Rivista Italiana di Filosofia Analitica Junior Vol 13, No. 2 (2022)
ISSN: 2037-4445

A Study on the Limitation of Standard Fatwa in Islamic Countries with Sunni-jurisprudence-based Penal Systems

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Abstract

Islamic countries have tried to match their legislation and legal system with the ideological and belief principles of their ruling political system. The ruling political systems in Islamic countries have taken various approaches when dealing with the issue of "adherence to a specific sect, narrative, or non-adherence to it". Many Islamic countries (such as Saudi Arabia, Brunei, Malaysia, and Mauritania), despite taking a specific sect and narrative as a standard for their rules and regulation, trying not to go astray from the limits of a specific sect, when encountering international issues and observing social interests, have to some extent accepted the narratives of other sects. However, some countries have limited the right (the real sentence) to a specific sect of the Mazahib Arba'ah (The Four Sunni Schools) and provided some reasons to prove their claims. Among the most important reasons they provide is that they have limited the right (truth) to a specific school or schools. The present study, using a descriptive-analytical approach, tries to investigate the legal approach of Islamic countries in this regard, and after that, explain the reasons provided by the supporters of the limitation of standard fatwa to a specific school or schools, and then, criticize their reasoning.

Keywords: Penal law, standard fatwa, schools, Islamic countries.

Introduction

At the time of Khulafa and Sahabah, in which there were no specific sects, people referred to the Sahabah to recognize the rulings, without commitment to a specific judgment (Mohagheq Damad, 2002, p. 25). In the Abbasid era, the four Sunni schools were recognized as official sects. In the period of re-popularization of Ijtihad and Taqlid, some jurists rejected the exclusiveness of ijtihad to the Mazahib Arba'ah (the four Sunni schools), citing the Muslim consensus that it is permissible to imitate any of the Sahabah (at the beginning of Islam). However, it did not spread and the Sunni mostly referred to the fatwas by their dour imams (Aghabozorg Tehrani, 2010, pp. 19-27; Yousefi Moghadam, 2011). But in Shia jurisprudence, Ijtihad still rules and Imamiyah jurists have extracted the religious rulings citing the books, Sunnah, wisdom, and consensus.

Concerning the obligation to a specific school, judgment, or rejection of it, there are conflicts between the Fariqein (the two Shia and Sunni sects) and their scholars in terms of legislation and law. Also, the political systems of Islamic countries have adopted different approaches in this regard.

In this regard, three general approaches can be named: 1) "Limitation of the standard fatwa" which is the approach taken by some countries such as Saudi Arabia and Libya. 2) "Limitation of the standard sect and non-limitation of the standard fatwa" which is adopted by some other countries such as Afghanistan, some Emirates in UAE, Brunei, Malaysia, Nigeria, and Mauritania. 3) "Non-limitation of both the sect and the standard fatwa" which is adopted by a third group of countries such as Pakistan, Qatar, and Maldives. Yet, in the legal proceedings of some countries, non-adherence to a specific sect or narrative can be seen. Investigation of the countries' approaches and their reasons is the subject of the present study. The main problem here is whether the legislator and the judge should abide by a

specific sect or fatwa when legislating and judging or they are not obliged to do so. What have Islamic countries' approaches been in this regard?

In the present study, some points should be considered to determine the research scope: 1) This paper is about the countries which have referred to Islamic jurisprudence in their legal systems. Therefore, the legal systems of those Islamic countries that are derived from western countries' law and have not shown any interest in jurisprudence (Akrami, 2021, p. 31) are excluded from the present study. 2) The focus of the present study is put on the penal dimension of the legislative and legal systems of Islamic countries. Most countries have tried to not be limited to a specific sect in their penal system, although their civil laws are formulated based on jurisprudence (such as Jordan, Iraq, and Afghanistan. Jordan has recognized Islam as the official religion in its constitution. Iraq has taken Islam as the main source of legislation, and Afghanistan has considered the criterion of non-contradiction of laws with Sharia). However, their penal codes have been formulated based on western origins. Therefore, the present study, besides the investigation of the general principles of the limitation to a standard sect (in the studied countries), has paid special attention to the penal territory.

It should be noted that the examination of the Iranian legal and penal systems and their reasons is beyond the scope of the present study, and it requires an independent study.

Penal Law Approach regarding the Limitation of the Standard Fatwa in Islamic Countries

Saudi Arabia

In the Saudi Arabian legal system, jurisprudential rulings have not been formulated as a law. Concerning the Hodud crimes, Qisas, atonement, and Taazirat (canonical punishment mentioned in religion), the sentences are issued by referring to the jurisprudential sources (Refer to Akrami, 2022). The ruling political system in Saudi Arabia recognized Imam "Ahmad bin Hanbal" School as its official sect in 1973 to unify the various legal proceedings, and introduced the books "Sharh al-Muntaha" and "Sharh al-Iqna" as its sourcebooks. When there is a difference between the mentioned books, they should refer to "Sharh al-Muntaha" and if there is no text in both books, they should refer to "Sharh al-Zad" or "Sharh al-Dalil". If they do not find a text about the ruling in these books, they should refer to the jurisprudential books of other sects and schools and in this case, the members of the judiciary (consulting with each other) judge with the most correct narrative (Muhammad al-Taei, 2009, p. 123). Therefore, if from the judge's view, adopting the issue with the opinion of the mufti of the said sect creates difficulties or is against the public interest, other religions are referred to issue a sentence that complies with the public interest (Ahmad Bakhit, 2016, pp. 709-710). For example, in terms of the criminal responsibility age, the judges determine it based on their point of view (Alotaibi, 2020, p. 11).

It is also noteworthy that by other sects, Saudi Arabia means the Four Sunni Schools, not all sects including the Imamiyah sect.

Libya

Libya has established the institution of "Dar-ul-Ifta" to integrate the fatwas (Law No. 15, 2012). Based on Article 15 of this law, Ifta (announcing a religious opinion) should be done based on the Book and the Sunnah without any obligations to observe a specific sect or ruling. Similar to this article, it is stated in Article 8 of Libya's constitution (2016) that there is no obligation to observe a specific jurisprudential judgment in the Ijtihad issues.

Still, the legislator has not mentioned a general standard in the Islamic penal code of Libya. For the Hodud rulings, in case of the absence of a text, the judge "should cite the simplest judgment from a popular narrative". Article 23 (Law No. 148, enacted in 1972 in terms of execution of punishment of theft

and Muharibah), Article 10 (Law No. 70, enacted in 1973 in terms of execution of the punishment of adultery), Article 16 (Law No. 52, enacted in 1974 in terms of execution of the punishment of Qadhf (false accusation of adultery or sodomy)), Article 20 (added repetitive), based on rulings of Law No. 12, enacted in 2016 in terms of modification of the Law No. 13 enacted in 1425 A.H., in terms of execution of the punishment of theft and Muharibah.

In Qisas and atonement crimes, although it has accepted Ihalah (venue) model, it is not acted based on the abovementioned rules. For example, in Law No.6 enacted in 1423 A.H. for Qisas and atonement rulings, the judge has been referred to the religious sources. However, in the repetitive Article 3 of the Libyan penal code (Tahdid al-Arash), a more common fatwa from the "Aisar al-Mazahib Fiqhi al-Moatabar" has been referred to.

According to some Sunni researchers, by "the most common" about "Aisar al-Mazahib" and religiously authenticated about "Mazahib Motabar Sharyie" (adapted to religiously authenticated Ijtihad and Mazhab), the Libyan legislator means the Four Sunni Schools, not an absolute reference to "Aisar al-Mazahib" so that Imamiyah and Zeidiyah sects can be also included (Al-Sivi, 1439 AH, p. 169) since they do not consider the Imamiyah sect to be a valid religious sect.

Afghanistan

The legislator has used the term "in accordance with the Hanafi jurisprudence" in Article 130 of the Constitution (2013). In the 2011 penal code of Afghanistan, all the Hodud crimes and Qisas have been referred to as the "Hanafi jurisprudence", however, to recognize the Imamiyah sect, in Article 131 of the Constitution, the legislator has obliged the judges to judge only the Shia people based on this sect (Hosseini Hanif, 2006, p. 100).

In 2019, Afghanistan established the "Dar-ul-Ifta of the Islamic Republic of Afghanistan" to prevent a diversity of opinions and fatwas, however, the Dar-ul-Ifta jurists have to issue their fatwas based on Hanafi jurisprudence. Based on what was mentioned, Afghanistan refers Sunnis to the Hanafi jurisprudence in determining the standard sect and has tried to partially recognize the Jafari jurisprudence for the Shia people.

United Arab Emirates

In Article 7 of the Constitution of the United Arab Emirates enacted in 1971, the legislator has accepted religion as the official source of legislation. However, in determining the sources of religion, it has been silent about the abovementioned law and has not provided any regulations. Article 1 of the civil code has clearly expressed the issue of reference to religious sources. According to this article, first, the Maleki sect should be referred to, then the Hanbali sect, then the Shafei, and finally, the Hanafi sect (Butti Sultan, N/D, 223). But this approach does not exist in the penal code of the UAE, and no specific sects have been emphasized. Yet, in some emirates, a specific jurisprudential sect has been taken as the standard sect. For example, the emirate of "Ras Al-Khaimah" has taken the Hanbali jurisprudence as the standard. In other emirates, the Maleki sect has been recognized as the standard sect (Akrami, 2022, p. 23).

Most rulings issued are in accordance with the Maleki jurisprudence, such as appeal No. 20006 in which the lower court sentenced a woman to death by stoning for double adultery based on the reasons for proof of adultery in the Maleki sect (pregnancy). In some rulings also, other sects have been resorted, such as the 1994's judgment about the equality of the blood money of Muslims and non-Muslims which was issued based on the Hanafi sect (Akrami, 2022, p. 181).

From what was mentioned about the UAE's law, it can be inferred that by religion, they mean the religious rulings that are limited to the four Sunni schools and not its general meaning that also includes the Imamiyah sect.

Brunei

In the Constitution of Brunei, under Article 2, the Shafei sect has been recognized as the official religion of the country. Although it has been mentioned by the legislator, other sects such as the Hanafi, Maleki, and Hanbali might be used for the public interest in case of necessity (with the provision of firm reasons) and finally, consent of the Sultan (Nurdeng Deuraseh, 2022, pp. 123-124).

Brunei legislators have limited the ruling to the four Sunni schools since they did not mention anything about the Imamiyah sect or any other sects.

Malaysia

According to Article 42 of the Malaysian Constitution, commitment to fatwas is among the religious duties of Malaysians except for personal beliefs (Lukman Ayinla, 2016, p. 10). The responsible institution for the issuance of fatwas is the "office of Ifta" (Nashah et al., 2012, p. 924).

In section 39 of 1993's Federal Law, it has been mentioned that the Mufti follows the Shafei Sect and issues the fatwas based on this school. However, in cases where adherence to this school is against the public interest, the Mufti is allowed to follow other jurisprudential schools and if it was also not adequate, he can act according to his discretion. A similar article is mentioned in Section 14 of ENACTMENT NO. 7 OF 2004.

In the laws of the Malaysian states, the same approach can be observed. For example, in Section of Part 3 of the criminal code of Kelantan (2015), it has been asserted that the Sharia ruling should be based on the Shafei school or any of the Hanafi, Maleki, or Hanbali schools. Similar articles can be seen in other states. For example, in Clause 1 of Section 2 of the penal code of "Johor" (2003), Clause 1 of Section 2 of the penal code of Malacca, Clause 1 of Section 2 of the penal code of Pahang, and Clause 1 of Section 2 of the penal code of Sarawak, the Sharia has been considered to be in accordance with Shafei sect or any of Hanafi, Maleki, or Hanbali sects. Again, as an example, in Section 54 of the penal code of Johor, it is mentioned in Clause 1 that the fatwa committee should judge according to the Maleki sect's narratives. Clause 2 has allowed for the issuance of fatwa based on other sects such as Hanafi, Maleki, or Hanbali. And in Clause 3, it has asserted that according to the conditions of the society, the fatwa committee can judge without adherence to a specific religion. There are similar articles in other states (e.g., Section 42 of the penal code of Malacca).

Based on what was mentioned about the federal law of Malaysia and its states, the legislator's presupposition has been the limitation of the right to the four Sunni schools.

Mauritania

According to the penal code of Mauritania, the crimes, including the punishment crimes, Hodud, Qisas, and atonement, are dealt with based on the Maleki jurisprudence. In Article 449, in case of legal gaps, the jurisdiction has been referred to Islamic sources. However, according to Article 94 of the Mauritanian Constitution (1991) (amendment of 20174): "The Supreme Council of Fatwa" is responsible for the issuance of fatwas, and the jurisprudential judgments of this council are based on the Maleki sect's teachings. Therefore, the Mauritanian Constitution has limited the right of the Maleki sect.

Nigeria

In Nigeria, in January 2000, the states' efforts for the formulation of laws based on jurisprudential sources were initiated. For example, in Zamfara, Bauchi, Sokoto, Jigawa, Yobe, Kebbi, and Kano, we can observe that laws on Hodud, Qisas, and atonements are established. In terms of the punishment crimes (for which there is no text), the criminal law of 1959 has been the basis for judgment and the

judges decide based on the Holy Quran, Sunnah, and Ijtihad in the Maleki sect (e.g., Article 92 of Zamfara, Jigawa, and Yobe's law; Article 95 of Bauchi's law; Article 93 of Kebbi's law, Article 94 of Sokoto's law) (Akrami, 2022, p. 178). Although the Nigerian penal code is to a high extent under the influence of the Maleki sect (Danladi Shittu, 2015, p. 103), sometimes, the legislator did not abide by this procedure and did not judge based on the Maleki sect. For example, in Section 1 of Article 147, in terms of the punishment of a father who has killed his child, Kano's law has set the punishment to be atonement and maximum imprisonment of up to ten years. Among the four Sunni schools, all of them believe in not killing the father (a father who is a murderer) except the Maliki School. Zamfara has also not complied with the Maleki jurisprudence in Section 204 (Danladi Shittu, 2015, p. 112).

Anyways, in the Nigerian Constitution, the legislator or the judge has not been referred to any other sects but the Maleki sect.

Pakistan

The Pakistani legislator in adhering or not adhering to a specific sect is reflected in Clause 1 or Article 227 of the Constitution. According to this article, all existing laws should be enacted in compliance with the Islamic rules (based on the Book and the Sunnah). In adapting this clause to the personal rights of any Muslim from any sect, "compliance with the Book and the Sunnah" means that any interpretation of the Holy Quran and the Sunnah based on the beliefs of each sect can be accepted. Based on the judgment by Sharia Federal Court, a fatwa is not valid if it is not supported by the Qur'an and the Sunnah. Of course, if the fatwa is supported by either of them, it would be valid. Fatwa has no intrinsic value by itself unless it is related to the primary sources of Islamic law. In this case, it can be taken as a standard (Cheema, 2016).

Among Islamic countries, Pakistan is perhaps one of the few that have not relied on a specific sect and have taken the Quran and the Sunnah as the main standard, in general.

Qatar

In Article 1 of the Qatari Constitution, it is stated that Islamic Sharia is the source of legislation, without specifying any other rules and criteria. Concerning the limitation of the standard fatwa, the legislator in the Civil Code of Qatar (No. 22, 2006), Article 3, has stipulated that in cases of a legal gap, the judges must first refer to the Hanbali sect and, in the absence of a ruling, to another school of the four Sunni schools. If they do not find the ruling in any of the other dour Sunni schools, they should issue the ruling according to the general rules of Islamic jurisprudence. Some also believe that the judges refer to the legal books of Al-Sanhuri when there is a legal gap in civil law (Hatem al-Bayat, 2009, p. 77). However, in Article 1 of the Penal Code (No. 11, 2004), even though religious crimes, including Hudud, Qisas, and atonements are referred to Sharia, there is no clear stance in determining the standard sect. This article is applied to the Qatari judicial procedure, and the rulings are issued according to Islamic law. Therefore, courts are allowed to issue judgments based on one of the four schools of jurisprudence. For example, in one of its rulings in 2010, the Supreme Court of the country determined the conditions of Qisas and their execution according to Hanbali jurisprudence. In other cases, rulings have been issued according to other schools of jurisprudence (Hassanein, 2018).

Although the Legislator has set the Hanbali sect as the standard for civil law, it has not set any rules and criteria for a specific sect in criminal law. But practically, the proceedings are conducted according to one of the four Sunni schools.

Maldives

Article 3 of the Maldivian Judiciary Law (2010) stipulates that the sources cited in the courts are in accordance with the Constitution and Islamic Sharia. Similarly, in Article 1205 of the Penal Code, judges are empowered to refer to Sharia in cases of Hodud and Qisas crimes. The current laws of the Maldives rely on the principles of Sharia, especially the Shafei school, in cases of lack of a clear law (Robinson, 2006, p. 3). Nevertheless, Hanafi jurisprudence has been referred to in the codification of some rulings (about the crime of adultery, Article 411) (Akrami, 2022, p. 181). The Religious Solidarity Law enacted in 2016 (No. 6) has recognized the fatwa (Mohamed Ibrahim, 2018, p. 89). According to this law, Maldivian people will not be obliged to follow a specific sect. To resolve the differences in the opinions of the Shafei jurists, the legal scholars resolve the conflicts by adopting an interpretation that best reflects the views in harmony with the norms of the current Maldivian society (Robinson, 2006, p. 4).

According to the abovementioned, the Maldivian constitution has applied Islamic law in a general sense and has not limited it to any specific school of jurisprudence, although in some cases, it has referred to the Shafei and Hanafi schools.

Limitation of the Standard Fatwa to a Specific Sect or Judgement (Tamaḏhaba)

Among Sunni scholars and jurists, there are generally two theories regarding the obligation or non-obligation of a particular sect and opinion: 1- Obligation to adhere to a certain sect and judgment (since a person has faith in the correctness of a certain sect; therefore, he must adhere to it and be faithful to it). 2- Non-obligation to a specific sect and judgment (This theory is divided into two sections: one is non-adherence to a specific sect among the four Sunni schools while adhering to all of them. The other section is the non-limitation to the four Sunni schools and the permissibility of referring to others such as the Imamiyyah and Zeidiyah) which is stated in the second theory.

The Reasons for Limitation of the Standard Fatwa to a Specific Sect or Judgement (Tamaḏhaba)

The obligation to follow a certain sect and a specific judgment is mentioned in jurisprudence under the title of "Tamaḏhaba" (to adopt a religion). The word "Tamaḏhaba" means not leaving the ijtihad and fundamental views and foundations of a mujtahid or the founder of a sect (Al-Shani'ar, N/D, 5). It seems that those who believe in "Tamaḏhaba" allow ijtihad in choosing one of the four Sunni sects, but after choosing one of them, they consider it impermissible to merge the. Therefore, the "majority of scholars" have allowed ijtihad to choose the principle of sect so that anyone can choose any sect. However, they have prohibited the ijtihad that is derived from the sect and its rules and branches and even not allowed for combining judgments of these four schools (Montazeri, 1988, p. 148).

1) "يَا أَيُّهَا الَّذِينَ ءامَنواْ أَطِيعُواْ اللهَ وَأَطِيعُواْ الرَّسُولَ وَأُوْلِي الامْرِ مِنكُمْ" (Believers, obey Allah and obey the Messenger and those in authority among you. Should you dispute anything refer it to Allah and the Messenger, if you believe in Allah and the Last Day. That is better and the best interpretation) (An-Nisa, 59).

Based on the above verse, obeying Allah, his Messenger, and those in authority is obligatory. Therefore, if the authorities oblige the judge to adhere to a certain sect and word, the judge must follow it. According to the preventive provisions of the above verse, if the authority prohibits the judge from ruling on something, the judge's ruling regarding that thing will be invalid and the judge will be the same as other people (Hasan al-Sahli, N/D, 826).

2- Avoiding indulgence: If the public is free to choose between sects and does not have an obligation to a certain sect, it leads to indulgence in a way that they investigate the cases of "deprecation" in religions and only consider such cases (Al-Najdi, 1428 AH, pp. 223-228).

3- Avoiding diversity of procedures: Another important reason is to avoid diversity of procedures in legislation and law. In this way, adherence to a specific judgment is necessary and even obligatory,

because after closing the chapter of ijtihad, the most appropriate procedure for managing the society is the necessity of imitating the Imams of different sects. The rulers have the authority to oblige the people to obey certain jurisprudence (Mohammed Al-Tabbakh, 2021, p. 1825).

Reasons for Limitation to a Standard Fatwa in the Four Sunni Schools

According to this theory, the obligee doesn't need to imitate a specific sect and mujtahid in all matters and events. Rather, he can follow any school from the four Sunni schools that he wants. In the book "Al-Forua", at the end of the Book of "Hodud", Ibn Al-Mufallah emphasized the exclusiveness of truth (right) in the four Sunni schools and assets that it cannot be found in other sects. (Al-Shavi'ar, N/D, 5). The requirement of his words is the permissibility of referring to the four Sunni schools and the non-permissibility of referring to others. It is important to pay attention to this discussion in terms of the effects and results it has in the Islamic world. Discussions such as "Tatabbo'a Rakhs" (Refer to Abdul-Wahab, 2013, pp. 105-120), "Aysar al-Mazahib" and "Talfiq" (Salimipour et al., 2019, p. 54), are all raised with the premise of no obligation to a specific sect and judgment, and avoiding exclusiveness of rights to a specific sect.

1) "يَا دَاوُودُ ... فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ" ((We said): 'David, We have made you a caliph in the earth. Judge with justice among people and do not yield to your preference in case it should lead you from the Path of Allah. Surely, a terrible punishment awaits those who stray from the Path of Allah, because they forget the Day of Reckoning" (Saad, 26).

The way of reasoning is that the judge is obliged to judge the truth, i.e., judging according to what he thinks is right. Possibly, from the judge's point of view, sometimes there is no truth in a certain sect and judgment, that is, the certain sect and judgment are not in accordance with reality. Rather, in his opinion, other sects and theories may be in accordance with the truth (reality). Based on this view, the obligation of a judge, in the position of judging, to a specific sect and word, is sometimes an obligation to judge other than the right (Hasan al-Sahli, N/D, p. 824).

2) "فَاسْأَلُواْ أَهْلَ الذِّكْرِ إِن كُنتُمْ لاَ تَعْلَمُونَ" (We never sent but men before you to whom We revealed, ask the people of the Remembrance if you do not know) (An-Nahl, 43).

The meaning of the verse is that a person who does not know should ask a person who knows. This is absolute. This holy verse does not limit it to specific people. Therefore, there is no reason to require a judge to follow a certain sect or a certain judgment (An-Nahl, 825).

3) The way of arguing Boraidah's hadith (Ibn al-Mulqan, 9/552, Al-Haithami, 4/228, Al-Albani, 3/324) is that according to the provisions of this narrative, the judge must act according to what he considers to be right, and he is not allowed to rule against it. A judge who does not know the truth and judges is damned to hell, regardless of whether his judgment is in accordance with reality or against it. Accordingly, the obligation of the judge to follow a specific sect and word in the position of judge, sometimes makes him judge against what he considers to be right or to rule based on ignorance, which is prohibited according to the mentioned hadith. Therefore, it is not permissible to oblige a judge to adhere to a certain sect and word (Hasan al-Sahli, N/D, p. 825).

4) Ease of religion: In cases where ijtihad is permitted, it is not permissible for the person in charge of Muslim affairs to prohibit someone from ijtihad in those cases, because ijtihad in religion and non-obligation to a specific sect and word leads to ease and facilitation in religion and religiosity. Requiring a judge to adhere to a specific sect and word is against ease in religion. Therefore, it is not permissible to require a judge to adhere to a certain religion and belief (Hasan al-Sahli, N/D, pp. 825-826).

Conclusion: Some Sunni scholars have considered the right to be limited to a specific sect, and some have not considered it to be so. However, most of them are limited to the four religions; Therefore, they often consider the obligation to a certain religion or the obligation to the four religions as necessary. Therefore, the common point that exists among the majority opinions of Sunni schools is the limitation

of the right to a specific sect or four Sunni religions. What this article refers to is the limitation of standard fatwa to a certain school or four Sunni schools. Criticizing each of evidence separately, while not necessary, is beyond the scope of this article. The present study will criticize all the arguments that refer to the limitation of the standard fatwa.

Criticism of the Reasons for the Limitation of Standard Fatwa to a Specific Sect(s)

In this part of the discussion, it is necessary to generally criticize the opinions of the Sunni jurists and scholars and the approaches adopted by some countries which have limited the right to specific sect(s). In other words, here, we will only deal with criticism of the narratives of the Sunni scholars, some of whom had clearly, and some had presumably considered that the right is limited to the four Sunni schools and not any other sects. This is a false claim for which there is no reason.

First, the imams of the four Sunni schools were neither in the position of revelation nor they were directly connected to the divine sources. In addition, they did not prohibit Ijtihad for others. Moreover, these Sunni imams were not contemporaries of the Holy Prophet (PBUH) so their words can be valid in this regard. Rather, they have been separated by about a century since the death of the Prophet (PBUH).

Second, we have neither a logical reason nor a narrative reason (the Book and the Sunnah) for the exclusiveness of the four Sunni schools. There are no logical or narrative reasons for the exclusiveness of the Ijtihad to the four Sunni schools. Also, no verses have been revealed so far, to indicate the exclusiveness of the Ijtihad to the four Sunni schools, nor a valid narrative has been cited from the Holy Prophet (PBUH) in this regard. In addition, there is no rational argument that can be made on this matter whose content is that only the imams of the four Sunni schools have the right to ijtihad, and their contemporaries and those after them do not have such a right. And there is no reason other scholars cannot match their scientific degrees.

Third, an Abbasid caliph, named “Al-Qadir Billah, recognized only the four Sunni schools as the official sects among the many sects that had emerged in the Islamic ummah. He recognized these sects in return for the amount of money he was paid by the followers of these sects. On the contrary, the followers of the Jafari sect did not pay the money the caliph had asked for, and he did not recognize this sect (Montazeri, 1988). Fourth, they were not infallible, i.e., they were not Masuum and themselves did not claim to be. Rather, they have clearly stated that they are not infallible and their judgments are true when they comply with the Book and the Sunnah.

The problems found in the second theory are also true for the first one. For example, if the right is not limited to all four Sunni schools, it will also not be limited to one of them. If none of the imams of the four Sunni schools is connected to the source of revelation, one of them will also not be. If none of the imams of the four Sunni schools is infallible, one of them will also not be. Fifth, in addition to the abovementioned, some Sunni jurists have also not considered the right to be limited to the four Sunni sects, e.g., based on the law of “Al-Mujlah Al-Ahkam Al-Adliyah”, the parents of the minors were not allowed to marry their minor child to someone and vice versa. This ruling is against the four Sunni sects and in accordance with the fatwa by “Ibn Shabrameh” (Managhebi, 2007, p. 169; Mokhtar al-Ghazi, 1432 AH, p. 39).

Sanhuri, a Sunni scholar, is among those who do not consider the right to be limited to the four Sunni schools. According to him, in using legal sources and extracting jurisprudential rulings from them, a few points should be considered in terms of legislation: “The first is non-adherence to a specific Islamic sect since all jurisprudential schools may be referred to and can be exploited. Therefore, one cannot limit himself to the opinions of Abu Hanifah and the Hanafi school. There is no reason to adhere to the four famous schools since there are other schools such as the Jafari and Zeidiyah which can be to a high extent exploited” (Al-Sanhuri, N/D, 49).

Another Sunni scholar who has not limited the right to the four Sunni schools is Allameh Albani. According to him, obliging the judge and the ruler to adhere to a specific sect (such as Hanafi) or a

specific narrative is not allowable, since the Mufti must judge based on reason (the Book, the Sunnah, etc.) (which may not comply with any of the four Sunni schools) (Refer to Durus al-Albani, N/D).

Some Sunni researchers, citing the lives of Ashab and Tabeyeen, have considered the adherence to a specific sect to be a heresy in religion. He says, where there is a religious reason for the dispute, it is clear that imitation is not allowable. Then he asserts that Tamaḏhaba is undoubtedly a new heresy that was not common neither at the time of Sahabah nor at the time of Tabeyeen and the Tabeyeen of the Tabeyeen (followers of the followers): "فهو [التمذهب] من البدع المحدثة بلا شک" (Indeed, Tamaḏhaba is a heresy). Then, he cites Masumi Khojandi as he asserts that adherence to one of the four Sunni schools or any other sects is neither obligatory nor recommended. Rather, adherence to a specific sect in all matters leads a person to the abyss of error, prejudice, and ignorant imitation (Al-Najdi, 1428 AH, pp. 229-230).

From the words of the four Sunni schools imams, it can be also inferred that Tamaḏhaba and the necessity to adhere to the four Sunni schools are negated:

1- أنكر الامام ابوحنيفه رحمه الله تقليده، فقال: اذا صح الحديث فهو مذهبى، و قال ايضا: لا يحل لاحد ان ياخذ بقولنا ما لم يعلم من اين اخذناه.

(1- Imam Abu Hanifa, may God have mercy on him, denied his imitation, and said: If the hadith is authentic, then it is my doctrine, and he also said: It is not permissible for anyone to take our saying unless he knows where we got it from (Al-Najdi, 1428 AH, p. 231).

1- اما الامام مالک رحمه الله فقال: انما انا بشر اخطى و اصيب، فانظروا فى رايى، فكل ما وافق الكتاب و السنة فخذوه، و كل ما لم يوافق الكتاب و السنة فاتركوه.

(2- As for Imam Malik, may God have mercy on him, he said: I am only a human being who makes mistakes, so look at my opinion, so take everything that agrees with the Book and the Sunnah, and leave everything that does not agree with the Book and the Sunnah (Al-Najdi, 1428 AH, pp. 231-232).

3- دعا الامام الشافعى رحمه الله، الى عدم التزام مذهب معين بقوة و صراحة ...

(3- Imam Al-Shafei, may God have mercy on him, called for non-compliance with a certain school of thought, strongly and explicitly... (Al-Najdi, 1428 AH, p. 232). Shafei used to say to his followers: Don't imitate me in everything I say; Think about it. (Montazeri, 1988, pp. 3, 150; quoted from Nazm al-Hikam va al-Adara fi al-Shariat al-Islamiyyah, 35).

1- امام احمد حنبل: ... و قد صرح الامام احمد بالنهى عن التقليد و الالتزام بمذهب امام معين فى كثير من كلامه فقال: لا تقلدنى و لا تقلد مالكا و لا الشافعى و خذ من حيث اخذوا (Al-Najdi, 1428 A.H., p. 233)

(4- Imam Ahmad Hanbal: ... Imam Ahmad declared the prohibition of imitation and adherence to the doctrine of a specific Imam in many of his speeches, so he said: Do not imitate me, and do not imitate Malik or Al-Shafei (Al-Najdi, 1428 A.H., p. 233).

From the sum of expressions of the four Sunni schools, it is inferred that adherence to a specific sect in all matters is a heresy: "And from the sayings of these imams - may God have mercy on them - it became clear to us that adherence to a certain school is heresy and wrong..." (Al-Najdi, 1428 A.H., p. 233).

In this regard, Sunni scholars have not been able to present any justified logical or narrative reason for the exclusiveness of the Ijtihad or the right to one of the four Sunni schools, because the imams of these four schools were neither connected directly to the source of revelation, nor did they claim to be infallible, nor did the "authority" of Al-Qadir Billah was the same as legal authority of the Holy Prophet (PBUH). In the past, many jurists have emerged among the Islamic Ummah and will continue to emerge in the future, and there is no reason to prohibit them from ijtihad.

Some Sunni scholars have also strongly opposed "Tamaḏhaba": one of the Sunni scholars mentioned the conditions of ijtihad from the words of Fakhr Razi (Al-Saeidi, N/D, p. 4566). He says that some Sunni scholars like Ghazali have considered the Ijtihad to be exclusive to the four imams. He says that the limitation of ijtihad to the four imams has no reason. Ghazali and others like him, due to piety and

caution in Islam and thinking that their contemporary jurists did not have such a scientific position, have issued a fatwa on the limitation of ijtihad to the four imams out of respect for the four imams and to prevent chaos. He says that the dispute over the permissibility and non-permissibility of ijtihad is not allowable, but the dispute is whether among the scholars and jurists after the four imams, anyone can be found who is qualified for ijtihad or not? (The difference is in the example). Ghazali and others like him thought that there were, and there will be no jurists qualified for ijtihad and they limited ijtihad to the four imams. The author goes on to say that this group of jurists did not investigate, otherwise, there were qualified jurists. He says that the consequence of the view of "religion" is intellectual petrification and the distancing of religion from the realities of society and the needs of the times (Al-Saeidi, N/D, pp. 4567-4570). The author believes that neither the right (reality) is exclusive to a specific sect (because the truth is not in anyone's possession), nor has a reason been established to limit the permissibility of ijtihad in a specific person or sect.

Conclusions

Since there are differences in the fatwas issued in different sects or even in the same sect (including the Shia and Sunni sects), the legislative and legal systems of Islamic countries have adopted various approaches when selecting these judgments. Some of them, such as Pakistan, have not adhered to a specific theory, or at least, kept silent so that the judge could refer to any fatwa and words from any sect and issue the ruling. It seems they believe that the right is not exclusive to a specific sect and referring to sects other than the four Sunni schools (such as the Imamiyah and Zeidiyah) is allowable. Some countries, such as Qatar, have allowed for the combination of the four Sunni sects (in some situations). Some other countries, such as Afghanistan, have obliged the legislators and the judges to legislate and judge based on a specific jurisprudential sect. Some Islamic countries, like Saudi Arabia, have obliged the legislation and legal systems to refer to some particular jurisprudence books (from the Hanbali sect), and in case of lack of a ruling in these books, refer to other four Sunni sects, and if still no ruling is not found, judge based on Ijtihad.

Based on the above mentioned, most Islamic countries have firstly not been inclined to pass beyond the borders of their official sect and tried to act based on it. However, when they faced complex social, political, and international issues, have resorted to the narratives of the other four Sunni schools and adopted a combined approach.

There are generally two words among Sunni scholars in obligation or non-obligation of adherence to a specific sect or narrative: 1- Obligation to adhere to a specific sect and narrative (since the one who issues the fatwa believes in the rightness of that sect and he must act according to it), 2- Non-obligation of adherence to a specific sect and narrative (it is divided into two sections: One is non-obligation to adherence to a specific sect among the four Sunni schools while adhering to all four Sunni sects. The other is the non-limitation to the four Sunni schools and allowing for reference to sects other than them such as the Imamiyah and Zeidiyah sects, which is known as a third category). However, the reasons provided by the supporters of the first and second theories are not convincing. The main reason provided by Sunni scholars has been the limitation of the right to one or all of the four Sunni schools. So far, they have not provided any logical or narratively justifiable reason to prove the limitation of the right or Ijtihad to one or all of the four Sunni schools, since the imams of these schools were neither connected to the source of revelation nor claimed to be. Rather, from the words of these imams, the negation of Tamaḏhaba and adherence to the four Sunni schools in all matters can be inferred. Even some Sunni scholars such as Sanhuri, have negated the exclusiveness of the right (the truth) to the four Sunni schools.

Funding: No funding was received to assist with the preparation of this manuscript.

Conflict of interest: The authors declare that they have no conflict of interest.

Ethics approval and consent to participate: Not applicable.

Consent for publication: Not applicable.

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