Al-Shafi‘i’s Role in the Formulation of Islamic Law

Dr. Abdul Karim Ali

Abstract

Artikel ini cuba membahaskan persoalan mengenai siapakah pengasas atau pelopor (pioneer) usul al-fiqh (the principles of islamic jurisprudence). Ini disebabkan terdapat beberapa dakwaan dari beberapa pihak bahawa pengasas madhhab mereka adalah pengasas bidang tersebut. Jadi, adakah benar al-Shafi‘i yang dikenali sebagai “master architect of jurisprudence” orang pertama yang mempelopori bidang usul al-fiqh. ia juga membicarakan kesignifikan kitab al-Risalah serta beberapa istilah yang digunakan dalam menghuraikan pencapaian al-Shafi‘i dalam ilmu usul al-fiqh.

Al-Shafi‘i and Usul al-Fiqh

It is widely claimed that al-Shafi‘i was the first person to systematise usul al-fiqh.1 However, this claim has been challenged by the Shi‘ah and the followers of the Hanafi school of thought, who argued that scholars preceding al-Shafi‘i had already dealt with the subject.

This needs proper investigation. One might suspect that the respective claimants were motivated by madhhab chauvinism.2 For instance, the Shi‘ah and the followers of the Hanafi madhhab claimed that their leaders were the founders and pioneers of usul al-fiqh. Al-Sayyid Hasan al-Sadr3 of the Shi‘ah claimed that Muhammad al-Baqir (57-115H)4 and his son, Ja‘far al-Sadiq (83-149H)5 laid the foundations of the science of usul al-fiqh. This was challenged by Muhammad Abu Zahrah6 in his Usul al-Fiqh who refuted the claim for lack of substantial evidence.7

As regards the Hanafi madhab, Ahmad Hasan8 and Abu al-Wafa’ al-Afghani9 claimed that prior to al-Shafi‘i, Abu Yusuf (d. 182H)10 and Muhammad b. Hasan al-Shaybani, both disciples of Abu Hanifah, were already engaged in the science of usul al-fiqh. Al-Afghani said,

“the first man to write or compile (sannafa) the science of usul al-fiqh as far as we know was Abu Hanifah al-Nu‘man. [For instance] he elucidates the methodologies of istinbat in his Kitab al-Ra‘y. He was followed by his two disciples, Abu Yusuf Ya‘qub b. Ibrahim al-Ansari and Muhammad b. Hasan al-Shaybani, then followed by Muhammad b. Idris al-Shafi‘i” .11
In defending his theory, Ahmad Hasan refers to Ibn al-Nadim’s Fihrist in which the latter lists the books written by Abu Yusuf and al-Shaybani which were among the lists of books on usul al-fiqh. He further argues that the term usul al-fiqh had been used by Abu Yusuf in his criticism of the scholars of Syria for their ignorance of usul al-fiqh. According to Ahmad Hasan, the above reports indicate that scholars preceding al-Shafi‘i and some other jurists had formulated the principles of law before him. Thus, the theory that al-Shafi‘i was the first legal thinker who pioneered usul al-fiqh appears to be incorrect and this needs to be explained.

The term ‘usul al-fiqh’ or ‘usul’ before al-Shafi‘i did not carry its present connotation nor had it acquired the technical meaning of the science dealing specifically with the sources of the law as defined by al-Shafi‘i. For example, Ibn al-Nadim reports that Abu Yusuf was the author of works on usul. However, he immediately mentions that these books dealt with subjects such as prayer, fasting, sales and others. Similarly al-Shaybani is also alleged to have written books on usul, but they deal with prayer, alms tax and so on.

Al-Shafi‘i’s Achievement in Formulating the Principles of Islamic Jurisprudence

Schacht, Coulson and others acknowledged that al-Shafi‘i had contributed greatly to Islamic jurisprudence. They regarded him as “the father of Muslim jurisprudence” or “the master architect of jurisprudence”. His contribution to jurisprudence has been compared by his biographers to the work of Aristotle on logic and to that of al-Khalil b. Ahmad on prosody (‘arud).

However, in the opinion of Hallaq, al-Risalah was not the best work ever written on usul al-fiqh. There are reasons as to why he believes so. Firstly, there was no such work in usul al-fiqh proper in the ninth century following the death of al-Shafi‘i. This means that there was a gap between the eighth and the tenth century. Hallaq argues that if al-Risalah was a very important book in usul al-fiqh, there should have been commentaries or even criticism from those who disagreed with al-Shafi‘i’s formulation. Apparently, he argues, commentaries of al-Risalah only appeared in the tenth century.

However, such an argument does not imply that the al-Risalah was unimportant. It most probably indicates that the work was not yet widely known, for Ibn Qutaybah in his Ta‘wil Mukhtalaf al-Hadith mentioned al-Shafi‘i only once. Besides, Abu ‘Ubayd did not mention al-Shafi‘i at all whereas his and Ibn Qutaybah’s work were among the important ones produced after al-Shafi‘i.

Norman Calder, in his Studies in Early Muslim Jurisprudence agrees with Hallaq’s theory. He further adds that al-Shafi‘i’s achievement in usul al-fiqh was not unrecognised by Muslim authors but also had no tangible effects on juristic thought, perhaps before the beginning of the fourth century of Hijrah.

Terms Ibda’, Wa’, Ta’sis and Ikhtira’ (Innovation, Pioneering, Founding and Inventional)

There is concern about the terms used to describe al-Shafi‘i’s contribution and his achievement in usul al-fiqh. He is always described as the founder and pioneer of usul
al-fiqh. Some scholars, like al-Buti\textsuperscript{23} do not agree totally with the use of such terms for he deems them inaccurate and improper. Instead, he suggests terms like *tadwin*, *kitabah* and *tasnif*\textsuperscript{24} (compilation, writing).

Al-Buti’s suggestion arises because he claims al-Shafi’i was not the first to mention *usul al-fiqh*. He argues that the usage of the term *usul al-fiqh* had begun right from the early days of Islam. According to him, al-Zarkashi\textsuperscript{25} reported that Ibn ‘Abbas held to the principles of *’umum* and *khusus*, while others held fast to *dalalat al-mafhum*. Moreover the * Hadith* of Mu’adh b. Jabal\textsuperscript{26} was said to have explicitly indicated the hierarchical order of these arguments in Islam.\textsuperscript{27}

Before al-Shafi’i, scholars had already used *usul al-fiqh* to extrapolate rulings. However, they did not lay down the general rules (*qanun kulli*).\textsuperscript{28} Thus, when people before Aristotle, Khalil b. Amad and al-Shafi’i\textsuperscript{29} mentioned the subjects of deriving rulings, they were discussing them on the basis of ideas and thought rather than its mechanisms. So, to a certain extent, the criticisms advanced by al-Buti and others seem to be quite correct, but it was al-Shafi’i who systematised the science of *usul al-fiqh* and put it in written form, thus ensuring that specialists would not commit mistakes in deriving rulings (*istinbat*).\textsuperscript{30}

Notes


2 One exception to this is the opinion of a contemporary scholar Muhammad Abu Zahrah who, although a *Hanafi* follower, acknowledges al-Shafi‘i’s contribution and believes the latter should be credited with regard to *usul al-fiqh*. See M. R. ‘Uthman, “al-Shafi‘i Wadi‘ Ilm al-Usul”, p. 41.


5 Al-Hasani, p. 233.
6 Abu Zahrah, Usul al-Fiqh. p. 11.


16 There are works of al-Shaybani that seem to have dealt with usul al-fiqh. They are Kitab Ijtihad al-Ra‘y, Kitab al-Istisan and Kitab Usul al-Fiqh. See Ibn al-Nadim, al-Fihrist. p. 288.

17 Ibn al-Nadim, p. 287.


20 Cf. Muhammad Abu Zahrah, al-Shafi‘i, p. 179.


Al-Shafi'i’s Role in the Formulation of Islamic Law


26 The Hadith of Mu‘adh b. Jabal is a well-known legal Hadith in the literature of Islamic jurisprudence. It lays down the guidelines for Muslims to derive rulings (hukm) in certain given circumstance. The hierarchical order of the proofs is the Qur’an, the sunnah of the Prophet, and the *ijtihad*.


30 Al-Buti, p. 1.