

N EXAMINATION OF THE HISTORICAL DEVELOPMENT OF MALIKI SCHOOL OF LAW: CONTRIBUTIONS AND CHALLENGES

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Abstract

The Maliki School of law is one of the four major schools of Islamic jurisprudence. It was founded by Malik Ibn Anas in the 8th century. The School relies on the Qur'an and Hadith as primary sources. Unlike other schools of jurisprudence, it also considers the practice of the people of Madina such as Maslaha and Sad al-dhari'a among others to be a valid source of Islamic law. It is against this background that the paper seeks to trace the history of the school: its contribution and challenges. A doctrinal method was adopted. Having appraised the development of the school, it was found that the Maliki School is one of the largest schools of jurisprudence of Sunni Muslims. It is predominantly founded in North Africa, West Africa, Bahrain, United Arab Emirates and Northeastern Saudi Arabia. In the medieval era, the school was also extended in part of Europe particularly Spain and Emirate of Sicily. Among the contributions of the school include number of classical books published by the scholars in the school that provide existence contribution to Islamic jurisprudence. On the other hand, most of the challenges encountered by the school were of personal against the leader of the school, because of his discipline, tenacity of his belief and understandings. Finally, concluded by recommending that for developing any Islamic jurisprudence strict

adherence to the religious injunctions and traditions of the Prophet Muhammad (peace be upon him) never be compromised.

Keywords: *Maliki School, Caliph, Jurist, Doctrine, Propagation, Madhhab.*

1.1 Introduction

For the purpose of proper understanding of the historical development of the Maliki School of law, perhaps, it is pertinent to define the two basic terms associated with Islamic Jurisprudential evolution and development, namely, *Fiqh* and *Sharee'ah*. The term *Fiqh* literally means the true understanding of the intendment of religious text or the religion.¹ However, technically speaking, the term *Fiqh* means the science of deducting Islamic law from the evidence gathered from any of the sources of Islamic law. *Fiqh* also means or refers to the body of Islamic laws so deduced.² To further elucidate this definition, the Holy Prophet Muhammad (SAW) was reported to have said that "To whomsoever Allah wishes good, He gives the *Fiqh* (true understanding) of the religion"³. While the term *Sharee'ah* literally means a straight path, as ordained by Allah (S.W.T). "Then we put you on a straight path (*sharee'ah*) in your affairs, so follow it and do not follow the desires of those who have no knowledge."⁴ In a broader sense, the term *sharee'ah* refers to the sum total of Islamic laws, revealed to the Holy Prophet Muhammad (S.A.W) as recorded in the noble *Qur'an* and the *Sunnah* of the Prophet of Islam. These were the handy and basic tools utilized by each and every known Islamic school of law.

Islamic schools of law, popularly referred to as *Madh-habs* are the paths or doctrines Muslims follow to the teaching of the noble *Qur'an* and the Holy Prophet Muhammad (S.A.W). These schools of law were founded after the death of the Holy Prophet Muhammad (S.A.W); but the schools only took shape during the time of the Umayyad Caliphate. The followers of these schools were and still are commonly referred to as *Ahl-al-Sunnah wal-jama'ah* (followers of the prophet tradition) which became prevalent during the third century of the Hijrah,

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¹ Bilal, P. (1986), *The Evolution of Fiqh: Islamic Law & Madh-habs*. Oxford Press, London, p.12.

² Ibid

³ Isma'il, M., *Sahih Al-Bukhari: Arabic-English*, Vol. 4, Pp. 223-224, No. 346; Also See Saddiqi, A. *Sahih Muslim: English Translation*. Vol. 3, Beirut. Dar Al-Arabia, p.1061, No. 4720.

⁴ Qur'an, 45:18

and by the year 250H, the four Sunni schools of law namely: *Hanafi*, *Maliki*, *Shafi'i* and *Hambali* were popularized and patronized during Abbasid Caliphate.

The *Maliki* School of law, is one of the four major schools of law (*Madhhabs* of Islamic Jurisprudence) within Sunni group of Islamic religion. It was founded by Imam Malik ibn Anas al-Asbahi in the 8th century in the Arabian peninsula. Imam Malik ibn Anas al-Asbahi was born in Madina and lived all his life in Madina from 93H to 179H, Madina was considered to be the center of Islamic learning during that period, he was taught by the greatest scholars of Islamic world of his time, he memorized the Holy *Qur'an* at his tender age, and devoted himself to the memorization of *Ahadith* and excelled in the area of *Hadiths*, *Fiqh-Law* and other branches of Islamic knowledge, but never indulged himself with controversial analysis of knowledge. He strictly used to avoid speculative and hypothetical *fiqh*. His grandfather Malik ibn Abi Amir was one of the great scholars and a reservoir of knowledge among the companions of the Holy Prophet Muhammad (S.A.W). His great grandfather Abu Amir was also a companion of the Prophet Muhammad (S.A.W), and participated in almost all the battles fought by the Holy Prophet Muhammad (S.A.W) except the battle of *Badr*.⁵ The purpose of this paper is to give the reader a general background on the development of Maliki School of law; analyze the contributions of the school to the Islamic education and Islamic legal system in general terms and examine the challenges faced by both the founder of the school and his disciples.

1.2 Historical Development of Maliki School of Law

The Maliki school of Jurisprudence relies on the *Qur'an* and *Hadiths* as primary sources of Islamic law in the formulation of its legal theory. It is predominant in the North Africa with significant presence in Upper Egypt, Sudan, Bahrain, United Arab Emirates and Kuwait, also it is characterized by strong emphasis on *Hadiths* thus, most of the doctrines within Maliki school, are traced to the early practice of Muslims such as wives, relatives and companions of the Holy Prophet Muhammad's (S.A.W). One of the distinguishing features of the Maliki School of law among the other schools of law are its reliance on the practice of the people of Madina and preparing it over and above one man narration (*Hadith al-Ahad*) and equally use *Sad al-dhari'ah* and *Maslaha* as sources of Islamic law. That apart and notwithstanding the fact that even though there are as of today, many Islamic sects within Nigeria, Maliki law is predominantly the applicable

⁵ <http://ourworld.compuserve.com/homepages/ABewcy/Malik.html>, Accessed 21st Sept., 2020, @1800hrs

Muslim law in Nigeria, as such all legal and judicial matters relating to Muslims are governed by Maliki school of law.⁶

The evolution, development and expansion of the Maliki School of law across the Muslim world, did not come on a platter of gold. As both the founder of the school and its adherents were faced with so many challenges including persecutions, torture and imprisonments, in addition to the rejection of the school and its ideology by the ruling class of that period.⁷

Imam Malik was recognized as one of the greatest scholars among the followers of the followers of the Companions of the Prophet Muhammad (S.A.W) (*Tabi'u at tabi'un*). He was the first author in Islam, and his book al-Muwatta was the oldest book known in Islam after the Holy *Qur'un*. It was reported that Malik spent about forty (40) years in the preparation of this great book, which was approved by about seventy jurists of Madina. Al-Muwatta was described by Imam al-Bukhari as the soundest of all because eighty of what al-Bukhari referred to as the golden chains of transmission of (Malik, from Nafi'i, from ibn Umar) scholars of *Hadith* are contained in the book of Imam Malik, Al-Muwatta.⁸

Generally speaking, the totality of Imam Malik's life style, was just like a mirror of the general life style of the Madina People, to whom at all times and places accorded them due regards and much respect, he often called them "the people of knowledge" (*Ahlu al-ilmi*). He also attached great importance to their customs and practices, in fact the customs and practices of the people of Madina are the basis of his *ijtihad* principles and the foundations of his legal method.⁹

Imam Malik was taught by the eminent scholars of the immediate generation after the companions of the Holy Prophet Muhammad (S.A.W) (the *Tabi'un*) who have deep history of the chain of narration of *Hadith* and general knowledge in the prophetic system. He also had many disciples, some were (1) Abdu al-Rahman ibn al-Qasim al-Atki (d. 191 A.H); (2) Abu Muhammad, Abdullahi ibn Wahab ibn Muslim (d. 197 A.H); (3) Ash-hab ibn Abdul-Aziz al-Qaisi (d. 204 A.H); (4) As-bag ibn al-Faraj (d. 225 A.H) among others some of them remained in Madina, while a large number of them moved to different parts of the world,

⁶ http://www.sunnah.org/publication/khulafa_rashideen/malik.html, Accessed 21st Sept., 2020, @ 22:30hrs

⁷ Ibid

⁸ Ibid

⁹ <http://ourworld.compuservice.com/homepages/ABwecy/malik.html>, Accessed 21st Sept., 2020, @20:00hrs

for the propagation of the Islamic religion using the precepts of the Maliki school of law.

As a result of his disagreement with Imam Abu Hanifa, Imam Malik became the leader of the school of tradition (*hadith*), while Imam Abu Hanifa was the leader of the school of opinion (*ra'i*). Yet, most Muslim governments were supportive of Imam Abu Hanifa. Consequently, Imam Malik joined the 'Alawiyin, the descendants of Imam 'Ali, and received his knowledge from Imam Ja'afar al-Sadiq, but shortly thereafter, some inconsistencies marked his life, as a result of which at one point or the other he was check mated, suffered and oppressed by the government of the day. For instance, he was reportedly dragged through the streets of Madinah and lashed on broad day light. However, by 148H, his misfortunes reversed and he regained his popularity and dominance within the Islamic world, with help of the Abbasids, who set him up as a popular reference for the nation in giving verdicts and injunctions. The Abbasid caliph al-Mansur encouraged him to write his book of *Fiqh*; *Al-Muwatta*, which contains the principles of the Maliki school of law. Furthermore, during the *hajj* season, no one had the authority to give *fatwas* (religious verdict) except Imam Malik.¹⁰

The Abbasid Caliph Haruna al-Rashid and the Caliphate as a whole appreciated the works and contributions of Imam Malik and described one of his works *Al-Muwatta* as the best codification of Islamic law on earth, beside the noble *Qur'an*. Ibn Hazm al-Andalusi also stated that two schools of law namely; Hanafi disciples, since the reign of Abu Yusuf al-qadi were appointed as judges/Khadis; while from the school of Imam Malik, his student, Yahya Ibn Yahya was also respected in the caliphs palace to the extent that no judge was ever appointed in Andalsu, Spain without consulting and seeking for his advice. That was attributable to the uniqueness and general application of the principles of Imam Malik school of law, which were eloquently given by al-Qarafi, in his book titled "*Tanqih al-Usul*", where he stated that the foundational principles of the Maliki school of law are: the *Qur'an*, the *Sunnah*, the consensus of the people of Madina, analogy, the statement of the companions, together with *Masalih Mursala* (consideration of public interest), '*urf* (custom), '*adat* (common usage), *Sadd al-dhari'ah* (blocking the means for evil), *istishab* (presumption of continuity), and *istihsan* (discretion). These are the fundamental

¹⁰ Ibid

principles of the Maliki School. Which were strictly followed by the Maliki School in all its endeavours.¹¹

The Maliki Jurists appointment into various administrative and judicial positions in Andalusia and the Maghreb signified the acceptance of the school, as the judiciary was the most important and is based on religious knowledge modelled after the Maliki School of law. The jurists were Maliki and through the instrumentality of the judiciary played very important roles in the state: the jurists were entrusted with the management of inheritance issues and anything related with money of the orphans which was perceived and considered as a legal and religious duty as well. Additionally, the task of *al-Shurta*, *al-Sughra* (local police) guardianship was assigned to them. Thus, Maliki jurists played a role in both religious and public administrations, and proved effective in the management and control of the disturbances within the society, this enabled them to rise to prominence within the *dawlah*.¹²

An in-depth analysis and critical look at the most reported historical documents regarding the Maliki's School of law indicate that Maliki jurists and the roles they played in Andalusia Maghreb were not confined to religious duties alone, but transcended to administrative works, economic approach and mechanisms for selection processes of the leaders. However, the most striking feature of the Maliki school, was continuous development and rise of the Maliki Jurists in the state's official administration and various mechanisms which showed that Maliki Jurists were not confined to religious duties but also actively participated in the day to day running of the state's affairs.

Some of the major reasons behind the wide spread, popularity and domineering control of the Maliki Jurists within the *Umayyads*, was the fact that Imam Malik was a staunch opponent of the *Abbasids* which endeared him among the *Umayyads*. Secondly, according to Ibn Khaldun, another psychological and social factors attributable to the spread of the Maliki Jurists was the facts that most of his students Ibn Khaldun inclusive, travelled to *Hijaz* and their journey ended there, at the time *Medinah* was the center and home of religious scholarship of Islamic knowledge.¹³

¹¹ Ramadan, T. (2001), *Islam: The Essentials*. Oxford Press, p.29

¹² Ibid

¹³ Ibid

Another factor attributable to the wide spread and popularity of the Maliki Jurists among the *Umayyads*, was the fact that most of Maliki students were also ambassadors for the propagation of Maliki doctrines. Thus, the transmission and spread of the Maliki doctrines in the Maghreb and Andalusia as well as the rest of the places where Maliki school was the dominant practice there, was largely made possible through persons considered as ambassadors of the doctrine by not only inviting people to it, but also writing series of lectures, seminars, teaching and undertaking some administrative works, etc. through such activities they participated in the strengthening of the doctrines in Maghreb and Andalusia. Among the famous Maliki ambassadors were; (a) Yahya Laithi (b) Asad ibn Al-Furat and Issa ibn Dinar. Therefore, the Maliki doctrines have become a fundamental component in the everyday life of the Magreb and Andalusia.¹⁴

Strict observance of the Maliki doctrines, was one of the basic requirements for administrative and economic appointments, especially positions of influence which demanded that the Maliki school serve as the arbitration mechanism. This contributed to the spread and growth of the Maliki law. Religious unity also meant political unity. Al-Maliki doctrine became the fundamental doctrine and sometimes the only doctrine in Maghreb and Andalusia since the era of prince Abdul-Rahman ibn al-Hakam (206-238A.H), as the religious unity has meant to them the political unity and it meant being away from the intellectual contradictions and what will subsequent that in the social and the political cracking.

Instructively, in the later period of Islamic Andalusia, the influence of the Maliki declined along with the political authority of the *Umayyads*. This was due to the rapidly changing social and political landscapes.¹⁵

1.3 Contributions of Maliki School of Jurisprudence in the Development of Islamic Law

Among the contributions of the Maliki School to Islamic Jurisprudence that could be attributed to the leadership and active role played by Imam Malik and later disciples since the emergence of the school are the following;

- 2 In interpreting the shariah evidence, Imam Malik basically relied on the two fundamental sources of the *Qur'un* and *Sunnah* of the holy prophet. He accepted traditions which believed were authentic even though some of the

¹⁴ Mahmossaini, S. R. (2001), *The Philosophy of Jurisprudence in Islam*. Open Press, Kuala Lumpur, p.90

¹⁵ Ibid

traditions were reported on the authority of a single narrator. He believed and depended upon the practices of the people of Madina to the extent that in the absence of the existence of as explicit texts he had recourse to analogy using the yardstick of tool of public interest technically known as *Masalahat al- Mursala*. The school is credited with the entrenchment of this analogical tool as Imam Malik was seen to always prefer the practice of the city over traditions if they went against the established opinion of the city based on public interest. The use of public interest by the school is contained in an illustrative scenario that beating a man accused of stealing to make him confess was held lawful by the Imam. He argued that there was no text contrary to it. It was in the public interest to make him confess his guilt. This is as against the view of other schools that argued that it was in the interest of the accused so beaten that he should not be forced to confess for he may not be guilty; it is better not to punish an innocent man. It was argued by Maliki jurists that forcing him to confess would lead to the recovery of the stolen property.¹⁶

- 1 Maliki School is credited for being a practical school. The Imam led his teachings on a pattern where his juristic opinions emphasized an underlying practicality of the issues involved. He replied to legal problems and always kept silent on those issues that were merely theoretical or speculative.¹⁷
- 4 There is an intensity of opinion in the Maliki School. Based on its ideals in promoting public interest and the betterment of public matters and public good and its practical approach to legal problems. The school is characterized with differences of opinion. There were intense differences of opinion which widened the influence of the school and its expansion thereby establishing freedom of thought and liberty of conscience and further widened their research activities.¹⁸
- 5 One of the most credible contributions of the Maliki School relates to the number of classical books published by the scholars in the School which provides rich and extensive contribution to Islamic jurisprudence. The companions of the Prophet, and the *mujtahiddun* of the time refrained from writing books which contained ijihad decisions essentially because they wanted to preserve the sanctity of the holy *Qur'an*. It was later on that, the traditions of the holy Prophet were collected and some compilations were made on legal opinion and *fiqh* material. These collections were short notes

¹⁶ Anwar A. Qadri (1973). *Islamic Jurisprudence in the Modern World*, (2nd Ed.) Taj Company, p.114

¹⁷ Ibid p. 117

¹⁸ Ibid p. 119

and not in regular books. It was during this period that the Maliki School made their mark in publishing Islamic texts.¹⁹

1e first of such book was the Muwatta. History has it that, it was the Abbasid Caliph, Al-Mansur, who initiated the idea of authoring the book. This was driven by the thinking of providing a uniform civil code for the muslims. The work was started in 148H and was completed by 159H. Although Imam Malik worked hard in compiling the Muwatta, but when it was sought to be used as an official document Imam Malik resisted the attempt. The Muwatta deals with *ahadith* that have bearing on juristic verdicts. It has produced lasting effects on the entire muslim world. Its arrangement is based upon methodical rules; there are chapters on theology and on several other illegal/religious issues. Imam Sahfi'i is reported to have said that "No book on earth after book of Allah is more accurate than the book of Malik."²⁰

Apart from Muwatta, another book compiled by the jurists of Maliki School is the Mudawwanah otherwise also called the Mukhtalifah. It is revision of a book by al-Qasim of the Asadyya which contains answers to questions answered by ibnul Qasim, a student of Imam Malik for twenty years. There are indeed several other books that have immensely contributed to Islamic jurisprudence that are too numerous to mention. Suffice it to say that these above two books were of the earliest contributions of the Maliki School to Islamic jurisprudence.²¹

Most of the scholars writing on the codification of Islamic law generally traced its origin to the *Mejelle (Mujallatul Ahkam El-Adliyyah)* of the Ottoman Empire. All the proceeding efforts along this line were considered or treated as mere attempts at unifying the Muslims on one school of Islamic jurisprudence (*Madhhab*) or the other and not codifying *per se*. However, after the production and enactment of the *Mejelle* by the authorities of Ottoman Empire series of official attempts of Abu Ja'afar El-Mansur who, at the behest of Abdullahi ibn El-Muqaffah, commissioned Imam Malik to collect, collate and compile the rulings and adjudications of the *Sahabah* with a view to making them accessible for ease of reference. It was also along this line that Abu Ja'afar tried to make the Muwatta of Imam Malik a book of reference for adjudication throughout the Islamic state. Hence it was considered as the first attempt at the codification of

Nyaze, k. (1996), *Islamic Jurisprudence*. University Press, London, p.161

Ibid

Ibid, p.162

Islamic law. Although Imam Malik, resisted the attempt of Caliph Abu Ja'afar al-Mansour to impose Muwatta upon the entire Islamic State as a code of reference in jurisprudential text worthy of codification and that could have served as uniform code for the then Muslim *Ummah*. Eventually the Muwatta traversed substantial part of the Muslim world and serves as a useful reference material for Islamic law and jurisprudence.²²

1.4 Challenges Encountered by the Maliki School of Islamic Jurisprudence

Some of the challenges encountered by Imam Malik as the leader of the Maliki School were more or less personal and occurred largely because of his personal discipline and tenacity to his beliefs and understandings. He had several encounters with those that held governance and political authority known as caliphs and governors. The followings are some of the challenges identified:

- i. During the reign of Mansur who was the second Abbasid Caliph, Mansur visited Madina for pilgrimage and when he was visited by Imam Malik. Upon receiving Imam Malik he said to him "I have become disgusted with the differences of jurists on Islamic law in different regions of the empire. There is nothing of jurists learning in Iraq. The Syrians are known for their ardent love for *Jihad*. There is little learning among them. All juristic knowledge and scholarship is centered in *Hijaz* and you are the leader of the Scholars of *Hijaz*. I wish that your book, Muwatta, may be kept in a prominent place in the Ka'aba, so that all the people should refer to it on juristic questions. I also wish that copies of the Muwatta may be circulated in all parts of the empire so that all juristic verdicts may conform to it, Imam Malik refused and expressed contrary view saying that "The companions of the holy prophet (PBUH) settled in all provinces of the empire, their juristic opinions and verdicts commands respects and reverence of jurists in different regions of the empire and the people of these regions follow their juristic opinions, under these conditions, the people should not be forced to follow the opinions of a single jurist who is not infallible, after all, he may commit errors". This incidence caused disaffection between the caliph and Imam Malik.²³
- ii. Although Caliph Mansur was a kind Imam, Imam Malik did not recognize the legitimacy of his government. At one time Imam Malik issued a *fatwa*

²² Shu'aib. U. M. (2014), *An Appraisal of the Codification of Islamic Criminal Law in the Muslim World. A case Study of Northern Nigeria*. PhD Dissertation, (Unpublished), Department of Islamic Law, Faculty of Law, Ahmadu Bello University, Zaria, p.52

²³ Rahimuddin, M. (2004), *Muwatta Imam Malik: Transitions with Notes*. Taj Company p.Siv

that the caliphate belongs strictly to *Nafs Zakiyya*, (a descendant of the holy Prophet). The People objected saying that they had shown allegiance to Mansur. Imam Malik said that they were forced to the allegiance and the shariah does not regard as valid any act done under coercion. He referred to a *hadith* of the Prophet that if a man is forced to divorce his wife, the divorce would be invalid. The governor of Madina responded to this and asked the people to renew their oath of fealty to Mansur and ordered Malik no to issue any *fatwa* declaring that divorce obtained under coercion is invalid as this would strengthen the case of those who regarded as invalid the oath of fealty obtained by Mansur under coercion. Imam Malik refused to comply and proceeded to issue his *fatwa*. Imam Malik was publicly flogged, humiliated and imprisoned.²⁴

- iii. Another challenge faced by Maliki School of law, right from its early stage of inception and in the process of each of its developmental stage, was lack of patronage of the ruling class of that time, particularly the Abbasids who not only refused to adhere to any of the Maliki principles of law but also refused to appoint any of the Maliki's disciples into a judicial or administrative positions.

1.5 Conclusion

The development of the Maliki School of law is not only historical but also unparalleled to any other school of law. Its contribution to the Islam and Islamic jurisprudence is immense and unquantifiable, and this is attributable to the fact that the leader of the school was one of the greatest scholars of his time; his strict adherence to the religious injunctions and the tradition of the holy prophet Muhammad (s.a.w) were uncompromising. In addition, most of his disciples were taught in Madina, which was the center and reservoir of Islamic knowledge.

Thus, it was found that among the contribution of the school is that in interpreting *Shari'ah* evidence, the school relied on *Qur'an* and *Sunnah* of the prophet (s.a.w). It equally believed and relied on the practice of people of Madina over and above one man narration. The school is also credited for being a practical school. It replied to legal problems and kept silent on issues that are merely theoretical or speculative. It is equally found that there is intensity of opinions in the school which widened its influence and expansion, thereby establishing freedom of thought and liberty of conscience. The scholars of the

²⁴ Ibid p. v.

school also published classical books which provides rich and extensive contribution to Islamic jurisprudence e.g. *Muwatta*.

On the other hand, most of the challenges encountered by the school were of personal against the leader of the school, because of his discipline, tenancy of his belief and understandings. Another challenge faced by the school is lack of patronage of the ruling class at its early stage of development particularly the Abbasid caliphate. However, the challenges faced did not affect any of its principles till date.

The paper therefore, recommends that, developing any Islamic jurisprudence requires strict adherence to religious injunctions and traditions of Prophet Muhammad (peace be upon him) as ordained, without any form of compromise.