



INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES



Salient Features of the Critical Approach of al-Imam al-Tawudi's Annotation (*Al-Hashiyah*) on the Explanation (*sharh*) of Al-Zurqani

Rafaa F Amragaa Anbeig, Ahmad Bin Che Yaacob, Nasrul Hisyam Bin Nor Muhamad, Kawthar Abdalla Mohammed Ahmed Bayoumi

To Link this Article: <http://dx.doi.org/10.6007/IJARBSS/v12-i7/14287>

DOI:10.6007/IJARBSS/v12-i7/14287

Received: 16 May 2022, **Revised:** 18 June 2022, **Accepted:** 30 June 2022

Published Online: 13 July 2022

In-Text Citation: (Anbeig et al., 2022)

To Cite this Article: Anbeig, R. F. A., Yaacob, A. B. C., Muhamad, N. H. B. N., & Bayoumi, K. A. M. A. (2022).

Salient Features of the Critical Approach of al-Imam al-Tawudi's Annotation (*Al-Hashiyah*) on the Explanation (*sharh*) of Al-Zurqani. *International Journal of Academic Research in Business and Social Sciences*. 12(7), 1329 – 1342.

Copyright: © 2022 The Author(s)

Published by Human Resource Management Academic Research Society (www.hrmars.com)

This article is published under the Creative Commons Attribution (CC BY 4.0) license. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this license may be seen at: <http://creativecommons.org/licenses/by/4.0/legalcode>

Vol. 12, No. 7, 2022, Pg. 1329 – 1342

<http://hrmars.com/index.php/pages/detail/IJARBSS>

JOURNAL HOMEPAGE

Full Terms & Conditions of access and use can be found at
<http://hrmars.com/index.php/pages/detail/publication-ethics>



INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES



Salient Features of the Critical Approach of al- Imam al-Tawudi's Annotation (*Al-Hashiyah*) on the Explanation (*sharh*) of Al-Zurqani

Rafaa F Amragaa Anbeig

University Teknologi Malaysia, Faculty of Islamic Civilization

Email: Refaaf.anbeig@graduate.utm.my

Associate Professor DR. Ahmad Bin Che Yaacob

University Teknologi Malaysia UTM

Email: ahmadcy@utm.my

Associate Professor DR. Nasrul Hisyam Bin Nor Muhamad, DR.
Kawthar Abdalla Mohammed Ahmed Bayoumi

University Teknologi Malaysia UTM

Email: nasrul@utm.my, amkawthar@utm.my

Abstract

The present study aims at to shed light on the jurisprudential critical thought of the sheikh of the (Maliki) school of law Talib Al-Tawudi (D. 1209AH) who is famous among Maliki scholars for his valuable writings, opinions and jurisprudential works. al-Imam has significant jurisprudential contributions and perhaps one of the most important books he wrote in this field is his magnum opus "Ṭalī' al-amani Imṭal' al-Zurqani ". It is an annotation (*Al-Hashiyah*) to the explanation of Imam Al-Zurqani (D: 1099 AH) on the summary (*Mukhtasar*) of the scholar Khalil (D. 767AH). In the annotation (*Al-Hashiyah*), he sought to present critical analysis, rectifying and correcting the errors and omissions that he came across in explanation (*sharh*) of al-Zurqani, of which no book is free, until *Al-Hashiyah* obtained a lofty position in the Maliki school of law. The reason for choosing it as a subject for this study has been to highlight the critical thought approach done by the imam on *Al-Hashiyah*, and what is the approach he followed in his critical appreciation. So, I set goals to achieve what I want, and to answer the questions asked. The study has been divided into two main parts. The first part answers the following questions: what is the concept of jurisprudential criticism, what are its fields and what types of it are? As for the second, it deals with the salient features of his approach in his criticism, rectifications, and corrections to an explanation of Al-Zurqani. In order to achieve these goals, the researcher will work on the descriptive and inductive analytical method to discuss and analyze the opinions and sayings, show the critical thought that distinguished Imam Al-Tawudi, and this will appear throughout the study, This study contributes to

highlighting one of the most important Maliki books that adopted the criticism approach to benefit researchers in the field of jurisprudence, and students of Sharia sciences in general, as well as contributes to highlighting the criticism approach that was used in authentic heritage books to benefit those interested in this field in how to deal with jurisprudential texts, criticism and objection It has to be corrected from error according to disciplined methodological rules.

Keywords: Methodology, Jurisprudential, Criticism, Al-Hashiyah, Al-Tawudi, Maliki

Introduction

Jurisprudence constitutes to be finest and noblest of all branches of knowledge as it is the blend of revealed and rational sciences. Engagement with this field of knowledge is of paramount importance and of superb level because it is related to people's conditions and their lives in terms of knowing God's will in their daily dealings. Therefore, Allah swt chose great imams for this knowledge who strove to understand it, knew the purposes of the Sharia to extract legal rulings from the basic texts of Islam. So, the people accepted their knowledge and their fatwas due to the depth of their understanding of Islamic religion and the integrity of their religion. Of those notables is the Imam of the House of Hijrah, Malik bin Anas, may Allah swt be pleased with him.

His knowledge and reputation spread by virtue of his disciples listening to him and writing down (his fatawa and methods), and hence the school of Maliki law passed through the stage of foundation to extension from the time of the Imam to the middle of the third century. Then the school moved to the stage of development, which was characterized by criticism, revision and setting preponderant opinions. One of its most important characteristics was the emergence of a critical movement of the sayings and narrations of the predecessors so as to refine as much as possible the Jurisprudential issues and determining the level of sayings and opinions in terms of strength and weakness. The first to take this path and the one who began to act in evaluating the sayings, scrutinizing, and passing the judgements on them based on his capability of Ijtihad is none other than Imam Abu al-Hasan al-Lakhmi (died 478 AH). And then his approach in criticism was followed by the scholars of the school such as his disciple Al-Maziri (d. 536 AH), Ibn Bashir (d. 536 AH), Ibn Rushd (died 520 AH) and Qadhi Iyadh (died 544 AH), and Maliki school got settled upon these pioneers and the abridged versions became prominent which comprised the gist of authentic opinions within the school after proper editing and revising of these pioneers. The approach of external and internal jurisprudential criticism continued throughout the eras, and one of the most prominent men of this approach was Al-Imam Al-Tawudi, who had a significant contribution in this field as he put an annotation on the explanation (*sharh*) of Imam Al-Zurqani (d. 1099 AH) on the summary (*Mukhtasar*) of Khalil (died in 767 AH)(Al-Jidi, 1993, 65-83; Limin, 2012,71-88). His work in this annotation, in its entirety, was to summarize the explanation of his sheikh Allama Ali Al-Ajhourī (died 1066 AH). So, Al-Tawudi used the method of criticism to correct what Al-Zurqani had fallen into, and to distinguish the authentic one from the unauthentic one to the extent that the level of Al-Zurqani's explanation of the fatwa was accompanied by his annotation known as (Ṭalī' al-amani Imṭal' al-Zurqani)(Al-Muslih, 2012, 91-165).

Therefore, this annotation is of importance in this aspect as it helped to correct the delusions and lapses into which Imam Al-Zurqani fell. In this study, the researcher tried to unveil the personality of this distinguished scholar and what he presented in the field of jurisprudential criticism within the Maliki school of law. After following and extrapolating what was written on this subject from previous studies, I did not find anyone who wrote about Al-Tawudi's approach to writing, especially his critical approach in his annotation. But I found studies that

mention the criticism approach of other notables, like the criticism approach of Imam Al-Rajaji, and Imam Abu Al-Hasan Al-Lakhmi and his efforts in development of critical approach method. The method of dispute and jurisprudential criticism according to Imam Al-Mazri, and the features of the critical method in Maliki jurisprudence of recitation according to the path of Abu al-Barakat al-Durdir. The researcher has benefited a lot from it in this study to try to answer the questions and to clarify the research problem and hence fill the research gap.

The Concept of Jurisprudential Criticism

Criticism linguistically has been derived from the letter's nun, qaf, and dal, a sound origin that indicates the emergence of something and its prominence. It is from there Arabs say: the value of the dirham, which is to be revealed about its quality etc. Al-Zubaidi said: "Criticized him about the matter" means "discussed it". Also "We have spoken" means "discussed" (Al-Zubaydi, 1984, 9.235)

As for Technical Definition, jurisprudential criticism is an indicative compound, it is new term. Some researchers tried to define and approximate it and their words can be summed up as: A research process through which it is intended to jot down the issues whether in terms of their application or in terms of directing and justifying them, to distinguish the correct from the weak by adopting well-known mechanisms and tools, and specific terminology. It can also be defined as:

A process of monitoring the right and wrong areas in jurisprudence issues after study and examination, using the tools of this science to correct some concepts related to these issues. Jurisprudential criticism goes through stages: first, understanding and assimilation, then interpretation and analysis, then evaluation. Finally, the structuration (Al-'Isawi, 2016, 394-576; Srmwm, 2014, 52-63; Ushshaq, 2012, 60-349).

There are similar terms related to the word criticism and there is an overlap between them. We will suffice to mention their idiomatic definitions, which are:

Al-Istidrak

It is said that it refers to the lifting of an illusion that was born from a previous speech. It is also said that it is the correction of a mistake, or the completion of a deficiency, or the removal of an ambiguity that occurred in it to reach to the right conclusion.

Al-I'tiradh

Imam Zarkashi says: Know that everything that the objector mentions to the inferred's words is called an objection or al-I'tiradh because he objected to his words and prevent it from effect. It is also said: The objection or al-I'tiradh is a meaning necessary to destroy the rule of the inferred.

Al-Tashih

It refers to removal of mistake by jurisprudential method according to the corrector.

Al-Ta'aqqub

It refers to trace to show error or discrepancy.

Al-Tahrir

It stands for systematic jurisprudential method which is free from any (unwanted) addition to the meaning, explicit text including removing the doubtful elements of the passage (Al-Jad'ani, 2012, 66-145).

*Areas of Jurisprudential Criticism***Criticism of Sayings and Narrations**

01. We can divide them into two types:

- (a) Criticism on the basis of isnad: It is made by distinguishing between the well-known and the abnormal, the reliable and the strong and the weak given the characteristics of the speakers and the narrators.
- (b) Criticism on the basis of evaluation: It is performed through the criticism of references in view of the consistency of sayings and narrations with the principles of school of law whether or not, or by criticizing the inferential evaluation through looking at the interpretation of the sayings of the imams of the madhhab in a way other than the intended way, or by criticizing the causes through looking at the link between the cause that with the ruling etc.

Criticism of Principles and Evidences

The critic's work in this field tends to criticize the principles on which the branches are built. It has two aspects:

First: Criticism of the principle itself, such as disagreement over the authenticity of the work of the people of Madinah and the approval of others or criticism of the references and modes of deduction.

As for the second: it is the criticism of inferences on partial issues from the point of view of the criticism of the partial evidence itself or the criticism of a facet inference.

Criticism of Books and Modes of Compilation or Codification

In this regard, the imams' criticism turned to the literature to distinguish the good from the bad. What can be relied upon in the fatwa and what is not appropriate for that (Srmwm, 2015, 166).

Types of jurisprudential criticism

For the observer of the phases that the Maliki school went through, it becomes clear to him that jurisprudential criticism was a prominent feature of the Maliki school and after following and extrapolating what was written in this regard, we can divide it into two trends:

1. **External criticism:** The efforts of the imams of the school in this regard were directed to defending the rules and principles of the school with arguments before other schools and pushing their objections within what is known as the refutation and issues of disagreement, debate etiquettes and research. Of the distinguished scholars in this field of the Maliki school in Iraq are Al-Abhari (d. 375 AH), Ibn Al-Qassar (died 398 AH), and al-Qadhi Abdul-Wahhab (died 422 AH). Iraq was teeming with golden diversity which led to discussions and refutation of opposite opinions. As for the Egyptian school, the matter was stable for the Maliki school until Imam al-Shafi'i arrived therein and the entry of the Hanafi school of thought at the hands of some judges, so arguments and debates arose among them. Of the distinguished scholars who mastered in the field of external criticism in Egypt are Ashhab (died 204 AH), Muhammad bin Abdullah bin Al-Hakam (died 268 AH). As for the Moroccan school, it took upon herself to carry the banner of the school after it

was almost vanished in Iraq and weakened in Egypt. In Kairouan, Imam Al-Alma'i Ibn Abi Zayd. (d. 386 AH), was one of the most prominent imams in this field along with Muhammad bin Omar Ibn al-Fukhar in Andalusia (died 418 AH), Abu al-Walid al-Baji (died 474 AH) and others who were famous for their precision and ability on editing evidence, eliciting rulings, issues, subsections, and references (Ushshaq, 2005,11-12).

2. **Internal criticism:** This trend has been inherent in the school in all its stages from its inception starting with the Imam Malik, with whom this self-critical tendency became clear. It was narrated from him that he retracted from many issues for multiple reasons such as knowing a legal text (at later stage), or because of differing legal evidence, or the application of the rules of the school or investigation of the effective cause, seeking the general interest, or any other reason. For example, he was prohibiting to sell the fruit that seemed to be good until it is possessed, then he retracted therefrom and said that it is permissible to sell part of the fruit after it had become good and before it was possessed. The reason for retraction from it is the dispute between hadith and the actions of the people of Medina. His disciples followed his path of criticism, so here is Ibn al-Qasim, the most famous of his followers who dissented from the Imam in various issues mentioned in the Mudawanah. His approach continued until there came Al-Lakhmi, who laid the foundations for this method, followed by those who came after him. The salient features of this trend are the correction of the structures of the fundamentals of the school and methodology, probing jurisprudential meanings, directing them, justifying and refining them, critiquing sectarian branches and distinguishing what is suitable for fatwas and this is on the basis of al-Dirayah (legal evaluation). From the perspective of narrations, they revised and edited the religious narrations and sayings by reviewing them critically; distinguishing the correct from the incorrect, and to know the approved, the famous, and the rare forms of narrations (Uthman, 2018, 119-145,298; Srmwm, 2015,377-382).

Reason for al-Tawudi's criticism of Sharh of al-Zurqani

Al-Zurqani's commentary has attained a high status in the madhhab. The scholars of Maliki school like Al-Amir, 'Aleesh, Al-Sawi and others have narrated extensively from him and some of them even made him a short symbol for the large number of what is mentioned in their sayings and praised his explanation. We will suffice to cite what Al-Tawudi said in the introduction to his annotation, where he said: "And it was one of his most moderate, best and superb explanations..."

"He summarized in it the majority of what is in the explanations and collected in it what the student would like to be very ambitious for, and he gave the word its due He fulfilled the uttered and the intelligible that he deserved, and he did not neglect the parsing of what needs to be articulated, and he did not neglect to parse what needed to be parsed nor did neglect most of Al-Hattab's warnings". (Al-'Ilmi, 2014, 35-36; Al-Tawudi, 2)

However, despite its good composition and the ingenuity of its classification, it is a human work that is riddled with errors and omissions. He was subjected to criticism from the point of view of criticism of works and collections. Al-Hilali mentioned that he was asked about it, and he said: "A student should not avoid reading it because of its many benefits and not imitating it in everything that it says or transmits, because of the many errors in the objectives of rulings." (Al-Hilali, 2007,132) As for the internal criticism, some scholars of the school set out to bridge this defect, complete the deficiency, correct illusions, and revise the explanation. So, they put annotation and among those annotation is Al-Tawudi's annotation. He cautioned on the reason for criticizing and revising this explanation in his introduction by saying: "Not that because of the excessive brevity, he may sometimes come up with what resembles riddles and

for the most part he imitates what he understands from the words of his sheikh¹ and the lack of his review of a thing in its origin with what he did not deduce from its original source. So, he brought it in a way other than its actual face, or transmitted it with the meaning but he did not find it in his action... So, I warned on issues that need to be alerted to and I have added benefits that students look forward to." Therefore, the imams of the sect emphasized those who came After Al-Zurqani, one should not rely on his explanation in the fatwa except by adding annotations to it, so he relied on this annotation and others.

As for the internal criticism, it represents the direction of internal criticism where Sheikh Al-Tawudi focused on criticism of sayings and narrations, criticism of principles and methods of deduction, the extraction of judgments, and in the following we will present examples of the sales section to reveal the features of his approach to criticism.(Al-Hilali, 2007, 132; Al-NAbighah, 2004, 19-92; Al-Tawudi, 2)

The salient features of the Al-Tawudi's approach to criticism of sayings and narrations

Criticizing the Statement because of the Error in the Reference

The issue: Khalil said in the chapter on usurpation: "Even if he killed him in transgression." Al-Zurqani said: That is, the usurper killed the thing usurped after it was usurped. So, his value was on the day he was usurped, not on the day he was killed. ... Ibn Abd al-Salam accepted (Alzahir)² in this statement and Ibn al-Qasim in one of his sayings and according to Sahnun his value is on the day of killing is like a foreigner because the killing is a sinful act, and from the proof of his Lord is that he says, "I do not take him to account by laying hands, but I will take him for death." Ibn Rushd holds this opinion, and he is of diligent casuists.

Al-Tawudi said: The preference of Ibn Abd al-Salam is only for the second opinion, and "the diligent casuist" refers to Ibn Rashid al-Qafsi, not Ibn Rushd thus is in Al-Taudhih.(Al-Tawudi, 67)

Comment: There was a correction and criticism of the transmission of Al-Zurqani on the authority of the imams of the school of thought where he stated that Ibn Abd al-Salam's preference on this issue by taking the value from the usurper if he destroyed the usurped on the day of his usurpation, and likewise he transmitted it from Ibn Rushd, the diligent, to take it on the day of his killing. Correct view is that Ibn Abd al-Salam preferred to say that the value has to be taken on the day of his killing and the most diligent is Ibn Rashid, not Ibn Rushd and inferred the error from Khalil's statement in al-Tawdi (Al-Jundi, 2008, 6, 515)

The issue: Khalil said in the chapter on acknowledgment: (I owe a thousand (dirham) according to what I know, I suspect or as per my knowledge) Al-Zurqani said: The meaning of the transmission is that the dispute is for what I suspect or conjecture, not with what I know or in

¹ His sheikh: He is Abu al-Irshad Nour al-Din Ali Zain al-Abidin al-Ajhour, the sheikh of the Malikiyyah in his time in Egypt. He has an explanation on Mukhtasar Khalil named "Mawahib al-Jalil bi-hall al-faz Khalil", He died in the year (1066 AH). (Makhlu, 2003, 1, 440)

² Al-Zahir (linguistically the manifest) refers to what lacks the definitive text. It refers to legal evidences or the evidence with the school of law. Therefore, any of the issues which lacks definitive text will be referred to (legal) evidences or will be referred to doctrinal principles of the legal school

my knowledge because it (what I know or in my knowledge) is absolute in meaning. However, I suspect, or I conjecture unanimously doesn't imply 'acknowledgement'.

Al-Tawudi said: he followed Al-Ajhourī in this issue though there is a difference of opinion about it.

Al-Mawaq has mentioned two opinions about it. Sahnoon has mentioned that whoever says, I owe a thousand dirhams, as far as I know, or in my knowledge, or in what I suspect, or in what I think, then it is considered to be an approval and is obligated to him.

Al-Muwazz and Ibn Abd al-Hakam opines that it is not a confession because he doubted, so its validity falls like that of testimony.

Comment: Al-Tawudi's criticism of Zurqani here tends to reference from his sheikh Al-Ajhourī without investigating the issue. He mentioned only one opinion as if there is no difference of opinion. The correct view is that it is a debatable issue within the Maliki school. Al-Tawudi made reference to Al-Mawaq and showed that the issue debatable not the agreed upon. (Al-Tawudi, 57.; Mawwaq, 1994, 7. 228)

The issue: Khalil said: (And it was only necessary for a child to be taken... when it is taken by a Muslim). Al-Zurqani says in the chapter of 'left over on the road'. In al-tawdih: He is only judged to be absolutely Muslim if the Muslims are equal to the infidels in the village or they are close to each other, i.e., by convention and more preferable if the Muslims are more not if they are below the infidels without closeness.

Al-Tawudi said: This denial is not present in al-Tawdih, nor is it the absolute understanding of his words. (Al-Tawudi, 104)

Comment: A criticism that he quoted from Al-Tawudih as Sheikh Khalil did not address the issue of (If he picked up the child in a village where the Muslims were less than the infidels) not even the concept of Khalil's words, in the view of Al-Tawudi, indicates this.

Criticism Related to Error Correction and Redemption

The issue: Khalil's saying at the beginning of the sales section: "And a pregnant woman close to her pregnancy." Even after six months of her pregnancy or so and as for her being as a seller, he stipulated in the Hajj by saying: she is pregnant by six, i.e., after six months have passed, she will not sell anything, i.e. She is quarantined after six months, so she does not sell anything.

Al-Tawudi said: addition to the stated issue" so do not sell anything" is apparent oversight.

Because her quarantine has to be assumed like other sickness and the ruling applies to voluntary acts, as the author mentioned, in case of non-femineity, medication and financial compensation. The statement of Ibn Ghazi is free from the addition when he said that his addition of the pregnant woman close to her pregnancy in the condition of the contract, it is specified that here she is contracted, not the contractor. Similarly, the saying of Ibn al-Hajib, and it is permissible to sell for the patient who is afraid of his death and the pregnant woman close to her pregnancy according to most correct opinion. As for her quarantine, he mentioned it in the chapter concerning to the Quarantine under the saying 'and concerning the patient assumed to be in the category of being dead' Her quarantine period refers to her donating something and is not applicable to her sale deeds. Allah swt guides to correct path.

Comment: Al-Tawudi's realization of Al-Zurqani in this matter is that the pregnant woman is not prohibited from selling citing Ibn Ghazi and Ibn Al-Hajeb. (Al-Jundi, 2008, 5, 210; Al-Tawudi, 5; Ibn Ghazi, 2008, 2, 600)

The issue: Khalil said in the chapter on sharecropping partnership (Muzaraah): (For everyone, the contract of sharecropping partnership is annulled if the seed is not sown, and it is right opinion) Al-Zurqani said, with four conditions.

Al-Tawudi said: the same is mentioned in Al-Tata'i but it is debatable as there are only two conditions in land tenancy as Ibn Shas, Abi Al-Hassan and others have mentioned: safety of renting the land from any impediment and entry at contract equally.

Comment: Here correction and identification of error on Al-Zurqani is that the conditions for the validity of the land tenancy are only two not four as evidenced by Ibn Shas and Abu Al-Hasan. (Al-Tawudi, 52; Ibn Shas, 2003, 3, 920)

The issue: It is mentioned in the chapter on exchange, Al-Zurqani said: or absent a mortgage or a deposit, even if it was minted as a lessee and as a loan, as the lessee and the loan is only not minted, otherwise it is a loan, not an exchange.

Al-Tawudi said: 'Not an exchange' is wrong whereas the correct ruling is neither lessee nor loan.

The issue: Khalil's saying also in the chapter on exchange, 'he will be compelled if he does not cooperate'. Al-Zurqani says, it is implied that the identification of the one refers to sound compensation....

Al-Tawudi said: the correct opinion is when the specified is the defective substitute, and his saying 'the sound' is oversight.

Comment: This example and the one before it is from the mistakes that occurred on the part of the commentator or the transcriber's oversight. Al-Tawudi, may God have mercy on him, highlighted it. (Al-Tawudi, 9)

Criticism Related to Editing the Issue and its Interpretation

The issue: Khalil's saying in the chapter on foodstuffs, on the issue of prohibited sales: There is no (sales of) food, even if joined with others like fruitful palm.

Al-Zurqani said: This leads to a difference between the two foods, whether they are both grafted or one of them.

Al-Tawudi: The correct view is to drop his saying or one of them because it is not impossible to differentiate between grafted ones and others, and because there is no difference at that time, not only in quality, but also in category, and this happened to others as well.

Comment: Al-Tawudi's criticism of Al-Zurqani for not editing the issue as he introduced the ruling prohibiting differentiation if one of the two categories was not grafted and that's not right. (Al-Tawudi, 6)

The issue: It is mentioned in the chapter on guarantee: (and there is no demand from) the guarantor of the debt, i.e., there is no claim for moneylender on him (if the debtor is present), it is about the debtor who has a solvent guarantor, the rulings are applied on him without insistence and procrastinating.

Al-Tawudi says: the same opinion is of Ali Al-Ajhour in line with Al-Shamil and it is not correct because the condition applies only when the debtor happen to be insolent. Ibn Hajib

mentioned it with weak expression i.e 'it is said' and Ibn Shas referred to other than Ibn Al-Qasim and his statement is: the scholars other than Ibn Al-Qasim said that if the debtor happen to be insolent tyrant, the moneylender can hold the guarantor responsible. The statement of other scholars is mentioned in Al-Mudawwanah. However, the issue is debatable with Ibn Shas, Ibn Al-Hajib and the author. Even though Ibn Abd As-Salam doesn't consider there is a debat in this issue.

Comment: Al-Tawudi's criticism here is for the commentator and those who followed him for not editing the issue properly as the condition has been mentioned by Ibn Al-Hajeb in the weak form. The correct opinion according to him is that condition is not necessary. Al-Zurqani did not mention that the issue is debatable in the Madhab.(Al-Tawudi, 46)

The issue: It is mentioned in the chapter on the mortgage: (And if he delivered it without their permission to the mortgagee) i.e., he delivered it to him and it was damaged with him or lost (within) the trustee the stake (its value) is due on the day it was damaged.

Al-Tawudi: It appears on the day of the transgression and hand-over, and it is in accordance with the following discussion of Al-Hattab and Ibn Asher.

Comment: Correcting Al-Zurqani's interpretation that the warranty is on the day of the infringement not the day of the damage.(Al-Tawudi, 34)

Criticism pertaining to his violation of preponderant (Al-Mashoor) and reliable opinions of the Maliki Madhab³

The issue: Khalil's saying in the chapter on foodstuffs: (as a sale and a loan) Al-Zurqani said that it is as a condition of an advance with the sale and as for combining them without a condition there is no problem according to sound opinion.

Al-Tawudi said: It is a debatable matter rather it is forbidden without disagreement as you will learn about it, God willing. Ibn al-Hajib said: If frequent intent is to sell and advance or advance with the benefit it is forbidden unanimously. Al-Hattab said: Know that there is no dispute regarding the prohibition of an express sale and in advances, as well as what led to it, and it is apparently permissible. There is no difference of opinion in the Madhab prohibiting it. This was stated by Ibn Bashir, his followers, and others.(Al-Tawudi, 13)

The issue: It is stated in the chapter on the left-over things: (and) he ate (a sheep) which he found (in a desert) if it was possible to carry it to the settled colony, there is no compensation upon him according to reliable opinion whether it is eaten in the desert or in the urban environment.

Al-Tawudi said: Look who adopted this opinion. the ultimate point is that the Mudawwanah put it open ended, and Ibn al-Hajib put a condition on eating if it was difficult to carry her and approved him. He maintained the same opinion as is mentioned in Al-Tawudih.

Commentary: The word of Al-Tawudi indicates that there is no one who adopted this saying, and the point of the matter is that the word Al-Mudawwanah is absolute, but Ibn Hajib has

³ Al-Mashoor: It is said: whose evidence is strong and is taken as precedence. It is also said: it refers to when narrated by a multitude of reliable people.it is said that Ibn Al-Qasim maintains the same opinion in Al-Mudawwanah. Ibn 'Arafa Al-Desouqi, as it appears from the previous definition, Sheikh 'Alish and other late Maliki scholars do favour the opinion based on 'multitude of reliable narrators' i.e it must be strong whether the strength is by virtue of its preponderance or popularity(Al-Zufayri, 2002, 202-209)

put up the condition pertaining to difficulty. Khalil agreed with that so there is no reason for his saying 'according to sound opinion.' (Al-Tawudi, 104)

The Criticism Pertaining to his Explanations

The issue: Khalil's saying in the deferred sales: (if the donkey is sold at the rate of delayed ten (dinars) and then he set aside a dinar in cash or deferred a deferred payment. It is forbidden absolutely). Al-Zurqani said: Because he dissolved a debt by virtue of debt.

Al-Tawudi said: There are other reasons for this than one, and it is not valid unless the dinar is of another type. If it is of same category, then its effective cause is sale and advance because the prompt amount is what is owed or the deferred is a loan. Therefore, it is permissible to match the price for a term. Ibn Asher said: The issue of the donkey is equal to the second of the two issues of the horse referred to in his saying like if he had retrieved it, he would be prohibited in this in the same manner. It should be restricted to the condition referred to in his saying here not in the same price. (Al-Tawudi, 17)

The issue: (and invalid) is a lease contract in which the rent was specified if there was an impediment of paying the specified amount promptly, but the custom of the region was deferred contract.... and the reasons for invalidity is that as if its condition is postponement. Thus, the debt is obligated to the debt and the maintenance of the two debts⁴.

Al-Tawudi said: There is difference of opinion therein because the specified amounts are not accepted by the debts rather it is necessary to sell a specific one possession is delayed and same opinion is in Al-Taudhih. (Al-Tawudi, 84).

Commentary: Al-Tawudi's criticism of these two issues is focused on the error in linking the cause to the ruling.

Criticism Related to Language in Terms of Meaning and Style

The issue: Khalil's saying at the beginning of the book of sales: (And sell it to me, so he says, I sold it to you) Abdul Baqi Al-Zurqani said: The seller's saying buy it from me or take such-and-such a commodity and he says: "I bought... and it is permissible to use Nasb on "fa yaqoolu" by making the faa as causation and the Rafa' on "fa yaqoolu" by making faa resumptive. Same is found with Ahmad Al-Zurqani.

Al-Tawudi said: The text of Ahmad Al-Zurqani: It is permissible to use Raf'a in "Yaqoolu" based on (faa) resumptive and Nasb after faa causative. Same is followed by Ali Al-Ajhour. There is difference of opinion in suggesting the Nasb because 'Faa' causal after which the verb is established is what occurs in the response to the denial or the request And the answer to the request here is "I sold it to you" (Al-Tawudi, 2)

The issue: Khalil's statement at the beginning of the book of sales regarding the conditions of the appraiser's sale: (It is permissible sale.....there is no prohibition even if it for part thereof) Al-Zurqani: like two containers of vinegar, and if one of them is alcoholic... then the contract is invalid for everyone due to the converging of both permissible and forbidden.

⁴ In order to understand the context, Khalil said: (And hurry to pay for it) i.e., and hasten the wages if it is specified i.e., as if he rents a specific garment, lest it leads to a specific sale in which possession has been delayed. For example, if the wages are set to be in the form of food, fresh or dry. Similarly, if the promptness is set as a condition or promptness is a norm (according to cultural practice).

Al-Tawudi said: The correct version is “Kullatayn” not ‘Kullatay’. One of the containers is vinegar and other is alcohol (Al-Tawudi, 6).

Commentary: This is an inference related to the language in terms of parsing in the first issue, and in the second issue the criticism is pertaining to Syntax style.

Features of Al-Tawudi’s approach to rooting criticism

Features of Al-Tawudi’s approach to rooting criticism

Criticism of the Inferred Meaning

The issue: Khalil’s saying in the book of sales in what is sold haphazardly: (And it is not counted without hardship nor its parts are deemed) Al-Zurqani says: That he considered with hardship and this is according to the inferred meaning because the negation of the negation is proof, and I feel the word count is that the measured and the weighed are all sold haphazardly even if it does not involve a hardship, as has been mentioned, because the feeling of hardship exists unlike counting as it makes it easier for most people.

Al-Tawudi said: Rather the inferred meaning is more general than this because it is true of it and if it is not something that is originally considered, since the negativity is believed to be true by denying the subject as is well known (to scholars)⁵. If he says to count with difficulty, or he is no longer like measured and weighed then he is dispensed with his saying and that is what I feel. (Al-Tawudi, 8)

Comment: His criticism of him in the context of the shortcomings of his fundamentalist reasoning of the text since here it is more general than what has been mentioned.

Criticism on His Preferred Opinions

The issue: Khalil’s saying in the chapter on foodstuffs: (and about the milk) Al-Zurqani said: Eating is not makrooh, rather it is not food in what appears to be a lack of exact limit of it.

Al-Tawudi said: his opinion of the lack of taste is not apparent. It appears that it is usurious food, and the author’s words are comprehensive for he has included the permissible milk of a wild beast such as a deer, cow, and a wild beast, as has been mentioned earlier (and four-legged even wild animals, and other milk do fall under it). The definition of Ibn Arafa for food is not applied without harm rather it is food. Then, his objection is made to the definition as it is not inclusive just as it does not include permissible milk of the beast. Ibn Arafa’s definition of food is his saying that it has been mostly used to eating or drinking of a human being. (Al-Tawudi, 11)

Comment: Imam Al-Tawudi critiqued Al-Zurqani’s preferred opinion about non-edibility of milk of disliked animals based on the definition of Ibn ‘Arafah whereas Tawudi’s opinion runs against it.

⁵ The positive predicate case refers to in which something is established for something (by proving the predicate of the subject). For example, “Muhammad is a scholar” then Muhammad is the subject and the predicate is a scholar. Conversely, negation is opposite to it. It is said, “Negation is established in the absence of the subject.” Negation is established by the example, “the father of Isa bin Maryam did not eat, nor drink, nor sleep and nor speak” ... because he did not exist at all. So, all of these things were definitely not proven to him. That is what refers to negation i.e “negation is established due to the absence of the subject.” In our issue, we say: “The measured and the weighted are not counted.” (Bakhit, 2013, 11-24)

Conclusion

In this study, the researcher has discovered a set of results which are as follows:

- Sheikh Al-Tawudi was one of the prominent figures of the critical school in the Maliki Madhab and this indicates the strength of the sheikh's diligence and his ability to the rules of the sect, his extensive knowledge and memorization of its branches, which he set up to express his opinion and corrections which were received by the imams of the Madhab with zeal and zest.
- The Sheikh's critical approach, in his footnote to Al-Zurqani, focused on internal criticism by correcting sayings and narratives, criticism of the inferences and principles on which Al-Zurqani based his opinions.
- The features of the critical method of that Sheikh are summarized in the following points:
 1. Criticizing the mistakes of Imam Al-Zurqani, which were source of error in the transmission of the imams of the Madhab or which he narrated on the authority of his sheikh Ali Al-Ajhour, or his approval of the mistake of his sheikh.
 2. Recognizing and correcting some of the Sheikh's mistakes such as mistakes due to the oversight, or a mistake in ruling on an issue etc as well as tracing faults in the editing of some issues, and tracing faults linking to other than their rulings.
 3. Objection to the methods of his inference in secondary issues

References

- Al-Hilali, A. ibn 'Abd al-'Aziz. (2007). Nur al-basar sharh Khutbat al-Mukhtasar. Dar ywsf ibn Tashfin.
- Al-'Ilmi, M. (2014). Mu'jam rumuz al-Mu'allafat al-Malikiyah. al-Rabitah al-Muhammadiyah lil-Ulama'.
- Al-'Isawi, M. J. (2016). al-naqd al-fiqhi 'inda ImAm al-Haramayn al-Juwayni wa-atharuhu fi al-fiqh al-Shafi'i-drash Nazariyat ttbyqyt. Majallat Kuliyat Al-Dirasat Al-Islamiyah Wa-Al-'Arabiyyah Banat, 1, 394–576.
- Al-Jidi, 'U. (1993). Mabath fi al-madhab al-Maliki bi-al-Maghrib. Matba'at al-Ma'arif al-Jadidah.
- Al-Jundi, K. ibn I. (2008). al-Tawdih fi sharh al-Mukhtasar al-far'i li-Ibn al-Hajib. Tahqiq : Ahmad Najib. Markaz Najibawayh lil-Makhṭuṭat wa-Khidmat al-Turath.
- Al-Muslih, M. (2012). Juhud al-Malikiyah 'ala Mukhtaṣar Khalil". Al-Manhajiyah Al-Fiqhiyah Fi Mu'allafat Al-Madhab Al-Maliki., 91–165.
- Al-Nabighah, M. ibn 'Umar al-G. (2004). nazm fi al-mu'tamad min al-Kutub wa-al-fatwa 'ala madhab al-Malikiyah al-ma'ruf bi (bu tlayhyh), Tahqiq : Yahya ibn al-Bara (2nd ed.). al-Maktabah al-Makkīyah.
- Al-Zubaydi, M. al-H. M. (1984). Taj al-'arus, Tahqiq : majmu'ah min al-muhaqqiqin. Dar al-Hidayah.
- Al-Zufayri, M. M. S. (2002). mustalahat al-madhahib al-fiqhiyah. al-Azhar.
- Bakhit, M. H. (2013). ilm al-manṭiq al-mafahim wa-al-mustalahat. Alam al-Kutub.
- Ibn Ghazi, A. 'Abd A. M. ibn A. (2008). Shifa' al-ghalil fi hall mṣṭḥṭ Khalil. Markaz Najibawayh lil-Makhṭuṭat wa-Khidmat al-Turath.
- Ibn Shas, A. M. J. al-D. (2003). aqd al-Jawahir al-thaminah fi madhab 'Alam al-Madinah. Dar al-gharb al-'islāmi.
- Limin, A.-N. (2012). al-masadir al-ula lil-fiqh al-Maliki : al-sm'h. Al-Manhajiyah Al-Fiqhiyah Fi Mu'allafat Al-Madhab Al-Maliki.2, 63–81.
- Makhluṭ, M. ibn M. (2003). Shajarat al-Nur al-zakiyah fi Tabaqat al-Malikiyah. Dar al-Kutub al-

Ilmiyah.

Mawwaq, M. ibn Y. ibn A. al-Q. (1994). al-Taj wa-al-iklil li-Mukhtasar Khalil. Dar al-Kutub al-Ilmiyah.

Srmwm, R. (2014). al-naqd al-fiqhi : mafhumuhu wa-ahammiyatuhu. Majallat Al-Akadimiyah Lil-Dirasat Al-Ijtima'iyah Wa-Al-Insaniyah, 12, : 52 – 63.

Srmwm, R. (2015). Manhaj al-naqd fi al-fiqh al-Islami al-madhab al-Maliki unmudhajan-drash thlylt. Wahran.

Ushshaq, A. Al-H. (2005). Manhaj al-khilaf wa-al-naqd al-fiqhi 'inda al-Imam al-Mazari. Dar al-Buhuth al-Islamiyah wa-lḥya' al-Turath.

Ushshaq, 'Abd Al-Hamid. (2012). al-naqd al-fiqhi fi al-madhab al-Maliki. Al-Manhajiyah Al-Fiqhiyah Fi Mu'allafat Al-Madhab Al-Maliki, 6–349.

Uthman, A. Al-R. (2018). al-Ruju' 'an al-Qawl al-fiqhi fi al-madhab al-Maliki-drash fiqhiyah astqra'yt. Universty of malaya.