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The Reason for Dispute among Foundational Jurists in the Science of "Jurisprudence" between Certainty and Conjecture

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Abstract

This study addresses the reason for the dispute concerning the certainty and conjecture of jurisprudential knowledge. I clarified the dispute's context, where scholars are divided into two groups: those who consider jurisprudential knowledge as definitive, and others who view it as conjectural. I then illustrated the dispute's basis, which stems from three reasons: firstly, the definition of jurisprudence in terms of terminology or as a designation; secondly, the disagreement over interpreting the term "knowledge" and its intended meaning; thirdly, the issue of validating or invalidating the efforts of a jurist (Ijtihad). The study concludes with several recommendations: attention to studying the reasons for disputes in fundamental issues, elucidating their interconnections, a deeper examination of the definitions of jurisprudence and knowledge in Islamic jurisprudence, clarifying concepts and terminologies as per foundational, linguistic, and jurisprudential perspectives, conducting further research on the role of Ijtihad and its impact on Islamic rulings and scholars' perceptions in this context, focusing on understanding disputes related to validating or invalidating juristic efforts, and analyzing more sharia and foundational texts related to conjecture and certainty in jurisprudence. God grants success.

Keywords: Cause of disagreement, science of "jurisprudence", Certainty, Conjecture

The Introduction

Understanding the reasons for dispute is among the most important sciences that a jurist, a legal issuer, and a judge must be familiar with, comprehend its meanings, grasp its consequences, and not be excused for its ignorance. Hence, some scholars have stipulated that one is not considered a jurisprudent until they understand the locations of dispute, its causes, and its effects on jurisprudential branches and related issues. Without this knowledge, a person is not a jurisprudent until a camel passes through the eye of a needle; rather, they are merely a confused transmitter, carrying jurisprudence to others without the ability to deduce new incidents from existing ones, or to analogize future cases with present ones, or to correlate the seen with the unseen, and they are prone to frequent mistakes and misunderstandings, and far from understanding jurisprudence. (Al-Subki, 2012)

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Research Methodology

In writing this paper, I relied on the inductive and analytical approaches

Inductive approach: I utilized induction in compiling the scientific material. I examined the foundational books and extracted content related to the topic, placing it appropriately. I attributed the texts I quoted back to their sources, enclosing direct quotes within quotation marks. I derived Hadiths from their reliable sources; if a Hadith was from Sahih Bukhari or Sahih Muslim, I merely attributed it, but if from other sources, I provided detailed references including page, volume, chapter, and the Hadith number if available, and I clarified its authenticity or weakness.

Analytical approach: I analyzed the texts related to the issue. Through this approach, the reasons affecting the matter became evident to me..

Clarification of Research Terminologies

Concept of Foundational Dispute Reason: I did not find a specific definition for the reasons of dispute in the titular consideration among early scholars; this is because there is no science with this term, nor are there dedicated works by early scholars focused solely on the reasons. However, one can discern the reasons through their discussions on disputed matters when they specify or hint at them during the argumentation of statements and their evidences.

Thus, the reasons for dispute are a chapter of the science of dispute and a part of it. It is essential to define the science of dispute as an independent art and science with its books and classifications, and what precedes is a definition of dispute in terms of conception and occurrence.

Therefore, I define "the reason for foundational dispute" as what identifies the cause of contention in foundational issues and the basis of the Imams in their various stances on these issues.

Concept of Jurisprudence in Terminology: Knowledge of the scientific Sharia laws acquired from their detailed evidences. (Al-Zarkashi, 2013) Also defined as: Knowledge of the established Sharia laws concerning the actions of the accountable. (Al-Tawfi, 2012)

The concept of certainty is twofold

Firstly, that which does not admit the opposite; for example, one is half of two.

Secondly, that whose compliance is obligatory and its violation is not legally permissible. (Al-Tawfi, 2012)

The concept of conjecture: It is the predominant belief while admitting the possibility of the opposite and is used in certainty and doubt. It is said: conjecture is one of the aspects of doubt characterized by predominance. (Al-Jurjani, 2013)

Scholars' Opinions and Their Evidences in the Research Issue

There is no dispute among scholars that some aspects of jurisprudence are definitive, such as universally agreed upon rulings or those known as part of the religion by necessity. The dispute arises in matters other than these rulings: are they to be considered definitive or conjectural?

Scholars differ into two main schools of thought on this issue

The first school considers jurisprudence as definitive. Al-Juwayni (2013) stated this, and it was the choice of Sheikh Al-Islam Ibn Taymiyyah who said: "The jurisprudence specific to the jurist is definitive knowledge, not conjectural, and whoever does not know is merely imitating the four Imams." (Al-Najdi, 2011) Scholars argue that jurisprudence is built on two definitive premises, making it definitive. For example, if a jurist strongly believes that touching nullifies ablution, this becomes a definitive premise for him, and thus, the ruling becomes definitive. Another definitive premise is that all conjectural matters must be acted upon, necessitating action and issuance of legal opinions based on them. Therefore, the conclusion that nullification of ablution requires action is definitive, as both premises are definitive.

They also argued that singular narrations and juristic analogies do not necessitate action in themselves, but the action is necessitated by the compelling evidence that mandates action when narrating singular narrations and conducting analogies. (Al-Juwayni, 2013) Furthermore, the majority of jurisprudential issues that people need and issue fatwas on are established by text or consensus, and doubt and dispute only arise in a few matters. This is similar across all sciences, and many disputed issues are infrequent and predictable, while necessary knowledge for people, what is obligatory, prohibited, or permissible, is definitively known. (Al-Najdi, 2011)

The second school considers jurisprudence as conjectural. (Ibn Taymiyyah, 1984) This school's proponents argue that most jurisprudential rulings are established through analogy, singular reports, presumptive consensus, and continuation, which do not yield certainty but rather conjecture for those who consider them authoritative. Thus, they fall under the category of conjecture (Al-Isnawi, 2009), and a conjectural evidence only produces conjecture, whether all or some of its premises are conjectural. (Al-Attar, 2016).

Results

Through induction from the scholars' statements and analysis of the evidence, it became apparent that the reason for the dispute in this matter traces back to three causes:

The first reason relates to defining jurisprudence either terminologically or as a designation, which is linked to foundational rules. Those who define jurisprudence as "knowledge of practical Sharia rulings acquired from their detailed evidence" consider it definitive because knowledge is associated with certainty and definitive reality. Conversely, those defining jurisprudence as "understanding Sharia rulings" categorize it as conjectural. Knowledge is more specific than understanding, which can be both certain and conjectural (Al-Futuhi, 2009). Al-Zarkashi (2013) noted that using "understanding" would have been better to avoid the ambiguity of jurisprudence in the realm of conjecture.

The second reason stems from the disagreement over interpreting the term "knowledge" and its implications. This aspect is also linked to foundational rules. Those interpreting knowledge as the craft of jurisprudence render jurisprudence conjectural.

The third reason is related to validating or invalidating a jurist's *ijtihad* (independent reasoning), which also pertains to foundational rules. Some argue that every jurist's *ijtihad* is valid and that truth is manifold, leading to the notion that jurisprudence is conjectural. Others hold that only one truth exists, and the truth cannot be manifold, suggesting that jurisprudence falls under the definitive category.

Discussion

From the aforementioned results, it is evident that some scholars' opinions concur regarding the impact of the discussed causes. Al-Amidi pointed out that using "knowledge" excludes jurisprudence from conjectural judgments, even if it's colloquially referred to as jurisprudence. In formal linguistic and foundational terms, jurisprudence is the knowledge of it or the knowledge of acting upon it based on definitive understanding. (Al-Amidi, 2011)

Al-Zarkashi, in his book *Al-Bahr Al-Muheet*, concurred with the second cause, stating, "Knowledge is a genre, meant to denote craft, as in saying: the knowledge of grammar, i.e., its craft. Thus, it encompasses both conjecture and certainty, and accordingly, questioning the jurisprudence doesn't arise from conjecture." (Al-Zarkashi, 2013) Sadr Al-Sharia also agreed, arguing that knowledge, in the definition of jurisprudence, can imply both conjecture and certainty; therefore, there's no reason to categorize jurisprudence as purely conjectural. (Sadr Al-Sharia, 2014; Gomez–Marin & Sheldrake, 2023).

Regarding the third cause's influence, Sadr Al-Sharia mentioned that when the legislator considers predominant conjecture in rulings, it is as if it said: whenever the jurist's conjecture about a ruling predominates, the ruling is affirmed. Thus, whenever there is a predominance of the jurist's conjecture, the ruling's affirmation is definitive. This response is valid according to those who believe every jurist's effort is correct. (Sadr Al-Sharia, 2014)

Also, Taftazani mentioned that the ruling is definitive, and conjecture lies in its path and its establishment: When consensus indicates the necessity of acting upon conjecture, and numerous narrations to that effect become conceptually recurrent, the legislator's consideration of predominant conjecture in rulings becomes tantamount to a definitive text from the legislator that every ruling that predominates in the jurist's conjecture is established in God's knowledge, making the supposed ruling's affirmation definitive and thus validly described as knowledge upon assuming every jurist's correctness.

If it's argued that conjecture, which admits its opposite, and definitive knowledge, which doesn't, are mutually exclusive, it's responded that conjecture becomes definitive upon consideration of this analogy: that it's known to be conjectural to the jurist and everything known to be conjectural to the jurist is definitively established in reality, based on validating every jurist's conjecture.

Taftazani further noted, if one assumes only one truth, it's as if there's a definitive text that every ruling that predominates in the jurist's conjecture is obligatory to act upon or established with regard to the evidence, even if not established in God's knowledge. Thus, the obligation to act upon it or its establishment regarding the evidence is definitive. But this necessitates that jurisprudence be defined as the knowledge of the obligation to act upon rulings or that what is established regarding conjectural evidence, even if not definitively established in reality, is known. And you know that what is definitively established admits no possibility of non-establishment in reality.

Therefore, every ruling known definitively as God's command is definitively known; hence, every ruling that must be acted upon is definitively known, making the jurist's conjectural ruling definitively known. Thus, jurisprudence is definitive knowledge, and conjecture is a means to it, resolving that we don't concede that every ruling that must be acted upon definitively is known definitively as God's command, for it's not inconceivable that one must act definitively

upon what is conjectured to be God's command. This is the crux of the dispute, especially if it's based on the notion that every jurist's conjectured ruling is God's command definitively, as some believe, making the mention of the obligation to act redundant and meaningless. (Taftazani, 2012)

Recommendations

In light of the findings of the current research, the researchers conclude with several recommendations:

1. Emphasize the study of the reasons for dispute in foundational issues and clarify the nature of their interrelation.
2. Conduct deeper studies to define jurisprudence and knowledge in Islamic jurisprudence, specifying the concepts and terminologies used according to foundational, linguistic, and jurisprudential perspectives.
3. Undertake more research and studies on the role of Ijtihad and its impact on Islamic ruling and scholars' perceptions in this context, with a focus on understanding the disputes related to validating or invalidating the efforts of a jurist.
4. Analyze further evidence and texts related to Sharia and foundational principles concerning conjecture and certainty in jurisprudence, and contemplate how these evidences influence the understanding of jurisprudence between certainty and conjecture.

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