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Linguistic issues and its influence on jurisprudential differences in Islamic law

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Abstract: Islamic law is characterized by a combination of stability and flexibility—stability in principles and fundamentals, and flexibility in branches and details. One of the most important manifestations of the flexibility of Islamic law is the space it provides for "ijtihad" (independent reasoning) for those who have met the necessary qualifications and fulfilled the required characteristics. The scholars of the Islamic community have understood the message of Islam and excelled in deriving rulings, using their sound reasoning. They differed in their search for truth, with each "mujtahid" (jurist) adhering to and defending a particular legal proof. The diversity of opinions in branches of law is a legitimate matter that arose for various reasons, either due to differences in the narration of "hadith" (Prophetic traditions), foundational legal principles, or the Arabic language and its related issues. The linguistic issues that contribute to differences among jurists are numerous and can be categorized into two types: lexical issues and grammatical issues. Among the most important lexical issues are homonymy (words with multiple meanings), opposites, and figurative language. Some of the key grammatical issues include disagreements about case markings, the meanings of particles, and whether an adjective refers to one or two described elements that are governed by different agents. In terms of methodology: This paper is based on the incomplete inductive approach by collecting scientific material from a specific number of jurisprudential sources in which disagreement is evident in jurisprudential rulings. The Scientific material is then classified according to its relationship to linguistic issues and is divided into two sections: the first section is devoted to lexical issues, and the second section is devoted to syntax issues. In terms of intent: The article aims to highlight the influence of jurisprudential rulings on linguistic perception, and the interaction of jurisprudence in the Arabic language.

Keywords: jurisprudential differences; branches of law; grammatical issues; lexical issues

Islamic law is characterized by a combination of stability and flexibility. It maintains stability in its principles and fundamentals while allowing flexibility in its branches and particulars. One of the most significant manifestations of the flexibility of Sharia is the space for independent reasoning (ijtihad) available to those who embody the spirit of Islam and possess the required qualities. The jurists of the Muslim community have comprehended the message of Islam and have creatively derived rulings with their enlightened minds. They differed in their quest for the truth, with each jurist holding onto and defending their own legal evidence. Abu Bakr al-Sardafi said, "Know that the reason for the disagreement among scholars, even though the Book is one and the Prophet (peace be upon him) is one, is due to the paths leading to the truth, not the truth itself (Al-Rimi, 1999)."

The divergence in the branches of Islamic jurisprudence is a legitimate matter that arose for various reasons, some of which are related to narration, others to

foundational principles, and others to language. As for the reasons related to narration, they are numerous, including:

- The hadith may not have reached the jurist performing ijtihad, but it may have reached another, leading to a difference in opinion.
- The hadith may have reached the jurist, but he may see a flaw in it that prevents him from relying on it, whereas another jurist may not see this flaw, leading to a difference in opinion.
- The hadith may have reached the jurist in one wording and reached another jurist in a different wording, altering the meaning of the hadith and leading to a difference in opinion.
- The hadith may have reached the jurist along with the context of its occurrence, while another jurist may receive it without this context, leading to a difference in opinion.

As for the reasons related to foundational principles, they revolve around the differences among jurists regarding the consideration of the opinion of a Companion, unregulated public interests (masalih mursalah), blocking means to harm (sadd al-dhara'i), presumption of continuity (istishab), custom and tradition, among others.

Language issues are considered one of the most significant reasons for the differences among jurists, and they are numerous. We have chosen to classify them into two categories: lexical issues and grammatical issues.

1. lexical issues

Language matters related to vocabulary and their meanings vary, the paper will examine points out those that have an impact on the differences among jurists (Al-Suyuti, 1998): I will discuss homonymy, antonyms, and linguistic metaphor.

1.1. Lexical ambiguity (Homonymy)

This refers to a single word indicating two or more meanings. The term "homonym" refers to "a single word that equally denotes two or more different meanings to the speakers of that language." For example, the word "Ayn" can mean the eye, a water spring, a spy, a leader of people, something precious, or someone present, among other meanings. Due to lexical ambiguity present in some religious texts, differences arose among jurists, as in the following examples:

(<u>Saeed</u>): In the verse: "If you are ill or on a journey, or any of you comes from the toilet, or you have contacted women, and you cannot find water, touch clean earth and wipe your faces and hands." (Quran 5:6). The word (Saeed) is ambiguous and can mean earth, soil, elevated land, or land not mixed with sand or salt, among others (Al-Zabidi, 1205). Due to this ambiguity, jurists differed. Al-Iraqi said: "The verse indicates the necessity of pure earth for tayammum, and they differed in the meaning of (<u>Saeed</u>)." Malik, Abu Hanifa, Al-Awza'i, Al-Thawri, and Muhammad ibn Jarir Al-Tabari said: (<u>Saeed</u>) is the surface of the earth, and includes everything elevated on the earth's surface, such as soil, stone, sand, and others. They used as evidence the verses: {So it becomes a slippery slope} (Quran 18:40) and {We will make it a barren slope} (Quran 18:8). They said it is the harsh land that produces nothing. Most jurists, including Al-Shafi'i, Abu Yusuf, Ahmad, Ishaq, Ibn Al-Mundhir, and Dawud Al-

Zahiri, said (Saeed) means soil only, excluding other parts of the earth, and this was narrated from Ibn Abbas who said: (Saeed) refers to the ploughing of the earth as narrated by Al-Bayhaqi in his Sunan, and the hadith of Hudhayfa in Muslim: 'Its soil is made pure for us,' and in another narration for Al-Bayhaqi: 'Its soil (Al-Iraqi, 1980).

(Nekaah): In the verse: "And do not marry those [women] whom your fathers married, except what has already occurred" (Quran 4:22). In Arabic, "Nekaah" is ambiguous between intercourse and contract (Al-Jawhari, 1987). Based on this, jurists differed on the ruling of a son marrying a woman whom his father committed adultery with. Abu Hanifa interpreted "Nekaah" as intercourse, ruling it forbidden for the son to marry such a woman, while Al-Shafi'i interpreted it as contract, ruling it not forbidden (Ibn Rushd, 2004).

Some researchers attribute (Tawila, 1993) the jurists' differences on this verse to the dual nature of the word "Nekaah" between literal and metaphorical meanings. They argue that its ambiguity lies in multiple meanings, but homonymy involves multiple literal meanings, while linguistic metaphor involves a literal and a metaphorical meaning. I considered "Nekaah" a homonym due to the prevalence of both its meanings, intercourse and contract, making them both literal.

1.2. Antonymy

It refers to a word indicating two opposite meanings, like "Jalal" meaning both great and small, "Sarim" meaning both night and day, and "Dan" meaning both doubt and certainty (Al-Anbari et al., 1987). Due to antonymy, jurists differed in some religious rulings, as in:

(Eqdar): The Prophet Muhammad (peace be upon him) said about the crescent moon: "When you see it, fast, and when you see it again, break your fast. If it is obscured, then estimate (Uqduru) it (Agreed upon). The word (Uqduru) is ambiguous, possibly meaning to narrow (i.e., restrict the count) or to estimate (i.e., observe and ponder). Based on this, jurists differed on determining the day of doubt which should not be fasted. If 29 days of Sha'ban have passed, Muslims must seek the Ramadan crescent; if seen, they fast, if not, and the sky is clear, fasting the next day is not permissible by consensus. If the sky is not clear, they differed: Hanbalis considered the next day as Ramadan, requiring fasting, while the majority considered it part of Sha'ban, each group adhering to a different meaning of (Uqduru) (Rushd, 2004).

Qurun): In the verse: "And divorced women shall wait by themselves for three periods (Qurue)" (Quran 2:228). (Qurun) is the plural of (Qurun), a word that can mean either purity or menstruation. Thus, jurists differed on the waiting period for a menstruating divorce into two views:

The first view: Malik, Al-Shafi'i, and Ahmad in one narration held it means three periods of purity, supported by Zaid, Ibn Umar, Aisha, Al-Zuhri, and others. They argued from Arabic language, stating (Qurun) refers to the retention of blood (Al-Anbari, 1987).

The second view: Abu Hanifa and Ahmad in his correct view held it means three menstrual periods, supported by Umar, Ali, Ibn Mas'ud, Al-Awza'i, Al-Thawri, and others (Al-Sarakhsī et al., n.d.).

This case illustrates how the jurists differed due to antonymy, with each group citing linguistic evidence.

1.3. Linguistic metaphor

Abdul Qahir Al-Jurjani defined "metaphor" and "literal" differently based on whether they describe a single word or a sentence (Al-Jurjani et al., n.d.). Literal in a single word is "a word intended for its original meaning in its linguistic context," while metaphor in a single word is "any word intended for a meaning other (Al-Jurjani, 1902) than its original meaning in its linguistic context (Al-Jurjani, 1902).

This is linguistic metaphor, distinct from metaphor in a sentence, which rhetoricians call mental metaphor, such as saying: "The prince built a palace," where the action is attributed to someone other than its real doer.

Using words in non-literal meanings has influenced juristic differences, such as:

(Al mutabayian): The Prophet Muhammad (peace be upon him) said: "The two parties to a sale have the option (to cancel the contract) as long as they have not separated." (Narrated by both Bukhari and Muslim). Jurists differed on the term (Al mutabayian)'. Shafi'is and Hanbalis took it literally as buyer and seller, meaning they have a choice to annul the sale as long as they are in the same session and have not separated. Malikis and Hanafis interpreted it metaphorically as 'negotiators,' meaning they have a choice until the contract is concluded, after which they become literal sellers and buyers, and cannot retract (Al-Ahkam, 1987).

(Allams): In the verse "Or you have touched women" (Quran 4:43), "Lams" literally means touch. Ibn Manzur stated: "Touch is to feel or contact with the hand (Manzur et al., 1993)," but it is metaphorically used for intercourse. Al-Zamakhshari stated: "From the metaphor: touching a woman or touching her means having intercourse (Al-Zamakhshari, 1998).

The term (Lamastum) fluctuates between literal and metaphorical meanings, both intended in the ruling of breaking ablution. Based on this, jurists differed in their views:

The first view: Shafi'is and one narration from Ahmad held that touching a foreign woman or one's wife breaks ablution in all cases.

The second view: Hanafis and one narration from Ahmad held that touching does not break ablution at all.

The third view: Malikis and the prominent view from Ahmad held that touching breaks ablution if accompanied by desire, but not without it, supported by Alqama, Al-Nakha'i, Hammad, Al-Thawri, and others.

2. Grammatical issues

2.1. Grammatical case marking

Different grammatical case markings can lead to different legal rulings, as in the hadith of the Prophet (peace be upon him): "The slaughter of the fetus is the slaughter of its mother" (Narrated by Muslim). There are two narrations: one with the nominative "Thakatu umihi" and another with the accusative "Thakatu umihi". In the nominative narration, Thakatu is a subject, while in the accusative narration, it is in the accusative case due to the omission of a preposition. Al-Sakhaawi said: Abu

Hanifa and his followers favored the accusative case due to their requirement of explicit slaughtering, while the majority, such as the Shafi'is and Malikis, preferred the nominative case, dismissing the need for separate slaughtering of the fetus. Some scholars also provided interpretations for the accusative reading (Al-Sakhawi, 2005). Jurists differed on whether the fetus of an animal must be slaughtered separately: the majority, based on the nominative reading, held that if the mother animal is slaughtered and a dead fetus is found, it is permissible to eat it, interpreting the hadith to mean that the mother's slaughter suffices for the fetus. Abu Hanifa argued that the fetus is not permissible unless it emerges alive and is slaughtered, as the slaughter of one animal does not suffice for another. He interpreted the accusative reading as an elision of the preposition, meaning the fetus requires its own slaughter just as its mother does.

In the verse: "O you who have believed, when you rise to [perform] prayer, wash your faces and your forearms to the elbows and wipe over your heads and your feet to the ankles" (Quran 5:6), reciters differed on the word "Arjulukum" Nafi', Ibn 'Amir, Hafs, Al-Kisai, and Ya'qub read it as accusative (Arjulakum), meaning "wash your feet to the ankles," referring to the bones protruding at the ankle joint. Others, including Ibn Kathir, Hamzah, and Abu 'Amr, read it in the genitive case, which conventionally means "wipe your feet to the ankles". Therefore, Muslims have differed on whether to wash or wipe the feet. The majority of Sunni scholars say washing is obligatory, while the Shi'a and Imamiyya say it is wiping. Dawud ibn Ali and Al-Nasir al-Haqq from the Zaydis say both should be combined (Darwish, 1994).

2.2. Returning of the attribute to two subjects governed by different agents

In the verse: "Prohibited to you [for marriage] are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, the daughters of your brother, the daughters of your sister, your [milk] mothers who nursed you, your sisters through nursing, your wives' mothers, and your step-daughters under your guardianship [born] of your wives unto whom you have gone in. But if you have not gone in unto them, there is no sin upon you. And [also prohibited are] the wives of your sons who are from your [own] loins, and [that] you take [in marriage] two sisters simultaneously, except for what has already occurred. Indeed, Allah is ever Forgiving and Merciful" (Quran 4:23) (Rushd, 2004).

Jurists differed, with the majority saying the condition "unto whom you have gone in" refers to the nearest mentioned, meaning the latter "your wives", while some jurists said it applies to both mentions of wives. Ibn Rushd stated: "Regarding the mother, the majority of scholars across various regions believe she becomes prohibited by the mere contract on the daughter, whether he has consummated the marriage with her or not. Others believe that the mother is only prohibited if the daughter is consummated, similar to the daughter being prohibited only if he has consummated with the mother, a view transmitted from Ali and Ibn Abbas through weak chains. The disagreement is based on whether the condition in {unto whom you have gone in} refers to the nearest mentioned, meaning the step-daughters only, or to both step-daughters and wives mentioned prior to the step-daughters in {your wives' mothers

and your step-daughters under your guardianship [born] of your wives unto whom you have gone in}."

2.3. Research findings

First: The Arabic language and its sciences form a solid foundation for developing jurisprudential and legal reasoning skills.

Second: The differences among jurists are in matters of secondary importance, not in fundamental principles and constants. These differences are legitimate, even merciful, and allow for flexibility.

Third: Linguistic interpretation plays a prominent role in issuing legal rulings.

Fourth: The linguistic topics that influence the differences among jurists are diverse and varied.

Fifth: The study classified the linguistic issues that impact juristic differences into lexical and semantic issues, which are: homonymy, antonymy, and metaphor; and issues related to syntax, which are: grammatical inflection and the return of the attribute to two described elements governed by two different operators.

Sixth: Homonymy is considered the most significant cause of juristic differences, followed by metaphor.

Seventh: Homonymy and metaphor often overlap, as the boundaries between them are frequently unclear. It is claimed that homonymy follows metaphor in a progression, meaning that any word, in its original designation, refers only to one meaning, but it is then used metaphorically for other meanings. Some of these meanings may become literal due to frequent use, thus creating homonymy. Therefore, it may sometimes be difficult to distinguish between metaphor and homonymy.

Eighth: Some scholars include antonymy under the category of homonymy, which is justifiable, but distinguishing between the two is preferable.

Ninth: Some linguists who delve into the causes of homonymy include certain linguistic issues that should be classified elsewhere in linguistic sources. For example, Al-Battalusi, in his book "Al-Insaf fi al-Tanbih ala al-Asbab alati Awjabat al-Ikhtilaf bayn al-Muslimin" (Equity in Highlighting the Causes that Led to Differences among Muslims), discusses homonymy in the context of single words, homonymy in their grammatical states (such as inflection), and homonymy caused by the composition of words and their structural relationships.

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