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## Issues of Jurisprudential Principles: Between Certainty and Presumption - A Study on the Cause of Disagreement

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### Abstract

*This research addresses the reason for the disagreement on the issue of the definiteness or presumptiveness of the principles of Islamic jurisprudence. The concept of "the cause of foundational disagreement" among scholars has been defined, and the paper delves into the definitions of certainty (al-qat') and presumption (al-zann). Subsequently, the locus of disagreement on the issue was elucidated, revealing two schools of thought: those who consider the issues of the principles of jurisprudence to be definitive, and those who view some as definitive and others as presumptive. The paper then elucidates the reasons for the disagreement, which are based on two factors: firstly, the disagreement over the subject matter of the principles of jurisprudence, and secondly, the disagreement over the derivation of principles of jurisprudence. The research concludes with several recommendations, including the importance of studying the reasons for disagreement in foundational issues, elucidating the connection between them, emphasizing the significance of understanding and applying the foundational rules in interpreting and judging Sharia rulings, and underscoring the necessity of comprehending the principles of jurisprudence as a mediator between beliefs and Sharia rulings to clarify the evidence and concepts. God grants success.*

**Keywords:** Issues of Fundamentals of Jurisprudence, Definitive, Speculative, Cause of Disagreement, Ruling.

### Introduction

Understanding the reasons for disagreement is among the most critical sciences that a jurist, mufti, and judge must be aware of. They must comprehend its meanings, grasp its implications, and cannot be excused for ignorance thereof. Some scholars have stipulated that one cannot be considered a jurist until they understand the locales of disagreement, its causes, and its effects on juristic branches and related issues. Without the knowledge of disagreement and its sources, a person is merely a confused transmitter of jurisprudence to others, incapable of innovating solutions for new incidents, drawing parallels between present and future cases, or associating the absent with the present. Errors and confusion are quick to follow such an individual, making the comprehension of jurisprudence far more elusive.

To shed light on the foundational reasons for disagreement, I have been compelled to write this academic paper titled: "Issues of Jurisprudential Principles: Between Certainty and Presumption - A Study on the Cause of Disagreement." The research problem involves clarifying the meaning of "certainty" and "presumption" and elucidating the concept of "the cause of foundational disagreement," its locus among scholars, and the reason for disagreement on this issue.

The research aims to familiarize with the meanings of certainty and presumption, understand "the cause of foundational disagreement," its locus among scholars, and the reason for disagreement on

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this issue. The significance of this research is revealed in how understanding the reasons for disagreement uncovers the scholarly efforts in discerning the truth. These efforts are not for mere caprice but to manifest the unadulterated truth, understand the doctrines of scholars and their evidences, and how they deduce the evidences they use to establish their viewpoints on contentious issues. The novelty of this research lies in its focus on studying the reasons for disagreement in foundational issues.

Upon reviewing prior studies, I found no foundational study that focused on the aspect of the cause of disagreement in this matter and compiled it into a single comprehensive study.

## **Research Methodology**

In writing this paper, I relied on both inductive and analytical methodologies:

**Inductive Method:** I adopted the inductive approach in collecting the scientific material. This involved examining the books of foundational jurisprudence and extracting relevant content to the topic, organizing it appropriately. I attributed the texts I cited to their sources; when quoting verbatim, I enclosed the text between quotation marks ". I extracted the Hadith from its reliable sources, attributing it directly if it was from the two Sahih books or detailing its source, page, volume, chapter, and Hadith number if numerated, from other recognized books for those not included in the Sahihs, specifying its validity or weakness.

**Analytical Method:** This involved analyzing the texts I gathered concerning the issue. Through this method, I was able to discern the reasons that influenced the matter

## **Clarification of Research Terminologies**

The concept of the cause of foundational disagreement: I did not find a specific definition for the causes of disagreement in the titular consideration among the early scholars; this is because there isn't a discipline with this exact terminology, nor are there writings by early scholars exclusively focused on this topic. However, one can discern the cause through their discussions on contentious matters when they specify or hint at it during the discussion of opinions and their evidences.

Thus, the causes of disagreement are a section of the science of disagreement and part of it. It's essential to define the science of disagreement as an independent art and science with its own books and classifications. The aforementioned is a definition of disagreement in terms of conception and occurrence.

Therefore, I define the "cause of foundational disagreement" as what identifies the source of contention in foundational issues and the basis of the Imams' positions in their various statements.

The concept of certainty (al-qat') has two meanings:

First: That which does not admit the opposite, such as saying, "One is half of two".

Second: That whose compliance is definitively obligatory, and its contravention is not legally permissible. (Al-Tawfi, 2012).

The concept of presumption (al-zann) is the prevailing belief while admitting the possibility of the opposite and is used in certainty and doubt. It has been said: Presumption is one of the aspects of doubt

with a predominance feature. (Al-Jurjani, 2013).

### **Scholars' Opinions and Their Evidences in the Research Issue**

There is no disagreement among scholars that the general auditory evidences of jurisprudence, including the Quran, the consistent Sunnah, and consensus, are from the matters of jurisprudential principles and yield certainty.

Similarly, there is a consensus that jurisprudential principles issues, such as the concept of contradiction, the implications of words, the saying of a companion, and analogies, do not yield certainty but rather presumption. (Al-Juwayni 2013)

However, the disagreement among scholars lies in categorizing all issues of jurisprudential principles as definitively certain. Consequently, we find two schools of thought regarding the locus of disagreement. The first considers the issues of jurisprudential principles as certain, a view held by many foundational scholars like Al-Juwayni and Al-Ghazali among others. (Al-Ghazali 1998) They argue that these issues either revert to rational fundamentals, which are certain, or to complete induction from the evidences of Sharia, which is also certain. There is no third category except the collective of these two, and what is compiled from certainties is certain.

The second school believes that some issues of jurisprudential principles are certain while others are presumptive. (Al-Shatibi 2018) They argue that some issues and discussions in jurisprudential principles are not definitive but presumptive, like the validity of presumption of continuity and the concept of contradiction. Thus, they fall into the categories of certainty and presumption. (Al-Muhalli 2004)

### **Results**

Through inductive analysis of scholars' statements and evidences, it became evident that the cause of disagreement in this matter is attributable to two reasons:

The first reason: It relates to the disagreement over the subject matter of the principles of jurisprudence, which is tied to foundational rules. Those who believe the subject of the principles of jurisprudence to be general evidences argue that issues of jurisprudential principles are definitive without exception. On the other hand, those who consider the subject to encompass evidences, rulings, independent reasoning, imitation, contradiction, and preference might regard some issues of jurisprudential principles as definitive and others as presumptive.

The second reason: It pertains to the disagreement in the derivation of the principles of jurisprudence, which is also connected to foundational rules. Those who believe the issues of jurisprudential principles are derived solely from the principles of religion might argue that they are definitive. Conversely, those who believe that they are derived from both the principles of religion and jurisprudence might view some as definitive and others as presumptive

### **Discussion**

From the aforementioned results, it's evident that some scholars' views align with the discussed causes. Al-Juwayni highlighted the impact of the first reason on the issue, stating: "Only in foundational matters do one find reports from individuals and analogies that are not definitive. It's the role of a foundational scholar to clarify what is definitive in their usage. However, they must be mentioned to clarify the indication and link the evidence." (Al-Juwayni 2013)

Those who didn't distinguish between presumptive evidence and its definitive indication differed from Al-Juwayni, asserting that some issues of jurisprudential principles are definitive, and others are presumptive.

Agreeing with the second reason, Al-Qarafi stated: "Principles of jurisprudence are attached to principles of religion. Abu Al-Hussein in his book 'Al-Mu'tamad fi Usul Al-Fiqh' mentioned that principles of jurisprudence are distinguished by three rulings from jurisprudence: that only one opinion is correct, the mistaken one is sinful, and imitation is not permissible. These three are precisely the same in principles of religion." (Al-Qarafi 2009)

The rulings of the principles of jurisprudence are foundational in one aspect and derived in another, as the intended religious knowledge relates to two things: beliefs of the heart, which is the science of the principles of religion, and physical actions, which is the science of jurisprudence. Therefore, the science of the principles of jurisprudence acts as an intermediary, drawing from the principles of religion and extending to the branches of jurisprudence. This is why its subjects include discourse on theology, the principles of religion, and envisaging the branches of rulings to enable judgment upon them with negation or affirmation when providing examples. (Al-Tawfi 2012)

### **Recommendations**

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

1. Emphasize the study of the causes of disagreement in foundational issues and clarify the connection between them.
2. Stress the importance of understanding and applying foundational rules in interpreting and issuing Sharia rulings.

Underline the importance of comprehending the principles of jurisprudence as a mediator between beliefs and Sharia rulings to elucidate the evidences and concepts

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