguistically, "*Furuq*" (differences) serves as the plural form of "*farq*," denoting distinction, separation, and division.

These definitions are most aligned with the terminological meaning.

Ibn Faris stated: “The letters *fa*, *ra*, and *qaf* constitute a phonetic root that signifies the differentiation and separation between two entities. An illustration of this is *farq shaar* (the separation of hair). It is stated, '*faraqtuhu farqan*.' (I separated it)”⁽¹⁾

Farraqa (to separate) two entities signifies the act of distinguishing one from the other.⁽²⁾

Farraqa baynahuma farqan (to distinguish between them) signifies separation.⁽³⁾

This root encompasses additional meanings, such as elucidation, decrees, and adjudication.⁽⁴⁾ Certain meanings cannot be traced to the basic word *farraqa* except via interpretation.

The term "*faraqa*" is articulated with or without a *shaddah*. Linguists have varied in their perspectives on the distinction between them, presenting three viewpoints:

1/ There is no distinction between them, as they possess identical meanings, with the exception that the verb with a *shaddah* is emphasized.⁽⁵⁾

2/ The term "*faraqa farqan*" without a *shaddah* signifies repairing, but "*farraqa tafriqan*" with a *shaddah* indicates corrupting.⁽⁶⁾

3/ "*Faraqa*" used for concepts, such as differentiation between issues, but "*farraqa*" refers to objects, such as separation between two men.⁽⁷⁾

Terminologically speaking, I have not encountered a precise definition of "*furuq*" (differences); yet, jurists and legal theorists have specifically addressed it in their debates on *qiyas* (analogy). They regard the distinction between the difference and the origin as an impediment to integration and perceive it as a deficiency in reasoning. Imam al-Haramayn stated: "Understand that the authentic interpretation of the difference is the separation of two entities in a legal ruling by a factor that varies between their respective rulings."⁽⁸⁾

(1) Maqayis al-Lugha Dictionary, p 493

(2) Al-Wassit Dictionary, p 685

(3) The Encompassing Ocean Dictionary, p 916

(4) Al-Sahah, p 916

(5) Jurisprudential and Fundamental Differences, p 11

(6) Al-Wassit Dictionary, p 685

(7) The Provision, p 4; The Enlightening Lamp, p 470

(8) The Sufficient in Controversy, p 298

Al-Suyuti characterized it as: "The discipline known as '*Furuq*', which delineates the distinctions between analogous terms that share similarities in structure and meaning, yet differ in legal ruling and causation." ⁽¹⁾

These definitions have been contested on the basis that they lack exclusivity and employ the terms of the defined word within the definition, resulting in the prohibited circularity in definitions.

2.2. Definition of “jurisprudential”:

“*Fiqhiya*” (jurisprudential), in linguistic terms, pertains to “*fiqh*” (jurisprudence). Jurisprudence linguistically signifies the comprehension and awareness of a subject. It is occasionally seen as general comprehension or profound insight derived from thought and reflection. ⁽²⁾

Terminologically, it refers to the understanding of practical legal decisions derived from comprehensive evidence. ⁽³⁾

2.3. Definition of “jurisprudential differences” as a discipline:

Despite the precedent and first authorship of jurisprudential differences, whether separately or within jurisprudential corpora, scholars have accepted this classification instead of providing definitions. The earliest definition available to us is that of Imam al-Suyuti, which is broad in its scope and not just pertaining to jurisprudential differences.

Subsequent scholars have endeavored to provide a definition that delineates the characteristics of jurisprudential differences, encompassing:

1. The definition provided by al-Fadani, author of *al-Fawa'id al-Janiyah*, states: "Knowledge of the distinguishing factors between two analogous issues, such that they cannot be equated in ruling." ⁽⁴⁾

This definition is broadly applicable across all fields of knowledge and is not limited to jurisprudential differences. Additionally, he employed the definite article in the definition.

(1) Convergences and Analogies, p 27

(2) See: Maqayis al-Lugha Dictionary, p 493; The Encompassing Ocean Dictionary, p 1250; Al-Bahr al-Muhit, pp 19-20.

(3) Tools of Fundamentals of Jurisprudence, p 367; Rules of the Fundamental Rulings, p 19

(4) Collection of Wise Sayings Commentary on the Relative Talents, p 95

2. Dr. Omar Al-Sabil defines it as "The science of elucidating the distinction between two jurisprudential issues that are analogous in form yet divergent in ruling." ⁽¹⁾

The criticism to it mirrored that of its predecessor: the inclusion of definite articles in the definition, which engenders the prohibited circularity in definitions.

3. Dr. Al-Bahussein defines the discipline as "The science that investigates the dimensions of divergence and their origins among jurisprudential matters that are analogous in form yet disparate in ruling, focusing on elucidating the significance of those dimensions, their correlations, or their legitimacy and illegitimacy, as well as delineating their conditions, methods of prevention, origins, evolution, applications, and the resultant advantages and benefits." ⁽²⁾

This lengthy statement, as al-Bahussein himself indicated, illustrates the distinctions in jurisprudence rather than providing a true definition.

The preferred definition may be:

Elucidating the significant distinctions between jurisprudential issues that share a similar form yet differ in their rulings.

Significant: A condition that omits non-influential distinctions, as they are irrelevant to the ruling.

Jurisprudential issues: The plural form indicates the potential for discrepancies across multiple concerns. The term "jurisprudential" omits distinctions in the principles of jurisprudence, grammar, similarities, analogies, and other considerations.

Similar: Excludes dissimilar matters, such as opposites, including life and death, purity and impurity, stillness and movement.

Form: In appearance, as it initially presents itself before examination, since distinctions can only be elucidated following cognitive engagement.

3. The Genesis and Evolution of Jurisprudential differences, Together with the Principal Maliki Corpora Pertaining to them

3.1. The Genesis and Evolution of Jurisprudential differences:

The genesis of the science of jurisprudential differences corresponded with the advent of Islamic jurisprudence, similar to differences in other disciplines. Discipline

(1) Clarifying the Evidence for the Difference between Issues, p 17

(2) Jurisprudential and Fundamental Differences, p 25

lacks coherence without observable commonalities among its branches and issues, implying uniformity in rulings, despite the distinctions that require divergence. This compelled scholars to elucidate this in what subsequently became known as differences.

The Book of Allah and the Sunnah of His Messenger (peace and blessings be upon him) provide evidence that differentiates between jurisprudential issues that are similar in form yet divergent in rulings.

According to the Book of Allah, the Most High states: ***“This is due to their assertion, “Trade is merely akin to usury.” Allah has allowed trade and prohibited usury.”*** (2:275). Allah, the Exalted, distinctly differentiates between trade and usury, which the polytheists conflated under the guise that both yield advantages. They issued identical rulings for each case, although Allah disproved their erroneous assertion.

In the Sunnah of the Messenger of Allah, the Exalted, it is stated: *“Pray in sheepfolds, but refrain from praying in camel resting places.”* ⁽¹⁾ Ibn al-Qayyim (may Allah have mercy on him) stated: “The Prophet (peace and blessings be upon him) was the pioneer in establishing legal rationales and justifications, in synthesizing and distinguishing, and in delineating valid and invalid descriptions. He elucidated the cycle and sequence, and to disaggregate them.” ⁽²⁾

The jurists of the nation, including the Companions, the Followers, and their successors, adopted this methodology. In his correspondence to Abu Musa al-Ash'ari, upon appointing him as the judge of Basra and Kufa, 'Umar (may Allah be pleased with him) advised: "Understand the examples and analogies, then evaluate matters according to your comprehension, and strive for what is most pleasing to Allah and closest to the truth, as you perceive it." ⁽³⁾

Al-Suyuti stated: "In his assertion, 'strive for what is most pleasing to Allah and closest to the truth,' there is an implication that certain analogies diverge from their counterparts in ruling due to a particular comprehension, referred to as the discipline of differences ." ⁽⁴⁾

Subsequently, experts among the jurists from various locations, including the Four Imams and others, focused on differences, which were clearly reflected in their *fatwas* (legal opinions) and *ijtihad*s (jurisprudential judgments). One explanation for their differences was the recognition of minor distinctions between comparable situations,

(1) Narrated by: Ahmad in Al-Musnad, p 584

(2) Wonders of Benefits, p 1533

(3) See: Sunan Al-Darqutni, p 367: The Book of Judgments, Rulings, and Others.

(4) Convergences and Analogies, p 7

necessitating great insight, investigation, and the ability to differentiate between factors that influence the ruling and those that do not. The domain of analogy predominantly encompasses this, as its concerns are limited to attachment or certainty, referred to as combining and separating.

Notwithstanding the initial appearance of jurisprudential differences, they were not designated for classification. Instead, they were dispersed throughout jurisprudential corpora and compilations of inquiries and *fatwas*, such as Imam Malik's *Al-Mudawana* (The Corpus), Al-Shafi'i's *Al-Umm* (The Mother), and *Al-Jami' Al-Kabir* (The Comprehensive Collection) by Al-Shaybani, who, among the Hanafis, emphasized the distinctions between various concerns.⁽¹⁾

Due to the stability of Islamic jurisprudence, the proliferation of jurisprudential schools, particularly the four main ones, and the heightened activity in authorship, a cohort of academics dedicated themselves to isolating issues and arguments on specific topics within distinct works for each discipline. Legal scholars specializing in foundational principles and codification sometimes compiled distinctions in jurisprudence, legal doctrines, and other elements into discrete collections, therefore enhancing clarity and accessibility. This transpired at the conclusion of the third century and the commencement of the fourth century. Included among these works is:

- *Al-Furuq* (Differences) by Abu al-Abbas Ahmad ibn Surayj al-Shafi'i, who passed away in 306 AH.

- *Al-Furuq* (Differences) authored by Abu al-Fadl al-Karabisi al-Hanafi, who passed away in 322 AH.

Consequently, writings on this discipline persisted relentlessly until the academic rivalry among scholars from various Islamic schools of thought escalated to a level where each school produced distinct works addressing jurisprudential discrepancies in the fifth century, regarded as the golden age of this discipline. Subsequently, discourse on jurisprudential differences diminished.

3.2. The prominent studies on the jurisprudential differences within the Maliki school⁽²⁾:

1- "*Furuq Masail Mushtabaha min al-Madhab*" (Differences in doubtful issues of the school of thought) authored by Abu al-Qasim Abd al-Rahman ibn Ali al-Kinani, recognized as Ibn al-Katib, who passed away in 408 AH.

2- "*Furuq al-Fiqhiyyah*" (Jurisprudential Differences) authored by Kadi Abd al-Wahhab ibn Ali ibn Nasr al-Baghdadi, who passed away in 422 AH.

(1) See: Introduction to Clarification of Evidence, edited by Omar Al-Sabil, pp. 23-24; Introduction to Differences by Al-Karabisi, edited by Muhammad Matmur, p 8.

(2) See: Works of the Tenth International Conference on the Maliki School: "The Science of Jurisprudential Differences among the Malikis and Their Applications," Ministry of Religious Affairs and Endowments, House of Culture, Ain Defla County, 2014, pp. 108-111; Jurisprudential Differences Through the Book of The Provision, Master's Thesis, University of Algiers 1 - By the student: Dahmani Abdel Halim, pp. 52-53

3- "*Furuq al-Fiqhiyyah*" (Jurisprudential Differences) authored by Abu al-Fadl Muslim ibn Ali al-Dimashqi, who passed away in the fifth century. He was a pupil of Kadi Abd al-Wahhab and was referred to as "Ghulam Abd al-Wahhab" owing to his prolonged affiliation with him.

4- "*Al-Nukat wa al-Furuq li Masail al-Mudawana*" (Anecdotes and Differences for Corpus Issues) authored by Abu Muhammad Abd al-Haqq ibn Harun al-Sahmi al-Qurashi al-Siqilli, an Alexandrian who passed away in 466 AH. This section addresses the differences within the corpus.

5- "*Anwar al-Buruq fi Anwa' al-Furuq*" (Lights in the Storms of Differences) by Abu al-Abbas Ahmad ibn Idris al-Qarafi, deceased in 684 AH, commonly referred to as "*Furuq al-Qarafi*". This work has garnered significant attention from the Maliki school, including a concise, edited, and structured version.

6- "Al-Furuq" (Differences) by Abu Abdullah Muhammad ibn Yusuf al-Mawaq al-Garnati, died in 897 AH.

7- "*Uddat al-Buruq fi Jami' Ma Fi al-Madhab min al-Jumu' wa al-Furuq*" (Lights' Tools in Collecting the Unifications and Differentiations of the School) authored by Abu al-Abbas Ahmad ibn Yahya al-Wansharisi, died in 914 AH.

4. The Correlation Between Jurisprudential Differences and Analogous Issues

4.1. The Correlation Between Jurisprudential Differences and Jurisprudential Rules:

Prior to examining the correlation between jurisprudential differences and rules, it is necessary to define jurisprudential rules. Scholars offer numerous definitions, centering on its characterization as a general or predominant rule applicable to specific cases. The most renowned of these are:

1. A universal rule that pertains to its specifics, so rendering its judgments discernible from it. ⁽¹⁾
2. A universal notion applicable to all its particulars. ⁽²⁾
3. General jurisprudential propositions, the specifics of which are universal jurisprudential propositions. ⁽³⁾

(1) Explanation of the Clarification of Text of Revision in Fundamentals of Jurisprudence, p 20

(2) Jurisprudential Rules by Al-Nadwi, p 39

(3) Jurisprudential Rules by Al-Bahusseini, p 56 (adapted)

4. A broad, pragmatic legal principle that may encompass the determinations related to its specific subject area. ⁽¹⁾

First/ Areas of Consensus Among Jurisprudential Differences and Jurisprudential Rules

1. Jurisprudential differences and rules typically concur on the same subject, which pertains to analogous branches of jurisprudence.

2. Both are encompassed by the terms "convergences" and "analogies."

3. Both elucidate the objectives of Islamic law in both unification and differentiation.

Second/ Distinctions Between Jurisprudential Differences and Jurisprudential Rules

1. Jurisprudential differences encompass a greater extent than jurisprudential rules, as the latter are included within the former's issues.

2. The topic of jurisprudential differences pertains to the distinction between analogous jurisprudential issues and their underlying causes. The focus of jurisprudential rules is the aggregation of analogous legal issues and their underlying causes.

3. The issues of jurisprudential differences exhibit similarity in form but diverge in rulings, whereas those of jurisprudential rules are alike in both form and rulings.

4.2. The Correlation Between Jurisprudential Differences, Convergences, and Analogies:

"*Ashbah*" (convergences) linguistically denotes *shabih* (similar), *shabah* (similarity), signifying *al-mithl* (example). It is stated, "An object resembles its analogous counterpart." ⁽²⁾

"*Anaza'ir*" (analogies) linguistically signifies *nazir* (the like). It is also asserted that it is "the equivalent across all entities". ⁽³⁾

Linguists assert that the example, the convergence, and the analogy possess identical meanings. ⁽⁴⁾

(1) General Rules and Jurisprudential Controls in Islamic Law, p 16

(2) See: Lisan al-Arab, p 503; Taj al-Arus, p 411

(3) See: Al-Sahah, p 278; Lisan al-Arab, p 219

(4) See: Fatwas Compiler, p 329

Terminologically speaking, convergences refer to jurisprudential disciplines that are analogous in most aspects and have identical rulings.

Analogies are disciplines of jurisprudence that exhibit similarity in form, even in a singular aspect. They may possess attributes that preclude comparison with analogous branches of jurisprudence.

First/ Areas of consensus among jurisprudential differences, convergences, and analogies

1. Each of the differences, convergences, and analogies constitutes a subject within Islamic law (the branches of jurisprudence).
2. Each of them analyzes situations that are analogous in nature, however in a singular aspect.
3. Jurisprudential differences are classified within convergences and analogies. ⁽¹⁾

Second/ Distinctions among jurisprudential differences, convergences, and analogies

1. Jurisprudential differences are classified within analogies, and they bear no resemblance to analogies.
2. Jurisprudential differences analyze situations that are analogous in form but divergent in ruling, whereas convergences and analogies scrutinize similar issues, regardless of whether they concur in ruling or not. ⁽²⁾

5. Empirical Examination of Certain Jurisprudential Differences in the Book of Purification

• First Issue: The Difference Between Purity from *Hadath* and Purity from *Najasah* Regarding the Requirement of Intention

Purity is categorized into two types: tangible purity, which refers to the absence of *najasah* (physical impurity), and is termed the eradication of filth. It is tangible purity due to the elimination of a physical substance. Intangible purity refers to the absence of *hadath* (ritual impurity). It is intangible because its objective is to eliminate the ruling of *hadath*, yet it does not include the removal of any substance. Imam al-Mazari (may Allah have mercy on him) stated: “Purity is categorized into two

(1) See: Jurisprudential Rules by Al-Bahusseini, p 93

(2) See: Works of the Tenth International Conference on the Maliki School, p 103; The Science of Jurisprudential Differences: Its Reality and Relationship to Other Sciences, p 360; The Landmark of the Jurisprudential Rules According to the Maliki School, p 194; Jurisprudential Differences of the Maliki School through the Book of Similar to the Principles of Guidance, p 21.

types: tangible purity, which refers to the absence of *najasah*, and intangible purity, which pertains to the absence of *hadath* and related matters. Purity from *najasah* does not necessitate intention, as it constitutes a sort of abstention. It parallels refraining from adultery, sodomy, and robbery, which do not necessitate intent. Yet, purity from *hadath* necessitates intention. ⁽¹⁾

He also stated: “The removal of *najasah* does not necessitate intention, as it is a purity whose significance is comprehensible, and its essence pertains to a concrete matter, attainable by both those who intend and those who do not. Consequently, anyone who removes their unclean garment or cleanses *najasah* without intention has fulfilled the intended objective, rendering the requirement of intention unnecessary. As purity from *hadath* is not to eliminate physical substances or fulfill a specific objective, but rather to attain a reward in the Hereafter, it necessitates the intention to perform this requisite duty.” ⁽²⁾

In this context, Kadi Abdul-Wahhab (may Allah have mercy on him) states, after delineating the difference between intangible and tangible purity: “Another distinction is that the removal of *najasah* is aimed at relinquishing it, and the method of relinquishment does not necessitate intention. This is evidenced by the notion that refraining from verbal expression during prayer and ablution pertains to executing an action, whereas the execution of acts necessitates intention. This is justified by prayer, fasting, and various other forms of worship. Thus, they vary, and only Allah possesses complete knowledge.” ⁽³⁾

• Second Issue: The distinction between washed and wiped in repetition

Al-Mazari (may Allah have mercy on him) responded to the inquiry: "What is the rationale for rejecting the merit of reiterating the act of wiping?": “There is no merit in repeating what has been wiped, as the fundamental principle of wiping is ease, whereas repetition is onerous. Consequently, due to the incompatibility of their subject matter, they are inherently incompatible. Furthermore, the majority of *hadiths* detailing the Prophet's (peace and blessings be upon him) ablution exclusively include repetition to the items that were cleaned. Consequently, merit must be confined to it.” ⁽⁴⁾

He (may Allah have mercy on him) emphasized that recurrence eliminates the leniency of wiping, rendering it equivalent to washing. This represents the perspective

(1) The Commentary on the Book of Indoctrination, p 138

(2) Ibid.

(3) Jurisprudential Differences, p 29

(4) The Commentary on the Book of Indoctrination, p 167

of Maliki scholars. Kadi Abdul-Wahhab (may Allah have mercy on him) stated that in Imam Malik's (may Allah have mercy on him) school that washing is to be repeated, although wiping is not: "Washing is meant to be thorough, thus repetition is incorporated to ensure it fulfills its intended purpose. The act of wiping is meant to be light, hence recurrence is excluded, as it would undermine its intended purpose and foundation." ⁽¹⁾

Al-Qarafi (may Allah have mercy on him) stated: "The rationale for wiping is to ensure ease. Were it not for that, Allah Almighty would have rendered it as a wash. If repeated, it would cease to be regarded as easy, thereby undermining the wisdom behind it." ⁽²⁾

• **Third Issue: The difference between a menstrual lady and an impure *junub* concerning the allowance of reciting Qur'an**

Al-Maziri (may Allah have mercy on him) noted the difference among jurists concerning the permissibility of a menstrual lady to recite Qur'an, along with the supporting evidence for each party. He asserted that this is allowable and addressed those who likened it to an impure, in a condition of major ritual impurity *-janabah-* in forbidding it, stating: "The impurity of the impure *junub* is acquired. It can be eliminated through purity. The duration of the permissible stay in this condition is not extended. A menstrual lady is not considered ritually pure, and her ritual wash does not negate the status of her menstruation. Her menstrual period is extended; she may discontinue her recitation due to lapses in memory. Consequently, recitation is permissible for her for this reason, contrary to the impure *junub*." ⁽³⁾

Kadi Abdul-Wahhab (may Allah have mercy on him) stated: "Menstruation constitutes a ritual impurity that does not necessitate ablution prior to sleep, unlike minor ritual impurity. Given that a woman has a legitimate need to recite the Quran, similar to someone in a state of minor ritual impurity, and considering that menstruation is a recurring condition lasting several days, it is permissible for her to be excused from refraining from recitation, akin to the allowance granted to those with minor ritual impurity." ⁽⁴⁾

(1) Jurisprudential Differences, p 34

(2) The Provision, p 262

(3) The Commentary on the Book of Indoctrination, p 332

(4) Supervision of the Anecdotes on Disagreement Issues, p 62

He remarked in another context on a menstrual woman: "...due to her inability to eliminate her ritual impurity, she is exempt from any harsher penalty, as she is absolved from performing ritual wash." ⁽¹⁾

- **Forth Issue: The difference between *istinja'* (cleansing after defecation) and *tayammum* (dry ablution) concerning the allowance of utilizing substances other than earth**

Al-Qarafi referenced the *hadith* of the Prophet (peace and blessings be upon him) regarding the materials permissible for *istinja'*: "*Bring me three stones, but do not bring me bones or dung.*" ⁽²⁾ He addressed the permissibility of *istinja'* using all inanimate objects, regardless of whether they are of the same nature as earth, excluding bones and dung as specified in the *hadith*. He subsequently dismissed the assertion of those who prohibited it by drawing an analogy to the impermissibility associated with dry ablution, elucidating the distinction between the two issues. He stated: "The difference between dry ablution and *istinja'* lies in the fact that the objective of *istinja'* is the removal of the substance; thus, any method that accomplishes this goal suffices. In contrast, dry ablution constitutes an act of worship, which remains confined to the parameters established by the text." ⁽³⁾ Specifically, *istinja'* possesses a logical significance as it pertains to physical purity aimed at the removal of impurities; thus, it is effective without the necessity of intention, as previously noted, and may be accomplished with any substance that fulfills this objective, irrespective of whether it is similar to earth or not. Dry ablution is a form of ritual purity governed by specific rulings, without broader interpretative meaning. Consequently, its application is confined to the instances explicitly stated in the texts and does not extend to other substances, thereby rendering it invalid when used to materials dissimilar to earth.

6. Conclusion

All glory to Allah, by whose grace virtuous actions are realized. This research has yielded several significant findings, the most noteworthy of which are:

1. The discipline of jurisprudential differences is elucidating the significant differences between jurisprudential issues that are analogous in form yet divergent in ruling.

(1) Jurisprudential Differences, p 32

(2) Narrated by Al-Bukhari, Book of Ablution, Chapter on What to Cleanse With, No. 155

(3) The Provision, p 208

2. The ancient scholars did not provide a precise definition of this science to elucidate its true essence; instead, they confined themselves to classification: occasionally by compiling jurisprudential differences in separate texts, and at other times by disseminating them in jurisprudential corpora.

3. The topic of jurisprudential differences pertains to the specific areas of jurisprudence, and the development of this discipline was a result of the advent of Islamic jurisprudence.

4. The Malikis had an early interest in jurisprudential differences, exemplified by Ibn al-Katib's work (Differences in doubtful issues of the school of thought) diseased in 408H, and the differences noted by Kadi Abd al-Wahhab diseased in 422H.

5. Jurisprudential differences pertain to jurisprudential rulings, since each generally corresponds to the branches of jurisprudence.

6. Jurisprudential differences equip the reader with a *fiqh*-oriented skill and acute discernment, allowing for the reconciliation of analogous rulings and the differentiation of those with disparate rulings.

7. Tangible purity denotes the elimination of impurities. Intention is unnecessary for it, and issues such as the Friday and Eid ritual washes are derived from it.

8. A menstrual woman may recite the Qur'an for ease and convenience.

9. Simplifying tasks through wiping is incongruent with repetition.

10. Jurisprudential differences are a discipline that elucidates the objectives of Islamic Law and unveils their intricacies and wisdom.

11. *Tayammum* is a ritual purification governed by religious law, wherein the conditions for cleanliness are confined to those explicitly outlined in the scripture.

Recommendations:

I recommend that researchers and experts proceed to the following:

- 1- Compiling an encyclopedia delineating the jurisprudential distinctions within the Maliki school, presented as a comprehensive volume that consolidates jurisprudential differences throughout all fields of Islamic law.

- 2- Integrating a module tackling jurisprudential differences into postgraduate curricula.
- 3- Allocating subjects pertaining to jurisprudential differences among master's and doctoral thesis endeavors.
- 4- Implementing the methodology of jurisprudential differences in codification and judicial legislation to elucidate laws and address uncertainties stemming from apparent similarities.

All praise is due to Allah, the First and the Last, and may Allah's blessings and peace be upon our Prophet Muhammad, his family, his companions, and his followers.

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