



Research Paper

Jurisprudential Presupposition and the Context of its Origins

Arash Ahmadi¹, Mohammad Adel Ziaey^{2*}, Jalil Omid³, Wrya Hafidi⁴

1. PhD candidate of Shafe'i Jurisprudence, Faculty of Theology and Islamic Studies, University of Tehran, Tehran, Iran.

2. Associate Professor, Department of Shafi'i Jurisprudence, Faculty of Theology and Islamic Studies, University of Tehran, Tehran, Iran.

3. Professor, Department of Shafi'i Jurisprudence, Faculty of Theology and Islamic Studies, University of Tehran, Tehran, Iran.

4. Assistant Professor of Shafi'i Jurisprudence and Law, Humanities and Social Sciences Faculty, University of Kurdistan, Sanandaj, Iran.



HTTPS: 10.22034/MFU.2024.138867.1262

Received: March, 16, 2023

Accepted: January, 2, 2024

Available online: January, 15, 2024



Keywords:

Jurisprudential Presumption, Jurisprudential Theory, Bases of Jurisprudential Presumption, Jurisprudential Disputes Ijtihad

Abstract

The presuppositions of any scientific theory are a set of pre-interpretive norms that play an effective role in the processing and formulation of the principle of the theory, and are considered and observed in the interpretation and analysis of sub-issues and inferring its results. The function of presuppositions is to maintain the internal coherence of the theory and the theoretical justification of its results and their meaningful connection with each other. Based on this, jurisprudential presuppositions are a priori assumptions based on which the jurist organizes the framework of his jurisprudential theory and remains loyal to them in the stage of interpretation of Sharia texts and derivation of secondary rulings. The presuppositions of jurisprudence are mainly the product of the jurist's general understanding of Sharia and his expectations from its set of rules and rulings. Therefore, the distinction between the preconceptions of the jurists should be considered as one of the most fundamental factors of jurisprudential differences. This research, using the descriptive-analytical method and referring to library sources, after explaining the meaning of jurisprudence default, has come to the conclusion that jurisprudence defaults are influenced by factors such as: educational environment, family and social conditions in addition to the psychological characteristics and scope of the jurist's information. Considering the importance of the issue and the lack of comprehensive research in this regard, it seems necessary to investigate such an issue.

Ahmadi, A., ziaey, M. A., omidi, J., & hafidi, W. (2024). Presupposition of Jurisprudence and its Origins. *Comparative Studies on the Schools of Jurisprudence and its Principles*, 7(1), 26-1.

Corresponding author: Mohammad Adel Ziaey

Address: Associate Professor, Department of Shafi'i Jurisprudence, Faculty of Theology and Islamic Studies, University of Tehran, Tehran, Iran.

Tell: +989125505019

Email: ziaey@ut.ac.ir



3041-8682 © The Author(s) This is an open access article under the CC BY-NC /4.0/ License.

(<https://creativecommons.org/licenses/by-nc/4.0/?ref=chooser-v1>)



Extended Abstract

1-Introduction

In addition to examining the literal meaning of words and sentences, the intention of the speaker in creating the text and the impact of the message on the audience are also important in the interpretation of the Qur'an. The commentator should research religious texts without any prejudice and preconceptions and with a clear mind and expurgating the mind from such preconceptions. For the basic condition of any acceptable interpretation, *ijtihad* and *iftā* is such an expurgation, so that it can be said that the development of the sciences of interpretation and jurisprudence is not possible without any revision, and the solution of the theoretical and practical problems of the Islamic world, which is the result of a complex civilization, would be possible by such an expurgation. However, the facts indicate that this has not been achieved due to adherence to some pre-interpretation accepted principles. A set of these pre-interpretive norms constitute the presuppositions of every scientific theory, which play an effective role in the processing and formulation of the principle of the theory. Also, they are considered and observed in the interpretation and analysis of sub-issues and inferring its results. Presuppositions can be effective both in the formation of the writer's mentality of a text and in its interpretation by the audience. Their function is to maintain the internal coherence of the theory and the theoretical justification of its results and their meaningful connection with each other. Accordingly, jurisprudential presuppositions are priori assumptions based on which the jurist organizes the framework of his jurisprudential theory and remains loyal to them in the stage of interpreting legal texts and inferring secondary rules. They must be interpreted in the light of this

assumption, and any interpretation contrary to it is doomed to be rejected. The jurisprudential presuppositions are mainly the product of the jurist's general understanding of Shari'a and his expectations from its set of rules and rulings. Therefore, the distinction of the presuppositions of the jurists should be considered as one of the most fundamental factors of jurisprudential differences. Through knowing the jurisprudential presuppositions, the possibility of expurgating and correcting them is possible, and the process of understanding the sources of Shari'a and texts is regulated and corrected. As a result, the error rate in understanding legal rulings would be reduced.

1- Method

This research, which is a part of the doctoral thesis entitled "The influence of jurisprudential presuppositions on the literary analysis of the verses of *Hudūd* and *Qiṣās*", was carried out based on the descriptive-analytical method and with reference to library sources. Referring to books on the history of jurisprudence, the principles of jurisprudence and comparative jurisprudence and their relations with each other, it explores the causes and bases for the emergence of jurisprudential assumptions.

3-Result

Human mentality, just as it can affect his thoughts and behavior in different fields, is affected by other existential factors and causes. Different aspects of individual and social life can affect creating or changing a specific view and attitude towards various matters, especially jurisprudential orientations; therefore, the effective factors in creating jurisprudential assumptions are divided into two aspects: individual and environmental factors. The individual factors that belong to a jurist and are



related to himself are divided into two aspects: the existence field and the jurist's data circle. In addition, the psychological traits and personal types can be seriously effective in choosing and inferring rulings by a jurist and his attitude and mentality, making then his orientation different from other jurists, such as regularity and seriousness. For instance, two precisions in Shafi'i's speech had led to the regularization of his school and the discipline of his *ijtihād*. On the other hand, the jurist's expertise and mastery of various sciences such as hadith, literature, logic, etc. are also very effective on his attitude towards religious issues, as any expert who is proficient in science and technology has paid more attention to this aspect in inferring texts. For instance, Imam Abu Hanifa used logic and analogies more than others due to his expertise and mastery in intellectual topics such as logic and philosophy. Also, due to his expertise in the science of hadith and the sayings of the Companions, Imam Ahmad paid more attention to them than other jurists in his fatwas.

Environmental and external factors such as family upbringing, educational environment, or jurisprudential school, as well as social factors, including political, economic, and cultural factors, can influence the jurist in different contexts and lead him to different specific jurisprudential opinions. For instance, Malik, under the influence of his family upbringing, included the rule of observing the opposite in his school. Also, the change of Karabisi and Tahawi schools was influenced by education in new schools, and Egyptian culture and customs are considered important factors in the construction of Shafi'i thought. Additionally, the barrier of *ijtihād* was expressed under the influence of political factors such as the government's support for a particular school and the business had broadened Abu Hanifa's opinion about transactions.

2- Conclusion

The jurisprudential presuppositions are formed in the affirmative propositions and as conventional principles in the mind of the jurist, and the principles of religion and his *ijtihād* method are based on them. There is no doubt about the effect of presuppositions on the results of jurisprudential *ijtihāds*. However, it cannot be said that only presuppositions guide interpretation and *ijtihād*. Rather, a relativity should be established between them and the rationality of the text. If jurisprudential presuppositions are not formulated in a well-researched, justified and fair manner, they will naturally lead to incorrect results in terms of *ijtihād* and commenting. The difference in the presuppositions of different schools of jurisprudence leads to their differences in the expression of rulings and fatwas. Therefore, the difference in presuppositions should be considered as one of the main causes of jurisprudential differences.

The platforms for the emergence and formulation of jurisprudential presuppositions include psychological characteristics, the circle of information, and awareness of the jurist and the extent of his understanding and power of inference from religious propositions, family environments, schools, and cultural, political, and economic conditions. These factors are not limited but other factors and contexts may also be effective in the formation of defaults. The influence of these factors and contexts on jurisprudential *ijtihāds* cannot be considered a reason for jurists to be passive against them. Such an effect shows the deep relation of *ijtihād* with the *mujtahid's* surrounding conditions. It also shows the need for a continuous and dynamic review of jurisprudence and its *ijtihād* foundations and assumptions. The jurists of every age, with their perceptions and expectations of the Shari'a system,



based on those perceptions and in line with the fulfillment of those expectations, try to derive jurisprudential rulings that are appropriate to the existing conditions and needs. Understanding and accepting this fact, in addition to justifying many jurisprudential differences, will mean the need to review the foundations of *ijtihad* and jurisprudential assumptions.

5- Funding:

There is no funding support.

6- Authors' Contribution

Each of the four authors contributed in some way to writing this article; but the amount of their participation is as follows:

Arash Ahmadi 40%

Mohammad Adel Ziaey 30%

Jalil Omid 15%

Worya Hafidi 15%

7- Conflict of Interest:

Authors declared no conflict of interest.

8- Acknowledgments:

We are grateful to all the officials of the Journal of Comparative Jurisprudence and Principles for their patience in all stages of our article and helping us to publish it. We are also grateful to Dr. Nemat Azizi, Dr. Mohyuddin Mohammadkhani and Dr. Omid Jahangiri who guided us in some details of this article.