AN EXAMINATION OF THE MAJOR *MADHHABS*: A CASE FOR REUNIFICATION

Saidu Sulaiman Oluwaseun

Director and Chief Executive Officer, Servitude Centre, United Kingdom;
Professor and Dean, Interest-Free Banking and Finance Institute,
1000, Ethiopia.
sulaimanibnsaidu@alumni.manchester.ac.uk
oss@servitudecentre.org

ABSTRACT

Madhhab dogmatism is now the order of the day with 'ordinary' Muslims and scholars sticking to the rulings of one madhhab. Though, this development seems normal, it is a threat to the Ummah. This manifestation has produced factionalism, sectarianism and even fanatism. This is a precarious situation as it impedes further developmental exploits as well as breeds knowledge decline. This write-up advocates a re-unification of the madhhabs. Specifically, the study has as its objectives the following; mainly to propose a re-unification of the madhhabs, to demonstrate the probable reasons why there are differences in rulings between the madhhabs, point out the disparity between the legacy of the Imams and happenings amongst the Muslims and to proffer some theoretical panacea to achieve the cohesion of the madhhabs. As a result, the qualitative cum phenomenological approach is accordingly used in the study owing to the questions as well objectives sought to be achieved, which is an enquiry into the problems of rigidity in madhhab adoption and the need to achieve a decisive unification solution to such problem. Adopting a diachronic strategy whilst adhering to sound scriptural reasoning, the author concisely looks at the madhhabs and issues surrounding its existence and concludes that the form of reunification sort at the moment existed at the messenger (PBUH) up to the point of the illustrious companions where convergence on an Islamic ruling was effortlessly achieved by presenting superior arguments in the face of sound primary source of Islamic law such as an authentic prophetic statement or tradition.

INTRODUCTION

The phenomenon of *madhhabs* remains a vexed one. It has led to irreconcilable divisions among the Ummah. This study is therefore pertinent as it argues for a re-unification of the *madhhabs* and of course unity of the Ummah. This will also translate to positivity in the Islamic financial services industry which relies heavily on the science of Fiqh. Re-unification is used here to point out that there was a point in time when the Ummah was united with respect to Islamic laws. This could be seen even up to the era of the Prophet's companions. The fact that most of the companions were willing to forego their opinion and verdict for another ruling on a particular issue in the face of a superior evidence especially an hadith, portends and is indeed a sort of unification. This dimension to unification is what this study argues for. The study will expatiate on what *madhhab* is, its relationship with Fiqh, the lives of the Imams, cutting across the recent manifestations in the Islamic world and finally presents a theoretical outline of how the re-unification can be pursued.

MADHHABS DEFINED

Melchert (1997) defines *madhhabs* as a term used by the classical jurists to denote both the individual opinion and the collective opinions of a school regarding a particular issue. Blyth and Landau (2009) also define *madhhab* as the different methodologies by which Fiqh is derived. According to the Encyclopaedia of Middle East, "*madhhab* refers to the schools of Islamic Fiqh (jurisprudence)". The author sees the *madhhabs* as the constellation of the legal verdicts of a particular scholar, the rulings of his students and that of the subsequent scholars who adopted their methods.

RELATIONSHIP OF *MADHHABS* WITH FIQH

Blyth and Landau (2009) advances that Fiqh comprises of the rulings of Jurists. Al-Ghazali (1995) technically defined the Fiqh as the knowledge of the branches of Islamic Law. El-Azhary Sonbol (2009) sees Fiqh, as the product of the efforts of the jurists over the centuries at deducing concrete legal rules from the Qur'an and the Sunnah. It therefore refers to the science of extracting

Islamic laws from evidence found in both primary and secondary sources of Islamic law. Thus, *madhhabs* are a multiplicity of Fiqh either inter or intra. By intra and inter, we mean within a particular school or between schools of jurisprudence.

MAJOR AND MINOR *MADHHABS*

Historically, there have been numerous *madhhabs* but only a handful survive till this day with their adherents cutting across different geographical boundaries, within towns, cities and regions. Demographically, judging by the number of adherents, we can classify the *madhhabs* into major and minor ones. The major ones include; The Hanafi, The Maliki, The Shafii and the Hanbali. The minor ones include; The Jaheeri, The Dhaheeri, The Thawri, The Laythi, The Zaydi, The Awzai. As indicated from the topic only the major ones fall into the purview of this study.

FOUNDING IMAMS OF THE MAJOR *MADHHABS*

From an era descending order, we shed more light about the founders. This is important as this gives us a background of their personality, some of their ideals and the inception of their prominence.

The Hanafi *Madhhab* founded by Imam Abu Haneefah (81-145 AH)

Originally known as Nu'man ibn Thabit, he was a native of Iraq the old Kufah. His father, a relatively comfortable merchant reverted to Islam during the epoch of the righteous caliphs. He had a very brilliant career during the Abbassid and Umayyad era. Under the tutelage of Hammad ibn Zayd a great scholar at that time, he learnt thoroughly the art of Fiqh and Hadith and by the age of forty he had become the most distinguished and revered scholar in Kufah.

Consequently, by virtue of his profound scholarship he was offered enviable positions in both the Umayyad and the Abbasids era which he refused to assume, this led to torture and imprisonment in these eras respectively. Imam Abu Haneefah died in 145 AH at the age of 64. He could be classified as a minor Tabi'oon (student of the Prophet's companions) because he met quite a small number of the companions. (Schacht, 1964; Abu Zahrah, 1963; Abu Zahra,1999).

The Maliki *Madhhab* founded by Imam Malik (91-179 AH)

Full named Abu Abdullah Mālik ibn Anas ibn Mālik Ibn Abī 'Āmir Ibn 'Amir, a native of Madeenah in Western Arabia. His grandfather was a major companion of the prophet in Madeenah. Under the tutorship of az-Zuhri and Naffi' who were great scholars of their time, he Malik learnt the art of Hadith but his knowledge is Madeenah based. He taught Hadith in Madeenah for approximately forty years.

One of his outstanding contributions to knowledge was the book he wrote called the al-Muwatta' The Beaten Path which is a compilation of Hadiths and the Athars of the Sahabah. The work was prepared at the request of the Abbasid Caliph who wanted to apply a uniformed code of conduct throughout the dynasty. The Imam did not however allow this materialize, giving the rationale that the companions were scattered all over the Islamic empire and as such his book cannot be all comprehensive since he did not take into consideration some Sunnah which were with other companions.

In 142 AH, he was tortured in Madeenah for giving a ruling on divorce which went against the grains of the Abbasid rulers. Imam Malik died in Madeenah as an Octogenarian in the year 179 AH. (Schacht, 1964; Abu Zahrah, 1963; Abu Zahra,1999).

The Shafi'i *Madhhab* founded by Imam ash-Shafi'i (147-198 AH)

Muhammad ibn Idrees ash-Shafi'i hails from Ghazzah, Sham, Great Syria. He studied Hadith and Fiqh under; Imam Malik in Madeenah, Muhammad ibn al-Hassan (a student of Abu Haneefah) in Iraq, and some students of Imam al-Layth in Egypt. Thus, he more or less studied the *madhhabs* of Imam Malik, Imam Abu-Haneefah and Imam al-Layth. He had an excellent memory; he memorized the Muwatta and recited it verbatim to Imam Malik (Schacht, 1964; Abu Zahrah, 1963; Abu Zahra,1999).

Imam ash-Shafii was accused of pushing Shia doctrines while he taught at Yemen in the 183 AH and was thus imprisoned but was later released by the then Abbassid Caliph in Iran after proving his beliefs to be otherwise. He died in Egypt in the year 198 AH at the age of 51.

His outstanding contribution to knowledge was the development of a systematized process of extracting Islamic rulings for the first time which he documented in his book ar-Risalah (Schacht, 1964; Abu Zahrah, 1963; Abu Zahra,1999).

The Hanbali *Madhhab* founded by Imam Ahmad (156-233 AH)

Ahmad ibn Hanbal ash-Shaybani is a native of Baghdad, Iraq. He studied Hadith and Fiqh under; Imam Abu Yoosuf (a student of Abu Haneefah) and Imam ash-Shafi'i and metamorphosed into one of the most apt memorizers and narrators of Hadith at that time.

Imam Ahmad taught in his city of birth for several years precisely between (191-233 AH) and was jailed for two years for openly rejecting the innovative concept that the Quran was created. He was also tortured and consequently went into hiding for five years for his negative stance on the Mutazilite philosophies adopted by the Caliphs of his time. He died in the year 233 AH (Schacht, 1964; Abu Zahrah, 1963; Abu Zahra,1999).

His outstanding contribution was the compilation of well over 30000 Hadiths and Athars on their interpretation in a book called the Musnad.

IDEOLOGICAL THEME OF THE *MADHHABS*

This section briefly discusses the approach to teaching cum knowledge dissemination philosophies of the Imams and early jurists with respect to deduction of rulings.

The Hanafi *Madhhab*

The method of this school was largely hypothetical in nature. By hypothetical Fiqh, we mean the creation of problems through a thought process and proffering solutions to them. In doing this, Imam Abu Haneefah usually tables a problem for debate among his students who will then return to him with an unanimous position on the matter. Thus it is safe to conclude that the Hanafi *madhhabs* was the brainchild of both the Imam and his students. Owing to this proactive approach, they were often referred to as the "What-iffers" or the opinion people.

The prominent students of the *madhhab* include Abu Yoosuf Ya'qoob ibn Ibraheem (113-173 AH), Zafar ibn al-Hudhayl (110-152 AH) and Muhammad ibn al-Hasan, ash-Shaybani (127-183 AH). The followers of this *madhhabs* in recent times can be largely seen in Turkey, Pakistan, Parts of Egypt, Afghanistan, Iraq, Trinidad and India. In historic times such as the Ottoman, the *madhhab* was used throughout the Muslim state (Coulson 2011).

The Maliki *Madhhab*

The method of this school was contemporaneous in that the Imam usually dealt with current problems in the light of Hadiths and Athars. There was also discussion on various issues that were dealt with in the Hadith and Athars under Islamic law. The completion of the Muwatta greatly enhanced the school of thought as the book represented the textbook of the *madhhab*. However, Imam Malik never hesitated to makes changes in the book in the face of new and superior evidence. They were called the Hadith people because of their contemporaneous approach and their vehement rejection of the hypothetical approach.

The prominent students of the *madhhab* include; Abu 'Abdillah ibn Wahb (120-197 AH) and Abu 'Abdur-Rahman ibn al Qasim (745-191 AH). Adherents of these *madhhabs* can be found in Sudan, Morocco, some parts of Egypt, Qatar , Tunisia, Kuwait, Algeria, Bahrain, Mali , Chad, Nigeria and some other West African States (Calder,1993).

The Shafi'i *Madhhab*

The *madhhab* was originally based on the synthesis of the Maliki and the Hanafi school which was compiled in the form of a book written by Imam Shafii called al-Hujjah (The Evidence).He usually dictated the contents of the book to his students such as Ahmed ibn Hanbal and Abu Thawr. This was in Iraq. After his migration to Egypt, in the face of fresh evidences in the form of hadiths and legal reasoning, he attempted the incorporation of Imam al-Layth deductions with his earlier synthesis, this gave birth a set of different rulings which abrogated some of his legal stance he held while in Iraq. This led him to write another book called al-Umm (The Essence).

His prominent students include ar-Rabee' al Maradi ibn Sulaiman (168-251 AH), Yoosuf ibn Yahya al Buwayti (d.232 AH) and Al-Muzani (169-254 AH). The followers of this *madhhab* in recent times can be found in Malaysia, Kenya, Surinam, Yemen, Egypt, Sri Lanka, Tanzania and Indonesia (Abu Zahra 1999).

The Hanbali *Madhhab*

The Imam usually dictated hadiths and their 'sahabic' interpretations as well as their applications to present problems to his students. He sometimes used his own opinions if there were no adequate precedence from the Hadiths and

Athars to solve a problem but he forbade his students to write down his own personal opinions. Thus, it is not out of place to say that his *madhhab* was documented probably by the student of his students. Imam Ahmad focused on hadith collection, narration and interpretation.

Among his prominent students were Imam Bukhari (188-248 AH) and Imam Muslim (199-253 AH) both of whom compiled authentic (Saheeh) Hadith we have today. Also, his sons Salih (d.251 AH) and Abdullah (d.281 AH) were also his major students. This *madhhab* is largely followed in Saudi Arabia and the Palestine (El-Awa 1991).

SOURCES OF LAW UTILIZED BY THE *MADHHABS*

The sources of Islamic law adopted by the Imams and early jurists of the *madhhabs* are discussed below;

The Hanafi *Madhhab*

The Quran

The Quran was considered the pure word of God and as such infallible. It was recognized as the main source of Islamic law and it serves as first reference on any matter. It thus stood as a yardstick for elimination of other sources, as any source that does not conform with the Quran is dubbed invalid (Alwani et al , 2003).

The Sunnah

Ranked second after the Quran as a source of Islamic law. The school laid emphasis on well known hadiths (Mash-hoor) as legal proofs. In other words, an hadith been authentic (Saheeh) alone does not make it useable as a veritable source. This condition was not unconnected with the preponderance of fabricated hadiths in the region (Schacht 1964).

Consensus of the Prophet's Companions (Ijma of the Sahabah)

The consensus of the companions was held the most superior in deciding issues that were not treated in the Quran and hadith. They also gave preference to the consensus of Muslim scholars on a legal issue at a point in time. They

therefore clearly favoured unanimous decisions over individual ones (Kamali, 1996).

Individual Opinion of the Companions

Imam Abu Haneefah would pick the opinion of a scholar he feels is appropriate to the issue at hand if peradventure there was no Ijma amongst the companions. Of course, in choosing, he needed to use some of his own reasoned judgement (Abu Zahrah, 1963).

Analogy (Qiyas)

Imam Abu Haneefah considered himself equal to the student of the companions (Tabi'oons), therefore if there was no clear decision on a legal matter from the hitherto mentioned sources, he would do his own reasoned decision informed by discussion between himself and his students (Janos, 2005).

Preference (Istihsan)

This principle describes a scenario whereby particular evidence is allowed to prevail over another because of its adjudged suitability to a case even if it is weaker evidence than the one that is dropped. The might be in the use of an hadith or a suitable law adopted over a one arrived at through analytical deduction (Abu Zahrah, 1963).

Customs (Urf)

Customs of the land were used as a source of law especially when there was no competing Islamic tradition available. This principle however allowed some customs and non-Islamic traditions to creep into the Islamic societies. These customs were ultimately wrongly perceived as Islamic (Alwani et al, 2003).

The Maliki *Madhhab*

The Quran

They also accept this source as an original and primary source without any deficiencies (Alwani et al , 2003).

The Sunnah and 'Amal (Practices) of the Madeenites

Imam Malik considered the Sunnah of the Prophet of utmost importance next to the Quran, but if a hadith contradicted the customs of the people of Medina

it was rejected. He also maintained that any hadith could be used as long as it is sound. Worthy of mention and closely associated with the Sunnah is the endorsement by Imam Malik of the pervasive practices of the Madeenites as a form of Sunnah that is manifested and exhibited in deeds rather than sayings. The wisdom behind this endorsement is that since the Prophet spent his last years in Madeenah coupled with the fact that the Madeenah people were descendants of the Sahabah, then, their practices must also have been sanctioned by the Prophet himself (Abu Zahrah, 1963; Abu Zahra,1999).

Consensus of the Prophet's Companions

Like Abu Haneefah, the consensus was considered as an important source (Kamali, 1996).

Individual Opinion of the Companions

Imam Malik also considered personal opinions of the companions as important but lower in legal status than the consensus. He also gave them more weight than his own opinions. This Athars were included in The Mutawwa (Janos 2005).

Analogy (Qiyas)

He practised sceptical Qiyas. He was very careful not to overstretch analogical deductions on matters that were not treated by the above sources Schacht (1964).

Customs of the People of Madeenah

Imam Malik gave some weight to some customs that existed amongst some people in Madeenah as long as they did not contract the hadith of the Prophet. He was of the opinion that such customs must have been allowed by the companions or even the prophet (Abu Zahrah, 1963; Abu Zahra,1999).

Welfare (Istislah)

Closely related to the Istihsan used by the Hanafi tent, the Istislah was used by the Maliki school to treat matters pertaining to welfare that were not directly treated in the Shariah (Abu Zahrah, 1963; Abu Zahra, 1999).

Custom (Urf)

The Maliki school considered customs, social norms as well as grammatical usage and meanings attached to words that is peculiar to a particular people

across the Muslim world as part of the sources of law as long as it did not go against the Shariah (Schacht 1964).

The Shafi'i *Madhhab*

The Quran

This *madhhab* like other ones considered the Quran as the main source (Abu Zahrah, 1963; Abu Zahra,1999).

The Sunnah

Imam Shafi'i applied a Saheeh condition to the use of any hadith. He therefore added a great contribution to hadith criticism as he rejected the earlier conditions given by Imam Malik and Imam Abu Haneefah (Al-Awani et al).

Consensus of the Prophet's Companions

He upheld Ijma but was however sceptical about its widespread occurrence. He contended that if it was ever known to occur it should be considered as the most important source after the Quran and hadith (Abu Zahrah, 1963; Abu Zahra,1999).

Individual Opinions of the Companions

This was also a source of law approved by Imam Shafii on the condition that there were no contradictions among the companions' individual opinions, if it occurred, he chose the one he deemed fit and closest to the source (Janos 2005).

Analogy (Qiyas)

He was also in favour of reasoned deductions and considered his own personal opinions inferior to those of the individual companions.

Linking (Istishab)

This source of law technically refers to the art of linking a contemporaneous issue with a previous one as a process of Islamic law deduction. It is based on the assumption of constancy of circumstances. Imam Shafi'i considered the Istihsan and Istislah used by Abu Haneefah and Malik respectively as innovations (Bid'ah). He was of the opinion that these principles were based

on extensive human reasoning in areas that already had been treated under Islamic law. Whether or not Istis-hab is another form of the Istihsan and Istislah is contentious (Abu Zahrah, 1963) (Abu Zahra,1999).

The Hanbali *Madhhab*

The Quran

Like the previously discussed schools, Imam Ahmad considered the Quran as the most important source.

The Sunnah

The Hadith was considered next to the Quran but on the condition that it must be directly attributed to the Prophet himself (Marfoo).

Consensus of the Prophet's Companions

He also endorsed ijma as next to the Sunnah but restricted it only to the epoch of the Sahabahs. He was of the opinion that ijma was not possible outside of that time owing to the geographical spread of the Sahabas throughout different lands at that time (Abu Zahrah, 1963; Abu Zahra,1999).

Individual Opinions of the Companions

Imam Ahmad accepted all the opinions of the companions on an issue whenever they differed. This led to a multiplicity of rulings in this school (Janos 2005).

Weak Hadith (Da'eef Hadith)

If the above sources could not lead to a ruling, the Imam would use a weak Hadith instead of the Qiyas as long as the narrators of the Hadith are not rebellious/disobedient (Fasiq) people or dishonest (Kadh-dhab) (Abu Zahrah, 1963; Abu Zahra,1999).

Analogy (Qiyas)

Imam Ahmad only used Qiyas when all the hitherto mentioned sources could not provide the ruling to an issue (Kamali, 1996).

RATIONALE FOR VARIATIONS IN VERDICTS

One theme running from the above sources of law of the *madhhabs* is that they all used The Quran, The Hadith, The Ijma and The Qiyas in the process of arriving at Fiqh. Nevertheless, there still exist some differences in rulings that emanate from these four schools. This is broadly not unconnected to interpretational differences owing to language intricacies, availability of superior evidence and controversial sources of law bordering on levels of reasoning capacity and methods. The following might help explain why we have differences in the rulings of the *madhhabs*;

Idiolectical Differences

These refers to certain words in the Quran and the Hadith which have more than one meaning (Duo-Literal Meanings). Also, there are also some words which have both literal and figurative meanings (Bi-Literal Figurative Meanings). So also, there are linguistic constructions in those sources which are equivocal (Linguistical Meanings). This phenomenon led to different interpretations of what is intended by the Law giver (Allah) and his Prophet. An outstanding example is the word Quroo' or Aqraa' expressed singularly as Qur'. This word occurs in the Quran and authentic hadiths and could mean menstruation on one hand and could also mean the purity interval between multiple menstruations. Therefore, with respect to the verse of chapter 2 verse 228 of the Quran وَٱلْمُطَلَّقَٰتُ يَتَرَبَّصْنَ بِأَنفُسِهِنَّ ثَلَٰثَةَ قُرُوٓءٍ, the choice of interpretation would clearly have far reaching implications for a woman who is divorced and is experiencing her third menstruation. To Imam Abu Haneefah, the word Qur' denotes the menstruation proper (At-Turki, 1974) while to the trio of ash-Shafii, Ahmad and Malik, the word Qur means the purity interval. If we go with Ash-Shafii, Ahmad and Malik's interpretation, then a (divorced) woman's divorce "kicks in" when the menstruation starts as opposed to her divorce coming into effect when the menstruation has ended going by Abu Haneefah's submission. However, a look at a few authentic hadith narrated in Sunan Abi Dawood[1] and Sunan An-Nasai[2] clearly reveals that Qur' is the menstruation proper. *"Aishah reported that "Umm Habibah asked the prophet) about the blood (which flows*

---

[1] Sunan Abi Dawud, "Purification" (Kitab Al-Taharah), Sunan Abi Dawud 279, Book 1, Hadith 279.

[2] Sunan an-Nasa'i 209 The Book of Purification: Book 1, Hadith 210, Sunan an-Nasa'i, The Book of Menstruation and Istihadah Book 3, Hadith 8

beyond the period of menstruation). 'A'ishah said: I saw her wash-tub full of blood. The apostle of Allah (May peace be upon him) said; Keep away (from prayer) equal (to the length of time) that your ("Qur") menses prevented you. Then wash yourself".

Hadith Factor

These refer to the fact that most of the rulings were done in the absence of comprehensive compiled hadiths as a whole. In other words, not all and the same hadiths were available to the Imams as at the time of giving their verdicts, this is because the companions who narrated the hadiths were scattered in different locations of the Islamic regions. The six sound hadiths (As-Sihah As Sittah) were compiled in the ninth century while the four major *madhhabs* came into being in the eight century (Non conglomeration of Hadith). Directly flowing from this is the use of weak hadith by some of the Imams either because they were unaware of its status or its preference over analogical deductions (Weak hadith Usage). Closely related to this is the adoption conditions for Hadiths by the Imams; Abu Haneefah contended that it must be well known, Ahmad advanced that it must be attribute directly to the prophet, Shafi'i only accepted authentic hadiths while Malik was of the opinion that the hadith must be in consonance with the Madeenite customs (Hadith adoption conditions). Another salient issue is the approach of the Imams in resolving textual literal meanings of the Hadith (Textual Hadith Arbitration); some Hadiths were accepted and other Hadiths rejected at the same time pertaining to the same topic (Tarjeeh). While some hadiths relating to the same topic were combined and used together in an holistic sense (Jama).

Controversial Sources of Law

As seen under the sources of law used by the *madhhabs*, some principles were rejected by some Imams while some were accepted by some. For instance, virtually all the Imams except Ash-Shafi'i[3] and Ahmad[4], upheld Ijma after the companions' generations as a cogent source of Islamic law. More so, the Madeenites customs inculcated by Imam Ahmad was rejected by the other schools and so on. On the contrary, Ash-Shafii held the Sahabah's opinions has sacrosanct on all legal rulings whilst the other Imams believed they were

---

[3]   Who was sceptical about Ijma whilst attaching utmost importance to the individual opinions of the companions

[4]   Who rejected Ijma outrightly

mere opinions and not legally binding. Similarly, the principles of Istislah and Istihsan were frowned at by Ash-Shafii has been too removed from the Quran and Sunnah.

Logical Deductions Method

There were different criteria guiding the application of Qiyas in the respective schools. This largely culminates into differences in rulings. It is worthy to note after the epoch of the Imams, their followers who in turn became the scholars of these *madhhabs* attempted the standardization of the fundamental principle of Fiqh for each *madhhab*; they tried to ensure that only accurate opinions of their founding fathers were promoted. They carried out Ijtihad on new issues but only within the confines of the *madhhabs* principles. They also gave preference to the opinion of some scholars within the *madhhabs* over other opinions of the *madhhabs* on the same topic. There was also a format for documentation and presentation of Fiqh, this usually begins with topics on the articles of faith, followed by topics on hygiene, prayer, fasting, Zakah, pilgrimage, Nikah, divorce, business transactions cum etiquettes. Thereafter, all the arguments of each and every *madhhabs* are highlighted and the writer justifies his or her own *madhhabs* position to be correct. (Majid and Syed, 1911; Hallaq, 1984).

TRANSFORMATION TO RIGIDITY AND SUBSEQUENT DEVELOPMENT

Owing to the differences in ruling and sequel to the systematization and organization of the *madhhabs*, some important trends and manifestations occurred in the Muslim world amongst the scholars and the Muslim population at large. These appeared in the form of irrational followership and believe in the supremacy of one *madhhab* over another. The abolishment of independent reasoned decision outside of the *madhhabs* which led to some sort of stagnation and obsolesces cum knowledge decline, sectarianism and even extremism and fanatical behaviour in the religion (Ali-Karamali and Dunne 1994). These manifestations are discussed under the following headings;

Taqlid as opposed to *Ittiba*

Taqlid here is used to refer to a non-reasoned following of a particular *madhhab* emanating out of the believe that the *madhhabs* and of course their

Imams are infallible. It extends to connote the refusal to make any independent Ijtihad or reluctance to adopt new rulings or the rulings of another *madhhab* in the face of a superior evidence based on authentic Hadiths while Ittiba refers to a reasoned following. It involves identifying the proofs used by each *madhhabs* and subsequently following based on a qualified judgement and the receptiveness to change in the event of superior evidences from authentic sources. Taqleed is tantamount to blind following.

It still widely believed today that advocating dropping the ruling of a *madhhab* or switching between *madhhab* rulings in the face of an authentic Hadith is to mean that the Imam was wrong which is tantamount to disrespect and thus blasphemy. However, this people fail to realize that rejecting an authentic hadith in favour of an Imams ruling is tantamount to shirk (associating partners to Allah) since following the Prophet means following Allah and only the Prophet deserves blind following and not the Imams.

Sectarianism and Knowledge decline

Owing to the above point, the search for more knowledge or further in-depth study of hadiths or analyses of conflicting rulings of the schools somewhat ceased. This led to lack of creativity and decline in authentic knowledge and new rulings adaptable to current circumstances even on matters that were not touched by the early jurists of these *madhhabs*. Scholarship was restricted to writing about previous works and promoting the views of a particular school. This led to a great sectarian division among the Ummah even until this day with each group following a particular *madhhab* strictly.

It is however worth mentioning some scholars who dared to bring the Muslims back on track thus challenging the status quo at differing periods in Muslims history till present day; Ahmad ibn Taymiyah (641-706 AH) , Muhammad ibn Ali ash Shawkani (1135-1213AH), Jamal-ad-Deen al Afghani (1217-1257AH), Ahmad ibn Abdur-Raheem (1081-1140 AH) and more recently Sayyid Qutb (1284-1344AH), abul-Ala Mawdudi (1281-1357AH) ,Nasir ad-Deen Albani (1292-1377AH) and so on.

Having highlighted some of these developments, let us assess these behaviours as against some of the statement of the founding fathers of these schools. This will provide an insight as to whether these developments negate or corroborate the positions of these scholars; this is exposed below;

PRESENT RELIGIOUS MANIFESTATION AS OPPOSED TO THE TEACHING OF THE IMAMS

The Imams were reported to have made the following golden statements;

Imam Abu Hanifah:

> *"Woe be to you, Ya'qoob. Do not write down all you hear from me, for surely I may hold an opinion today and leave it tomorrow, hold another tomorrow and leave it the day after. Related by Abu Yoosuf a major student of the Imam. (Ibn Mu'een, 1979: 88)*

> *"It is forbidden for anyone who does not know my proofs to make a ruling according to my statements, for verily we are only humans we may say something today and reject it tomorrow" Related by one of his student Dafar. (Ibn 'Abdul-Barr, 1931: 145)*

> *"If I have made a ruling which contradicts Allah's book or the Messenger's Hadith, reject my ruling" Related by his student Muhammad ibn al Hasan. (al-Fulani, 1935: 50)*

> *"If a hadith is found to be Saheeh, it is my madhhab". Reported by Imam Ibn 'Abdul-Barr. (Ibn 'Abideen, 1833-1900: 63)*

Imam Malik:

The following transpired between a student, a questioner and the Imam:

> *Questioner: What is the ruling about washing between the toes during ablution (Wudoo)?*

> *Imam Malik: People do not have to do it.*

> *Ibn Wahb: (I waited till almost all the people left the study circle) There is a hadith concerning the issue.*

> *Imam Malik: What is the hadith?*

> *Ibn Wahb: Al-Layth ibn Sa'd, Ibn Luhay'ah and 'Amr ibn al Harith all reported from al-Mustawrid ibn Shidad al-Qurashi that he saw Allah's Messenger rub between his toes with his little finger.*

> *Malik: Surely this is a good hadith which I have never heard before.*

Ibn Wahb: Subsequently when I heard people ask Imam Malik about washing of the toes he used to say it should be washed. (Ibn Abi Hatim 1952)

"Verily I am only a human being, I err and am at times correct; so thoroughly probe my opinions then take whatever agrees with the Book and the Sunnah and reject whatever contradicts them". Related by Ibn Abdul-Barr. (Ibn 'Abdul-Barr, 1927: 32)

Imam al-Shafi'i:

"There is no one among us who had not had a Sunnah of Allah's Messenger elude him or have one slip his mind, so no matter the rulings I have made or fundamental principles I have proposed, there will be in them things contrary to rulings of Allah's Messenger. Therefore, the correct ruling is according to what Allah's messenger said and that is my ruling" Reported by Al-hakim, the hadith scholar. (Ibn 'Asakir, 1911-1932: 3)

"The Muslims (of my era) were of unanimous opinion that one who comes across an authentic Sunnah of Allah's messenger is not allowed to disregard it in favour of someone else's opinion". Related by Ibn Qayyim. (Ibn al-Qayyim, 1988: 361)

"If a hadith is found to be Saheeh, it is my madhhab". Related by Al-hakim, the hadith scholar. (An-Nawawi, 1925: 63)

Imam Ahmad:

"Do not blindly follow my rulings, those of Malik, ash-Shafi'i, al-Awza'i or ath-Thawri. Take (your verdict) from where they took theirs". Related by Ibn Qayyim. (Al-Fulani, 1935: 113)

"The opinions of Al-Awzai, Malik and Abu Haneefah are simply opinions and to me they are all equal but the real criterion for right or wrong is in the hadiths". Related by Ibn Abdul-Barr. (Ibn 'Abdul-Barr, 1927: 149)

"Whoever rejects an authentic hadith of Allah's Messenger is on the verge of destruction". Reported by Ibn al-Jawzi. (Ibn al-Jawzi, 1977: 182)

These statements therefore allude to the fact that the Imams;

Were opposed to blind imitation of their opinions thus inculcating in their students the need to use their God given intellect within the confines of the Shariah and to develop a respect for their own opinion as well as opinion of others, hence, the following of any one *madhhab* was not mandatory for Muslims.

Never hesitated to change their position on a particular issue in the face of a superior evidence (authentic Hadith) even if their earlier ruling had crept into the public domain. In short, they held preference for hadith over their respective opinions. Were not infallible and as such not error proof and that it was Allah and his messenger that deserves to be followed without question. The Imams were therefore In pari material with the verse of the Quran;

> *"O you, who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result. This would be a most virtuous and the best way of settling differences." (Quran 4:59).*

This approach will help preserve the purity and originality of Islam as revealed by Allah through the last and final messenger. However, it is important to mention that some Muslims justify disagreements and differences in the Ummah manifested in the form of *madhhab* factionalism with the following hadiths:

> *"My Sahabah are like stars. You will be guided by whichever of them you follow."*

> *"Verily my Sahabah are like stars, you will be guided by any statement of theirs you adopt."*

> *"Differences among my Sahabah are a mercy for you."*

> *"I asked my Lord about the things in which my companions will differ after my death and Allah revealed to me: O Muhammad, verily to Me, your Companions are like stars in the sky, some brighter than others, so he who follows anything over which they have differed, as far as I am concerned, he will be following guidance."*

> *"Disagreement among my nation is a mercy."*

First and second has been classified as fabricated (Mawdoo), the third has been classified as very weak, the fourth, false (Batil) and the fifth is not found in any books of Hadith. (Al-Albani 1979). Furthermore, these "hadiths" are

somewhat against Allah's injunctions in the following chapters and verses of the Quran; 3:103,4:65, 6:159, 8:46, 11:118-119, 21:92-93, 23:53-54, 28:4, 30:31-32, and 42: 14-15.

A CASE FOR REUNIFICATION

Here, I advocate a case for reunification of the *madhhabs* as it is only through this that the unity of the Muslims as well as the crystal purity of Islam can be resuscitated and sustained. The following suggestions are recommended for this Herculean task. This is based on the footsteps of the Imams as well as open minded knowledgeable and qualified scholars who acted as reformers in one way or the other at varying times in the history of Fiqh scholarship;

Flexibility in Fiqh should be encouraged and rekindled as the Sahabah have done during their time. The companions made decisions and changed in the face of superior evidence and they always respected each other opinions within the confines of the Shariah.

Totally conflicting rulings between two *madhhabs* such as rulings that one act is Haram and the other Halal should be resolved with authentic hadiths which are now widely available in a single whole. There can only be one truth as Imam Malik rightly pointed out when he was asked by one of his students. (Ibn 'Abdul-Barr, 1927: 82-89). The rulings which confirm with authentic traditions should be upheld. Similarly verdicts given in the absence of relevant hadiths or verdicts based on weak hadiths should be re-examined in the light of authentic ones and those rulings that are not in consonance with authentic narrations should be dropped.

Some rulings which can coexist in the light of the main sources should be overlooked. Examples include those rulings based on instances where the Prophet was known to do things in two ways and so on. Rulings based on unrestricted Qiyas or money stimulated Fatwas should be re-examined in the light of the Quran, Sunnah and Ijma.

High flying scholarly educational institutions of learning can tremendously help in making this reunification a reality. All the *madhhabs* should be taught jointly in these institutions and their rulings analysed and examined by referring back to the original sources. This will go a long way in making things clear and re-orientating the teeming Muslim population.

The scholars who benefit from this division should be called back to order by their colleagues and most importantly admonish themselves by going back to the scripture (i.e. the Quran and authentic Hadith) to understand the purpose

of God given knowledge. They should also follow the way of the Sahabas who sought knowledge to act on it and did not seek it for the sake of this world; to impress and conceal the truth.

Individuals possessing adequate knowledge of the various branches of Islamic sciences who can recourse to original sources as well as examine the opinion of all the scholars irrespective of their *madhhabs* are strongly urged to do so. Those who do not have the requisite knowledge and have the capacity should seek. They can acquire knowledge by reading the relevant books of Hadith and asking questions concerning the basis for rulings given to them. They should also access books which are objective and non-sectarian.

Furthermore, those who still do not have required knowledge to make independent reasoned decisions in improbable circumstances can utilize the knowledge available to them whilst been open minded, they can also rely on open minded scholars as far as they can. It is important that they do not restrict themselves to the books of one *madhhab* but rather follow any ruling in any of the *madhhabs* which corresponds with the agreed infallible sources and should be willing to follow the authentic Sunnah whenever it is presented to them. Above all, we should be open minded in our search for knowledge otherwise our rulings will be biased, sectarian if not fanatical.

CONCLUSION

By and large, the study has tried to examine the major *madhhabs* from an historic-present fashion. It has been able to introduce, trace and present *madhhab* factionalism vis-à-vis its potential impact on the unity of the Muslims. The work enunciated the sources of law used by the *madhhabs*, pointed out the probable reasons for differences in rulings, the disparity between the divisionary trends we have today and of course the ideals of the founding fathers of the *madhhabs* and finally proffered tips on how to go about re-unifying the Ummah. It is hoped that by this study, we have come a step closer to the re-unification of the Muslims. Nevertheless, there will be some challenges at achieving reunification going by the ascension of statehood in religious matters where different countries and their scholarship tend to adopt a "national *madhhab*" These challenges are however not insurmountable if the dramatis personae would always ask themselves the question; what was the *madhhab* of the Messenger of Allah and that of the companions? We ask Allah to make it easy.

REFERENCES

Abu Zahrah, M. A. (1963). *Tārīkh al-Madhāhib al-Islāmīyah,* vol. 2. Cairo: Dār al-Fikr al-ʿArabī.

Abu Zahra, M. (1999) *The Four Imams, their Lives and Works*. London: Dar al-Taqwa Ltd.

Al Älwara, T. J. (1991). Taqlid and Ijtihad. *The American Journal of Islamic Social Sciences*, vol. 8, no. 1, 129-142.

Al-Alwani T.J, DeLorenzo Y.T, Al Shaikh-Ali A.S (2003). Source Methodology in Islamic Jurisprudence Usul al-Fiqh al-Islami (New Revised English Edition), United States: *International Institute of Islamic Thought* (IIIT).

Al-Albani, M.N. (1979). *Daʾeef al-Jami'as-Sagheer*. Beirut: al-Maktab al-Islami.

Al-Fulanee, S.M. (1935). *Eeqadh Himam Uli al-Absar li al-Iqtida bi Sayyid al-Muhajirin wa al-Ansar*. Cairo: Al-Munireeyah Press.

Al-Ghazali, (1995), *al -Mustashfa min 'Ilm al-Usul,* vol. 2. Bayrut: Dar Sader Publisher.

Ali-Karamali, S. P., & Dunne, F. (1994). The Ijtihad Controversy. *Arab Law Quarterly*, vol 9, no.3, 238-257.

Al-Zwaini, L.. & Peters, R. (1994). *A Bibliography of Islamic Law*, 1980-1993, vol. 19. Leiden: Brill Academic Pub.

An-Nawawi, Y, S. (1925). *al-Majmu' Sharh al-Muhadhdhab*. Cairo: Idarah at-Taba'ah al-Muneerah.

Blyth, E., & Landau, R. (2009). *Faith and Fertility: Attitudes Towards Reproductive Practices in Different Religions from Ancient to Modern Times*. London: Jessica Kingsley Pub.

Brockopp, J. E. (1998). Early Islamic Jurisprudence in Egypt: Two Scholars and Their Mukhtasars. *International Journal of Middle East Studies*, vol. 30, 167-182.

Brown, L. C. (2000). *Religion and State: The Muslim Approach to Politics*. New York: Columbia University Press.

Browne., L. E. (1934). The Development of Islam. *The Muslim World*, 24, 168–177.

Burton, J. (1995). Review: Rewriting the Timetable of Early Islam. *Journal of the American Oriental Society*, vol.115, no.3, 453-462.

Calder, N. (1993). *Studies in Early Muslim Jurisprudence*. Oxford: Clarendon Press.

Coulson, N. J. (1957). The State and the Individual in Islamic law. *International and Comparative Law Quarterly*, Vol. 6, no. 1, 49-60.

Coulson, N. J. (1969). *Conflicts and Tensions in Islamic Jurisprudence*. Chicago: University of Chicago Press.

Coulson, N. J. (1984). *Commercial Law in the Gulf States: The Islamic Legal Tradition*. London: Graham & Trotman.

Coulson, N. J. (2011). *A History of Islamic Law*. New York: Aldine De Gruyter.

El-Awa, M. S. (1991). Approaches To Sharī'a: A Response to NJ Coulson's A History of Islamic Law. *Journal of Islamic Studies*, vol. 2, no. 2, 143-179.

Fariq, K. A. (1957). Evolution of Law in Islam. *Iqbal*, 61, 55.

Gubara, D. (2002). The Four Imams: Their Lives, Works and their Schools of Thought. By Muhammad Abu Zahra, trans. Aisha Bewley. Pp. 518. Dar al-Taqwa Ltd. 2001. *Journal of Qur'anic Studies*, vol. 4, no. 1, 91-94.

Gyekye, K. (1972). The Term Istithnā' in Arabic Logic. *Journal of the American Oriental Society*, 88-92.

Hallaq, W. B. (1984). Was the gate of ijtihad closed?. *International Journal of Middle East Studies*, vol. 16, no. 1, 3-41.

Ibn Abdul Barr, Y.U. (1927). *Jami Bayan al-Ilm*. Cairo: Al-Muneeriyah Press.

Ibn Abi Hatim, A.M. (1952). *Al-Jahr wat Ta'deel*. Majlis. Dairah al-Ma'arif al-Uthmaneeyah.

Ibn Abideen, M.F. (1833-1900). *Hashiyah ibn Abidin*. Cairo: Al-Maymaneeyah Press.

Ibn Al-Jawzi, A.A. (1977). *Manaqib al-Imam Ahmad ibn Hanbal*. Beirut: Dar al-Afaq al-Jadeedah.

Ibn al-Qayyim, M.B. (1988). *I'lam al-Muwaqqi'in*. Egypt: Abdus-Salam Press.

Ibn Asakir, A.H. *Tarikh Dimishq al-Kabir*. Damascus: Rawdah ash-Sham.

Ibn Mueen, Y. (1979). *At-Tareekh*. Makkah: King Abdul Aziz University.

Iqbal, S. M. (2011). *The Reconstruction of Religious Thought in Islam*. Pakistan: Iqbal Academy.

Janos, J. (2005). The Four Sources of Law in Zoroastrian and Islamic Jurisprudence. *Islamic Law and Society*, 12(3), 291-332.

Kamali, M. H. (1996). Methodological Issues in Islamic Jurisprudence. *Arab Law Quarterly*, Vol.11, no.1, 3-33.

Kuran, T.(2003). The Islamic commercial crisis: institutional roots of economic underdevelopment in the Middle East. *The Journal of Economic History*, 63(02), 414-446.

Majid, A.& Syed, H. R. (1911). Historical Study of Mohammedan Law. *LQ Rev*., 27, 28-40

Melchert, C. (1997). The formation of the Sunni schools of law, 9th-10th centuries CE (Vol. 4). Leiden: Brill Academic Pub.

Peters, R. (1980). Idjtihād and Taqlīd in 18th and 19th Century Islam. *Die Welt des Islams*, 131-145.

Rahim, A. (1911). The Principles of Muhammadan Jurisprudence According to the Hanafi, Maliki, Shafi'i and Hanbali schools. London: Luzac & Co.

Schacht, J. (1964). *An Introduction to Islamic Law*. Oxford: Clarendon Press.

Shalabi,M,M. (1969). *al-Madkhal fi at-Ta'rif bi al-Fiqh al-Islami*. Beirut: Dar al-Nahdah al-'Arabiyyah.

Sonbol, A. E. A. (2009). The Genesis of Family Law: How Shari'ah, Custom and Colonial Laws Influenced the Development of Personal Status Codes. Wanted: Equality and Justice in the Muslim Family,179-207.

The Encyclopaedia of Middle East. Available at; http://www.mideastweb.org/Middle-East-Encyclopedia/

Vogel, F. E. (1993). The Closing of the Door of Ijtihad and the Application of the Law. *American Journal of Islamic Social Sciences*, 10, 396-401.

Watt, M.W. (1974). The Closing of the Door of Ijtihad, *Orientalia Hispanica Lieden* 1, 675-678.

Weiss, B. (1978). Interpretation in Islamic law: The theory of Ijtihad. *Am. J. Comp. L*., 26, 199-212.