Ibn Taymiyya's views on issues of divorce in contrast to the majority of jurists in Islamic law

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ABSTRACT

This study examines and investigates Ibn Taymiyya's opinions on issues regarding divorce in Islamic law, which disagreed with the majority of jurists' opinions. The study aims to fill an existing gap in the field of Sunnī Islamic law related to Ibn Taymiyya's dispute with the majority of jurists regarding divorce law. In light of the available findings, it is noted that Ibn Taymiyya had opinions regarding some issues of divorce in Islamic law different to most contemporary jurists as well as those who came before him. These issues include divorce during a woman's menstruation period, triple divorce, intoxicated divorce, divorce pronounced in angry circumstances, a father's divorce on behalf of his young or mentally incapacitated son, a proxy divorce of a client wife, and divorce oaths.

This study found that Ibn Taymiyya, in contrast to the majority of jurists, used his interpretations, understandings and knowledge when attempting to use any evidence from the Qurʾān and the Sunna. The findings show that Ibn Taymiyya's approach to aspects of each of the principles of jurisprudential ultimately evolved into reasons that supported his disagreements with the majority of jurists. This conclusion will support the idea that Ibn Taymiyya worked as an absolute mujtahid in the later years of his life and was not personally affiliated with any particular Sunnī school of law, not even the Ḥanbalī School to which he belonged earlier in his life.

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Introduction

Ibn Taymiyya, in his legal judegments and opinions regarding divorce in Islamic Sunni law, has used the same sources of the principles of jurisprudence that are used by the majority of jurists from the four main *Sunnī* schools of law. Ibn Taymiyya, nevertheless, reached different outcomes in his views about issues in Islamic divorce laws that diverge from his contemporaries and predecessors over the three centuries that came before him. Although Ibn Taymiyya's fatwas and written works cover the entirety of Islamic thought, an important portion of his works was devoted to Islamic law. Ibn Taymiyya is well-known among Islamic scholars and Muslim communities for his different views about just two issues in Islamic divorce law: triple divorce (*al-ṭalāq al-thalāth*) and divorce oaths (*al-ḥalif bi al-ṭalāq*). But his different views about issues in divorce law have not been studied in-depth. In addition, neither academic nor non-academic studies have been conducted to address the possible reasons underlying Ibn Taymiyya's views regarding divorce law that differed from the majority of jurists from the four *Sunnī* schools of law. Unfortunately, there are not many sources in the English language about the topic because just a few scholars, like Yossef Rapoport and Abdul Hakim Al-Matroudi, have worked on divorce issues and looked at triple divorce and divorce oaths. Their works are considered as the three main available academic discussions of divorce law in Ibn Taymiyya in English as I will indicate.

As stated above, Rapoport and Al-Matroudi have conducted three studies relevant to this thesis topic as their contributions to elucidate Ibn Taymiyya's legal thinking. The first one is Rapoport's book *Marriage, Money, and Divorce in*

Medieval Islamic Society[1] in which he has devoted several pages about "Ibn Taymiyya on divorce oaths". Rapoport found that "The crux of Ibn Taymiyya's argument was his broad definition of intention".[2] His conclusion has come from his analysis of Ibn Taymiyya's interpretation of the invalidity of divorce oaths. However, Rapoport in his study has not investigated how and why Ibn Taymiyya was different from the majority of jurists' views. He has merely made his social interpretation from concluded opinions regarding Ibn Taymiyya's legal thinking. Therefore, in this thesis, we will investigate and examine this and other new issues between Ibn Taymiyya and the majority of jurists in more detail. We will treat it according to our main research questions, which are how and why was Ibn Taymiyya different in his view regarding this issue?

The second work was also prepared by Rapoport and it is an article titled "Ibn Taymiyya's Radical Legal Thought: Rationalism, Pluralism and the Primacy of Intention".[3] Rapoport in this work has attempted to encompass Ibn Taymiyya's legal thinking with his own social–political interpretation instead of religious analysis. So, in this regard, he has drawn important principles in Ibn Taymiyya's legal thinking, such as pragmatism, neglecting the views and authority of the four main *Sunnī* schools of law and, again, the primacy of intention. Therefore, in addition to confirming the importance of intention in Ibn Taymiyya's legal thinking, Rapoport, in his analysis of Ibn Taymiyya's ideas, concludes that "The central premise of Ibn Taymiyya's legal theory, like that of his theology, is the impossibility of contradiction between revealed and rational

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[1] Yossef Rapoport, *Marriage, Money, and Divorce in Medieval Islamic Society* (Cambridge: Cambridge

[2] Rapoport, *Marriage, Money and Divorce*, 96.

[3] Rapoport, "Ibn Taymiyya's Radical Legal Thought: Rationalism, Pluralism and the Primacy of Intention." In *Ibn Taymiyya and His Times*. Edited by Yossef Rapoport and Shahab Ahmed, 191–226. (Karachi: Oxford University Press, 2010).

knowledge".[4] In these two works of Rapoport, what is relevant to my topic on divorce issues is Ibn Taymiyya's reasons for his different views. It is worth mentioning that Rapoport emphasised that Ibn Taymiyya considered intention as a foundational principle of Islamic law in all contracts. This was contrary to the thinking of all contemporary law schools[5]. Rapoport's thoughts about intention provide a greater understanding of Ibn Taymiyya's legal thoughts, noting that "A central principle governing his [Ibn Taymiyya's] approach to most legal questions brought before him is the primacy of intention".[6] It can be said that Rapoport in his two studies found the primacy of intention as a reason for Ibn Taymiyya's different views. But while Rapoport asserts that intention is a primary source among the principles of jurisprudence in Ibn Taymiyya's legal thinking, Ibn Taymiyya himself considers benefit (*maṣlaḥa*) as a primary source of ruling. This will be addressed and examined in this thesis. Ibn Taymiyya views intention as a springboard for obtaining *maṣlaḥa* which he views as the greater purpose. Also, Rapoport found the impossibility of contradiction between revealed and rational knowledge as the second reason behind Ibn Taymiyya's different legal thinking. However, as we will address in this thesis, analogy in its correct formula is another reason for Ibn Taymiyya's views if his opinions are examined and investigated religiously and not social–politically as Rapoport has done.

The third work is Al-Matroudi's study *The Ḥanbalī School of Law and Ibn*

[4] Rapoport, "Ibn Taymiyya's Radical Legal Thought." 193.
[5] Rapoport, "Ibn Taymiyya's Radical Legal Thought." 208.
[6] Rapoport, "Ibn Taymiyya's Radical Legal Thought." 207-208.

Taymiyyah: Conflict or Conciliation[7]. This study is an attempt to reduce the intellectual gap that Ibn Taymiyya made in the last years of his life between himself and Ḥanbalī School on one side and the other three schools of law on another side. The author of this study has argued that Ibn Taymiyya wanted to be affiliated with the Ḥanbalī School. This is despite his difference of opinion to the majority of Ḥanbalī jurists and the view of Aḥmed ibn Ḥanbal the eponym of the school regarding triple divorce law, as well as his critique and correction of many issues in the Ḥanbalī legal system. This conclusion shows a big difference between this thesis and al-Matroudi's study. Therefore, it is very important to do a careful review of this study and compare it with the findings of this thesis. Hence, this task will be conducted completely in chapter one.

Originally a Ḥanbalī jurist, Ibn Taymiyya is widely considered to be the most important Islamic jurist of his day due to his polemics against his contemporaries from all of the four *Sunnī* schools, including Ḥanbalī, regarding divorce issues in particular. However, this study will investigate and examine that disagreements and disputes between Ibn Taymiyya and the majority of jurists regarding divorce law are not limited to only these two mentioned issues, but also to several others. Therefore, this thesis will address and examine Ibn Taymiyya's opinions on several issues of Islamic divorce law that were in opposition to the views held by the majority of jurists from the four *Sunnī* schools of law. This study will also aid in identifying the most prominent reasons underlying his divergent views through an analysis and evaluation of how he used evidence and applied different understandings and interpretations

[7] Abdul Hakim I. Al-Matroudi, *The Ḥanbalī School of Law and Ibn Taymiyyah: Conflict or Conciliation* (London: Routledge, 2006).

to the principles of the jurisprudential sources of Islamic law.

Based on my personal interest in the issues related to Islamic law in general and in the subjects of marriage and divorce in particular, as well as my previous MA research and degree on marriage in Islamic law, I had a modest and general knowledge, like others, that Ibn Taymiyya's views on triple divorce and divorce oaths are completely different to the views of the majority of jurists, including the eponyms of the four main *Sunnī* schools of law: Mālik, Abū Ḥanīfa, Shāfiʿī and Aḥmed ibn Ḥanbal. This was before I had made any attempt to get further information or do an investigation to discover Ibn Taymiyya's reasonable justifications or finding more controversial issues other than triple divorce and divorce oaths. Therefore, when I started studying for my Ph.D. in October 2013, I agreed with my supervisor's advice to write about Ibn Taymiyya's views on marriage and divorce. My reading along the first year of the study gave me a lot of knowledge of the hidden issues related to the topic. I read Ibn Taymiyya's volume 33 on divorce in *Majmūʿ al-fatāwā* [8] a major collection of his writings, and the divorce volume of two significant books from each of the four schools of Islamic law[9]. I noticed that there are several divorce topics on which Ibn

[8] Aḥmad b.ʿAbd Ḥalīm Ibn Taymiyya, *Majmūʿ al-fatāwā* (Kitāb al-Ṭalāq 33), ed. ʿAbd al-Raḥmān b. Muḥammad b. Qāsim and Muḥammad b. ʿAbd al-Raḥmān b. Muḥammad (al-Madīnat al-munawara: Mujamaʿ al-malik fahd li-ṭibāʿat al-muṣḥaf al-sharīf, 2004).

[9] For the Hanafi school, I have read ʿAlāʾ al-dīn b. Masʿūd al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ fī tartīb al-sharāʾiʿ*, ed. al-Shaykh ʿAli Muḥammad Muʿawaḍ and al-Shaykh ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-kutub al-ʿIlmiyya, 2003), 4, and Shams al-Dīn al-Sarakhsī, *Kitāb al-mabsūṭ* (Beirut: Dār al-maʿrifa, n.d.), 6. For the Maliki school, I have read Aḥmad b. Muḥammad al- Dardīr, *Al-sharḥ al-kabīr bi- ḥāshiyyat al-dasūqī* (n.pl.: Maṭbaʿa ʿĪsā al-bābī al-ḥalabī, n.d.), 2, and for the Shafii school, I have read Maḥī al-dīn b.Sharaf al-Nawawī, *Al-Majmūʿ sharḥ al-muhazab*,ed. Muḥammad Najīb al-Muṭīʿī (Jidda: Maktabat al-Irshād, n.d), 16, and ʿAlī b. Muḥammad al-Māwardī, al-Ḥāūī al-kabīr, ed. al-Shaykh ʿAli Muḥammad Muʿawaḍ and al-Shaykh ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-kutub al-ʿilmiyya), 10. For the Hanbalī school, I have read Muwafaq al-Dīn Ibn Qudāma, *Al-Mughnī*,ed, ʿAbd Allah b. ʿAbd al-Muḥsin al-Turkī and ʿAbd al-Fatāḥ Muḥammad al-Ḥulū (al-Riyāḍ: Dār ʿĀlam al-kutub, 1997.), 10.

Taymiyya has different views to those of the jurists from the four Sunni schools of law. These controversial issues between Ibn Taymiyya and the majority of jurists include triple divorce and divorce oaths which have been addressed in Rapoport and Al-Matroudi's contribution studies as I have indicated above. They also include divorce during a menstruation period (*al-ṭalāq fī al-ḥayḍ*), intoxicated divorce (*ṭalāq al-sakrān*), divorce pronounced in angry circumstances (*ṭalāq al-ghaḍbān*), a father's divorce on behalf of his young or mentally incapacitated son (*ṭalāq al-ab niyabatan ʿan waladihī al-ṣaghīr aw al-majnūn*), and a proxy divorce of a client's wife (*ṭalāq al-wakīl li zawjat al-muakkīl*). I will investigate and examine these in a new research and for the first time in order to give a fully rounded view of divorce in Ibn Taymiyya's opinion. All of these pushed me toward when finding my research questions, which are: How was Ibn Taymiyya different from the majority of jurists? And why did he positions opposite to theirs? This solidified my decision to work on Ibn Taymiyya's views on the issues of divorce in Islamic law in contrast to the majority of jurists as my Ph.D. thesis topic.

Throughout this period and the second year of my studies, I started collecting and investigating Ibn Taymiyya's other important thoughts, works, and fatwas that were relevant to his legal thinking and understanding of Islamic jurisprudence (*fiqh*) and the science of the principles of Islamic jurisprudence (*uṣūl al-fiqh*). It was neccessary to examine these in order to discover his opinions about the selected issues in detail and to investigate and address the reasons behind his different views. In this regard, I have used many of his relevant treatises. I will define these works and explain their importance and contents when I will first use them in the thesis. In particular, I will take advantage of Ibn

Taymiyya's very significant and recently discovered refutation of al-Subkī's important objection to his own views regarding suspended divorce on a condition[10]. This book, *al-Radd ʿalā al-Subkī fī masʾalat taʿlīq al-ṭalāq, (The Refutation of al-Subkī concerning the issue of suspension divorce*), is Ibn Taymiyya's recently discovered book, which was edited and published in 2014. It is considered the longest written work among Ibn Taymiyya's treatises about the same issue. Ibn Taymiyya presents his own views and arguments in this book, at the same time as refuting the majority of jurists' evidence, which is explained in more detail than what we can find in his other fatwas and treatises[11]. I will use many of Ibn Taymiyya's replies and refutations in this book along with the discussion concerning the different views of Ibn Taymiyya and the majority of jurists in order to present an insight into the reality of consensus as the main evidence in Islamic legal jurisprudence. All of these references will be included in the bibliography list in the back of this thesis.

I also did the same research concerning important primary sources written about the topic from all four schools of Islamic law in the Arabic language as well as the secondary sources that helped me when writing my thesis. I will intently focus, review and show the important treatises and refutations to Ibn Taymiyya's views written by Ibn Taymiyya's strongest opponent, the Shāfiʿī jurist Al-Subkī, who I will count as the representative of the majority of jurists from all the four *Sunnī* Schools of law due to his religious position as the chief judge (*Qāḍī al-quḍāt*) at that time.

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[10] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī fī masʾalat taʿlīq al-ṭalāq*, ed. ʿAbd Allāh b. Muḥammad al-Mazrūʿ (Mecca: Dār ʿālam al-fawāʾid, 2014).

[11] ʿAbd Allāh b. Muḥammad al-Mazrūʿ, an introduction to Ibn Taymiyya's book: *al-Raddd ʿalā al-Subkī fī masʾalat taʿlīq al-ṭalāq* (Mecca: Dār ʿālam al-fawāʾid, 2014), 7.

Throughout this thesis, the phrase "*the majority of jurists" (jumhūr al-fuqahāʾ)* will regularly appear, and some explanation of what that phrase means in the context of Islamic legal research is necessary. Traditionally, there were four *Sunnī* schools of law, Mālikī, Ḥanafī, Shāfiʿī and Ḥanbalī, which issued legal opinions applicable to Muslims who followed the teachings of each school. On many issues, a firm consensus existed among all four schools regarding the religious judgements pertaining to certain matters. On other issues, an agreement among three of the schools was reached with the fourth holding a dissenting opinion. Thus, the term 'the majority of jurists' refers to an opinion or judgement agreed unanimously by the jurists from the four *Sunnī* schools of law or at least a plurality of three of them. To explain how will we get the majority of jurists' opinions regarding some disagreement issues of divorce between Ibn Taymiyya and agreed opinions frome the main four Islamic Sunni schools, it is necessary to mention that, traditionally, there are many sources in each Islamic Sunni school of law which have become dependable and agreed about them to identify the views of of the majority of jurists within each particular school regarding any particular issues of Islamic Sunni law. Therefore, when we will attempt to compare Ibn Taymiyya's views, in this thesis, concerning some divorce issues to the views of the majority of jurists from the four Islamic Sunni schools of law; we will be using, quoting and providing their views by relying upon those dependabl sources in every single school. So, we will regularly indicate to the views of the majority of jurists or to a particular school among them in the footnotes of this thesis in order to show that the views are taken from those dependable sources of these main Isalmic Sunni schools. However, in order to avoid the prolongation of mentioning many views in the

thesis and many sources in the footnotes, sometimes, we will investigate the majority of jurists' views about a particular point then we only chose to indicate to one among them in the footnotes as the unified opinion of the entire majority of jurists. Nevertheless, we may also refer to their views from other sources that are mandated to convey their views. So, this thesis will review several opinions of Ibn Taymiyya on the topic of Islamic divorce law that were in opposition to the mainstream views held by other jurists of the four *Sunnī* schools of law and the probable reasons for their disagreement.

This proposed study will address these important questions to be answered fully. Firstly, it investigates whether Ibn Taymiyya's views differ from those of the majority of jurists only on the topic of triple divorce and divorce oaths or on several issues? Secondly, this study will examine this important question: How were Ibn Taymiyya's opinions different from those of the majority of jurists concerning divorce issues under Islamic law? Thirdly, an answer to these crucial questions: why did Ibn Taymiyya take positions in opposition to other jurists about these issues, and what were his religious justifications? Finally, the study's last question – "Should Ibn Taymiyya be viewed as being affiliated with one of the four *Sunnī* schools of law (*muqallid or mujtahid muntasib*) or as a completely independent jurist (*mujtahid muṭlaq*)?" – will be addressed and answered carefully. I will be challenging Al-Matroudi on this point.

This thesis represents an important new research about divorce in Islamic law that investigates the era and views of Ibn Taymiyya and those of Islamic jurists contemporary to him and those who came before him. It will try to analyse and evaluate Ibn Taymiyya in the context of when he lived in order to

show the difficulties he faced as an emerging jurist during that era of Islamic history. Both primary and secondary sources will be used to illuminate and examine the views of divorce in Islamic law between Ibn Taymiyya and the majority of jurists. The study's other necessary purpose is to examine Ibn Taymiyya's role regarding two important dilemmas in the history of Islamic law: (1) closing the gate of Ijtihād (*ighlāq bāb al-ijtihād*) and (2) imitation and doctrinal view (*al-taqlīd wa al-tamadhhub*). Ibn Taymiyya's opinions and efforts to correct what he considered a false understanding of these two issues will be explained, as this will be very important to understanding his other divergent opinions that will be discussed in later chapters. Another goal is to demonstrate that Ibn Taymiyya's views regarding several prominent issues of divorce law were contrary to the majority of jurists. Further, it will attempt to understand Ibn Taymiyya's methodology for presenting his views and legal opinions (*fatāwā*) about divorce issues and to explore his intellectual background and his responses and objections to the majority of jurists' opinions. Furthermore, this thesis will help to identify possible factors that might have played a role in the development of Ibn Taymiyya's divergent views on the issues of Islamic law by analysing and evaluating his opinions concerning specific issues pertaining to divorce law. Finally, this thesis examines and investigates Ibn Taymiyya's jurisprudential ideas in order to confirm that he had many divergent opinions about the issues surrounding the various sources that gave rise to the principles of Islamic jurisprudence. Through careful review of Ibn Taymiyya's relevant opinions, the issues relating to divorce law will be addressed and organised for comparison with the consensus views of the majority of jurists. Addressing and examining the primary sources relevant to Islamic law will be the primary

objective of the first part of this study which is intended to respond to the thesis questions.

Further investigations into several controversial issues of divorce law where Ibn Taymiyya's views diverged from the majority of jurists will take place. These include: divorce in a menstruation period, triple divorce, intoxicated divorce, divorce pronounced in angry circumstances, a father's divorce on behalf of his young or mentally incapacitated son, a proxy divorce of a client wife, and divorce oaths. These types of divorce issues will be addressed and explained throughout chapters two, three and four. The best-supported evidence about the views of both Ibn Taymiyya and the majority of jurists regarding the aforementioned issues has been drawn from their writings about the principles of Islamic jurisprudence as derived from the Qurʾān, the Sunna, the consensus views among Islamic jurists, analogy, benefit, and the opinions of the Companions. In this manner, the nature of Ibn Taymiyya's opinions on divorce law, as well as how his opinions differed from those of the majority of jurists on that topic, will become clear.

Through careful consideration of the evidence used by both sides and the differing approaches presented to support their views, significant points relating to the sources of Islamic jurisprudence used by both Ibn Taymiyya and the majority of jurists will be addressed as a means of answering the study's one question: Why did Ibn Taymiyya take positions contrary to those of other jurists in these issues of divorce in Islamic law? The second part of this thesis will evaluate the evidence used by both sides to discover the most reliable reasons behind Ibn Taymiyya's disagreement on these issues of divorce law. The findings

indicate that the primary factor underlying Ibn Taymiyya's disagreements with the views of the majority of jurists arises from his unique perspective on the sources supported by the principles of Islamic jurisprudence. The views of both Ibn Taymiyya and the majority of jurists that appear most relevant to the topic will be examined, particularly their views on the issues surrounding divorce under Islamic law.

This study is divided into two parts and ten chapters. The first part is mainly devoted to studying the different views on divorce-related issues held by Ibn Taymiyya and the majority of jurists. It contains four chapters as described below.

Chapter one will focus on the reality of Islamic jurisprudence and the jurists of Ibn Taymiyya's era, as well as both the political and religious situations at that time – and earlier. In this chapter it might appear that in some ways Ibn Taymiyya was born into the wrong era of history, as he seems to have been greatly affected by the decline of Islamic jurisprudence that resulted from the decision in the fourth century to end independent rulings. Consequently, this chapter will show that Ibn Taymiyya devoted the last years of his life to writings, issuing fatwas, and contemplation on how to change this reality. This chapter will also state that Ibn Taymiyya's treatises included many special jurisprudential views that differed from those of the majority of jurists. In addition, this chapter will address the western studies and scholars investigating concerning the issue of ending independent rulings in the Islamic history prior to Ibn Taymiyya's time. It shows that these studies and scholars are divided into two views regarding the reality of that decision. Some of them are in doubt about

it and deny that it happened. However, others take it as an unquestionable reality in Islamic thinking history. This chapter will focus on another religious dilemma in Ibn Taymiyya's era which is doctrinal views (*tamadhhub*) and imitation (*taqlīd*) among the jurists. This needs to be examined and investigated within the context of Ibn Taymiyya's actions and shows that Ibn Taymiyya acted according to the evidence that was presented, while the majority of scholars at that time imitated a particular doctrine and shortened their works by explaining and clarifying what had come before in their leaders' doctrines. This chapter clearly shows that the understanding of Islamic law during Ibn Taymiyya's time had changed from an evidence-based analysis of both the Qurʾān and the Sunna to simply imitating the opinions of the eponyms and followers of the four *Sunnī* schools of law. Due to a strong relationship between this issue and Baybars' decision in 662/1265 to change the judicial system in the Mamlūk sulṭānate, this chapter will address and examine many opinions and studies regarding the reasons behind Baybars' decision to change the judicial system from one chief judge (*qāḍī*) to a quadruple model (one for each legal school).

Chapter two will show how Ibn Taymiyya's restrictions on the meanings and words from the Qurʾānic verses and the Ḥadīth affected his legal thinking. In this regard, this chapter shows that in contrast to the majority of jurists' judgements and justifications to validate prohibited (*bidʿī*) types of divorce, such as divorce during the menstruation period and triple divorce, Ibn Taymiyya confirms the invalidity of these two types of divorce in Islamic law. This chapter will also review the evidence relied upon by both Ibn Taymiyya and the majority of jurists to support their views and also their objections to each other's proofs.

Chapter three will address the validity of divorce between Ibn Taymiyya and the majority of jurists according to personal circumstances, such as divorce pronounced by an intoxicated person, divorce pronounced in anger, a father's divorce on behalf of his young or mentally incapacitated son, and a proxy divorce of a client's wife. This chapter will show how Ibn Taymiyya's opinions concerning divorce took place in accordance with these circumstances due to the importance of the intention of a person or *maṣlaḥa* in Ibn Taymiyya's legal thinking and as a source of the principles of jurisprudence. For instance, this chapter will state that Ibn Taymiyya saw intent as an important quality when considering divorce, and because of that he said that an angry person's divorce was invalid. However, the majority of jurists believed that it was sufficient to validate an angry person's divorce by using its explicit formula, and they further stated that it did not need to be accompanied by intention.

This chapter will also address Ibn Taymiyya's permissibility of a father's divorce on behalf of his young or mentally incapacitated son if the father sees this decision has a benefit (*maṣlaḥa*) for both husband and wife on the one hand and their families on the other. In contrast, the majority of jurists from the other three schools of law, the Ḥanafī, Shāfi'ī and Ḥanbalī, insist that it is absolutely not permissible for fathers to divorce on behalf of their young or mentally incapacitated sons under any circumstances. They reason that divorce is solely the right of a husband. So it is not acceptable for anyone else to end the marital relationship between a husband and wife. Each of these will be examined through a review of each side's proofs and discussions to support their views.

Chapter four will carefully examine divorce oaths, a very complex issue of divorce in Islamic law between Ibn Taymiyya and the majority of jurists. This chapter will note that Ibn Taymiyya links divorce oaths to legal issues concerning oath issues and not divorce law. This indicates that both issues are regulated by the same law, and in other words, a divorce oath is just a type of oath and should be treated as such by the law. In this chapter it will be clear that Ibn Taymiyya places significance on the husband's intention in suspended divorce on a condition and divorce oaths; if his intention is the validity of divorce, then his divorce would be valid, but if his intention is something else, his divorce would be invalid and the oath's atonement would fulfil a violated oath. However, the majority of jurists view the use of the word of divorce as sufficient to validate it either as an oath or suspended divorce, and in that case it requires no atonement to fulfil any type of divorce. In addition, this chapter shows al-Subkī's actions undertaken as a representative of the majority of jurists of his day in opposition to Ibn Taymiyya, and his works will be addressed and reviewed, along with al-Subkī's objections to Ibn Taymiyya's views.

The second part of the thesis will be devoted to the analysis and evaluation of Ibn Taymiyya's methods for presenting and interpreting Islamic proofs that were contrary to those of the majority of jurists as potential reasons supporting his divergent opinions in the specific area of divorce law. This part has six chapters, each of which addresses one source of the principles of the Islamic jurisprudence found in Ibn Taymiyya's opinions, discussions and objections to the majority of jurists. A brief introduction reiterates what was

discussed in the first part to show how the second part will relate to what has come before.

Chapter five will focus on the foundations of Ibn Taymiyya's divergent perspectives and interpretations used in making judgements on various issues of Islamic law that relate to the Qurʾān. This chapter will identify specific views held by Ibn Taymiyya about the Qurʾān as the most important source for establishing Islamic laws, views which separate him from the majority of jurists as found from the issues of divorce studied in the previous chapters. Specific topics presented in chapter five will include: (1) Attention to the language of the Qurʾān. This section shows that Ibn Taymiyya's method regarding interpreting and carrying the words of the lawgiver on its pure language used in Arabic societies is an issue jurists disagreed with from the principles of jurisprudence. This question is at the root of the issue: Is it supposed that God used Arabic words in their new legitimate meanings far from its original Arabic meanings? Ibn Taymiyya completely rejects this idea and confirms that it is not permissible to transfer words from their linguistic meanings into new legitimate meanings. Counter to this, the majority of jurists believe that the lawgiver uses the Arabic language in its new linguistic meanings instead of the original meanings. (2) The unambiguous declarations of texts. This section will show that Ibn Taymiyya firmly believes that the texts in the Qurʾān have notifications to understand the lawgivers' intentions and to derive the correct ruling. Therefore, it became clear that Ibn Taymiyya's accurate examination of the texts gives him the ability to derive correct rulings in Islamic law, as he claims, and is another important reason behind his differences with the majority of jurists. (3) The silence of the

texts. It shows that Ibn Taymiyya also believes that the text gives knowledge of purpose by its silence to make things lawful or unlawful. (4) The abrogation (*al-naskh*) of the Qur'anic verses. This declares that Ibn Taymiyya's general belief about abrogation is that he accepts the abrogation of Qurʾānic texts by other texts from the Qurʾān, and he also accepts the abrogation of texts from the Sunna by other texts of the Sunna. He rejects the abrogation of Qurʾānic texts by texts of the Sunna, whether done by the recurrence of the Sunna [*al-mutawatir*] ḥadīthor solitary Sunna [*al-āḥād*] ḥadīththat have been reported by only one person in every transmission chain. It shows that the difference between Ibn Taymiyya and other jurists therefore lies in their beliefs regarding abrogating Qurʾānic texts using the recurrence of the ḥadīth [*mutawātīr]*, a practice that Ibn Taymiyya rejects and the majority of jurists support.

Chapter six will begin with an introduction reminding us of the differences in the views held by Ibn Taymiyya and the majority of jurists that were relevant to divorce issues, differences arising from their respective knowledge and understanding of the Sunna. These different views became a significant reason underlying Ibn Taymiyya's opinions that contradicted those of the majority of jurists. This chapter will also explain that there are no major differences between Ibn Taymiyya and the majority of jurists in terms of their definitions of both the Sunna and the ḥadīth. However, differences between the two begin arising in terms of the division of the Sunna into different sections which are determined according to the Sunna's standards for giving religious knowledge, taking this knowledge, and acting in accordance with it. This chapter also raises a question: Which conditions should exist in *āḥād* ḥadīthin order to

use this ḥadīthas evidence of Islamic laws? This question represents an important dispute separating Ibn Taymiyya and the majority of jurists. Finally, the chapter will examine the types of Sunna and the standards for giving religious knowledge (*ifādat al-ʿilm*) as understood by both Ibn Taymiyya and the majority of jurists, as this is another source of Ibn Taymiyya's divergent opinions.

Chapter seven will address the dispute between Ibn Taymiyya and the majority of jurists regarding consensus (*ijmāʿ*) among Islamic jurists as an important basis for making correct laws. The chapter begins with an introduction that summarises how the majority of jurists used consensus to reinforce their views about issues such as divorce as mentioned above and also the accusations against Ibn Taymiyya asserting that he improperly ignored this important source of jurisprudence in Islamic law. In this chapter we will show how Ibn Taymiyya starts his first and most important effort to narrow down the space of time and area that is possible for consensus to occur and be known. Therefore, he views that true consensus among all Muslim scholars is a transmitted one from the time and era of the Companions. This chapter will state that Ibn Taymiyya indicates that there is not only one type of consensus, according to the ways of its occurrence. So, he mentions three types of consensus in contrast to the majority of jurists. They are an encompassing consensus (*ijmāʿ iḥāṭī*), a consensus by endorsement (*ijmāʿ iqrārī*), and an inductive consensus (*ijmāʿ istiqrāʾī*). In addition, Ibn Taymiyya finds the significant point of provided religious knowledge in both inductive consensus (*ijmāʿ istiqrāʾī*) and endorsement consensus (*ijmāʿ iqrārī*), as they provide probable

knowledge as opposed to certain knowledge. He then explicitly declares that there are two types of consensus: a certain consensus and a probable consensus. After these explanations from Ibn Taymiyya, he divides the available number of consensuses into transmitted and alleged consensuses in which he refutes the alleged consensuses by the majority of jurists.

Chapter eight will explain why Ibn Taymiyya, like the majority of jurists, relied on arguments from analogy but from a different perspective which became another reason for his divergent opinions. It will also show the definition of analogy as used by both sides, and it will examine the valid, correct, and incorrect types of analogy as defined by Ibn Taymiyya. This chapter will note that, according to Ibn Taymiyya, the majority of jurists relied on incorrect analogies in claiming that there are many laws under Islamic law opposite to analogy. Finally, the chapter will address Ibn Taymiyya's views regarding laws contrary to analogy and compare them to the views of the majority of jurists.

Chapter nine identifies another reason for Ibn Taymiyya's divergent views which is clearly connected to a principle of Islamic jurisprudence: benefit (*maṣlaḥa*). The chapter begins with an introduction to remind the reader of how Ibn Taymiyya's opinions differed from the majority of jurists. Next, it will define *maṣlaḥa* to show how both Ibn Taymiyya and the majority addressed this concept in different ways, thus leading to differing interpretations of divorce law. The majority of the jurists defined it as merely preventing harm to Muslims with the result that they largely ignored the other aspect of *maṣlaḥa* -- bringing benefits to Muslims. Contrary to the majority of jurists, Ibn Taymiyya is interested in the beneficial side of *maṣlaḥa*. The chapter will then discuss the views of Ibn

Taymiyya's two main critics regarding the majority of jurists' perspectives on *maṣlaḥa*. Firstly, *maṣlaḥa* means both bringing benefits and preventing harm while other jurists focus solely on preventing harm without the consideration of benefits. Secondly, Ibn Taymiyya views *maṣlaḥa* as a broad concept that could cover an equally broad segment of the Islamic legal system, and he discusses how *maṣlaḥa* is linked to both religious and worldly issues. This view on *maṣlaḥa* differed greatly from that of the majority of jurists. Ibn Taymiyya argues that bringing benefits in *maṣlaḥa* is not related only to either religious or worldly issues. Instead, *maslaha* has a strong relationship to many issues falling under both religious and worldly concerns. Finally, Ibn Taymiyya's views about a link between the intentions of God and the benefits offered to human beings both within the religion and in the world will be examined carefully.

Chapter ten will show that Ibn Taymiyya's views on the Companions as a source of jurisprudence represent yet another reason underlying his dispute with the majority of jurists. In this chapter, we will find that Ibn Taymiyya presents two conditions that should be applied to every single opinion under review. The first condition requires that there is no disputed view among the Companions about the issue. The second condition is that no Companion's view can contradict any text from either the Qurʾān or the Sunna. In such a case, the text holds priority over the opinion regardless of which Companion offered it.

This thesis will show that Ibn Taymiyya's views on these divorce-related issues appear to demonstrate his consistency of legal thought when compared with his other views on Islamic law. Ibn Taymiyya's specific concerns about some elements of each source of jurisprudential principle ultimately evolved into

reasons that supported his disagreements with the majority of jurists. This conclusion will further support the idea that Ibn Taymiyya was living as an absolute *mujtahid* in the last years of his life and was not personally affiliated with any particular *Sunnī* school of law, not even the *Ḥanbalī* School to which he belonged earlier in his life.

PART ONE
DIFFERENT VIEWS ON ISSUES OF DIVORCE BETWEEN IBN TAYMIYYA AND THE MAJORITY OF JURISTS

CHAPTER ONE
THE REALITY OF ISLAMIC JURISPRUDENCE AND JURISTS IN IBN TAYMIYYA'S ERA

1.1 Political and religious situations before and during Ibn Taymiyya's time

The circumstances and conditions into which one is born greatly affect every aspect of one's life, but especially one's potential for reasoning and vision. It is therefore important to examine the circumstances and conditions of the age in which an important historical figure lived to fully understand the many factors that influenced such a figure's development. Ibn Taymiyya is a worthy choice for such an examination due to his great influence on the Islamic communities of his era and because of his independent and innovative views about Islam, which influence scholars even today. The impact of Ibn Taymiyya on his community has become a controversial point in recent studies. This can be compared in both Bori and El-Rouayheb's articles in the book *Ibn Taymiyya and is Times*. Bori claims that Ibn Taymiyya received popular support from all kinds of individuals, including scholars, religious people, soldiers, *amirs*, tradesmen, and even the authorities.[12] Bori interprets this support as evidence of Ibn Taymiyya's influence on people. This is demonstrated when she makes a comment on Ibn Taymiyya's funeral by stating "Yet, the narratives of Ibn Taymiyya's funeral do more than affirm the authority of the *Shaykh*"[13] while, El-

[12] Caterina Bori, "Ibn Taymiyya wa -Jamāʿatuhu: Authority, Conflict and Consensus in Ibn Taymiyya's circle", in *Ibn Taymiyya and His Times*, ed. Yossef Rapoport and Shahab Ahmed (Karachi: Oxford University Press, 2010), 41.
[13] Bori, "Ibn Taymiyya wa -Jamāʿatuhu", 42.

Rouayheb rejects the impact of Ibn Taymiyya on the mainstream non-Ḥanbalī *Sunnī* environment until the nineteenth century.[14] El-Rouayheb, however, reinforces his view through examining the work of some *Sunnī* scholars between the period of Ibn Taymiyya's death and the nineteenth century, which went in opposition to Ibn Taymiyya's views. He, therefore, claims "The idea that Ibn Taymiyya had an immediate and significant impact on the course of *Sunnī* Islamic religious history simply does not cohere with the evidence that we have from the five centuries that elapsed between his death and the rise of *Sunnī* revivalism in the modern period."[15] Whatever the reality of Ibn Taymiyya's impact on his community, there is no doubt that he had a great impact on his contemporary opponent jurists and authority. This can be demonstrated by jurists' reactions to his thinking, which is clear in Al-Subkī's and Ibn Rajab's works against him, and we will address their works against Ibn Taymiyya later in this chapter. It is also evident by the fact that Ibn Taymiyya was on trial several times and received a prison sentence each time until his death in prison.

Ibn Taymiyya lived from 661/1263 to 728/1328, a time characterised by political instability in his part of the world in Syria, Iraq and Egypt due to the Mongol attacks against Islamic territories before and during that time period.[16] Before this time, the Crusades also affected many Islamic regions, especially during the time of the Fatimid state in which they supported the Crusaders

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[14] Khaled El-Rouayheb, "From Ibn Ḥajar al-Haytamī (d.1566) to Khayr al-Dīn al-Ālusī (d. 1899): Changing views of Ibn Taymiyya among non-Ḥanbalī Sunnī acholars", in *Ibn Taymiyya and His Times*, ed. Yossef Rapoport and Shahab Ahmed (Karachi: Oxford University Press, 2010), 269.

[15] El-Rouayheb, "Changing views of Ibn Taymiyya among non-Ḥanbalī Sunnī acholars", 270.

[16] Muḥammad Khalīl Harās, *Bāʿīth al-nahḍa al-islāmiyya Ibn Taymiyya al-salafī naqdihi li masālik al-mutakalimīn wa al-flāsifa fi al-ilāhiyāt* (Beirut: Dār al-kutub al-ʿilmiyya, 1984), 15.

against Muslims.[17] Additionally, there were domestic divisions within Islamic countries caused by the corruption of various kings and princes who had drifted away from Islamic teachings.[18] In general, this period was marred by conflicts in all aspects of the greater Islamic community, including political, religious and social dimensions.[19]

Despite these problems, the era of Ibn Taymiyya was marked by an improvement in the religious sciences. It was an era in which the exegetics of the Qurʾān, the ḥadith sciences, and the principles of jurisprudence had all been expanded.[20] At this time, there were many scholars who were well read on the topic of Islamic exegetics, and modern scholars can learn about their views by examining and studying the various jurists' bibliographic books (*ṭabaqāt*), which address virtually every single *Sunnī* doctrine.[21] Otherwise, reading and analysing the works of jurists and theologians who belong to that period is an effective way to understand the reality of knowledge at that time. Despite the deep knowledge of these scholars and jurists, however, their views were largely repetitions of the

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[17] Saʿiyd ʿAbd al-ʿAẓiym, *Manhaj shekh al-islām Ibn Taymiyya al-tajdīdy al-salafy wa daʿwatuhu al-iṣlāḥiyya* (Iskandariyya: Dār al-Iīmān, n.d), 13.

[18] Ibrāhīm ʿUqaylī, *Takāmul al-manhaj al-maʿrifī ʿind Ibn Taymiyya* (U.S.A: al-Maʿhad al-ʿālamī lil-fikr al-islāmī, 1994), 13.

[19] For more details look at P. M. Holt, *The Age of the Crusade: The Near East from the eleventh century to 1517* (New York: Routledge, 2013), Amalia Levanoni, "The Mamluk conception of the sultanate", *International Journal of Middle East Studies* 25 (1994): 373-392, Amir Mazor, *The Rise and Fall of a Muslim Regiment: The Manṣūriyya in the First Mamluk Sultanate, 678:1279–741:1341* (Bonn: Bonn University Press at V&R Unipress, 2015), Yossef Rapoport, "Royal Justice and Religious Law: Siyasah and Shari'ah under the Mumluks", *Mamlūk Studies Review* 16 (2012): 71-102.

[20] ʿAlī al-Ḥassanī al-Nadawī, *Rijāl al-fikr wa al-daʿwa fī al-islām: Shekh al-islām Ibn Taymiyya*, Trans. Saʿiyd al-iʿẓamī al-Nadawī (Damascus: Dār al-qalam, 2002), 2: 273.

[21] For instance look at ʿAbd al-Qādir b. Muḥammad, *al-Jawāhr al-muḍiyya fī ṭabaqāt al-ḥanafiyya*, ed. ʿAbd al-Fatāḥ Muḥammad (Riyadh: Hajr lil-ṭibāʿa wa al-nashr, 1993), Muḥammad b. al-Qāḍī al-Farāʾ, *Ṭabaqāt al-ḥanābila*, ed. Aḥmad ʿUbayd (Damascus: Maṭbaʿat al-iʿtidāl, 1931), ʿAbd al-Wahāb b. Taqī al-dīn al-subkī, *Ṭabaqāt al-shāfiʿiyya al-kubrā*, ed. Maḥmūd Muḥammad and ʿAbd al-Fatāḥ Muḥammad (Riyadh: Hajr lil-ṭibāʿa wa al-nashr, 1994).

views of prior scholars rather than attempts to articulate their own thinking and evaluation of the sacred texts.[22]

Some might say that Islamic thought had grown stagnant in the time before Ibn Taymiyya and that there had been little to no innovation in the science of Islamic exegetics. Many scholars sought to better understand the thinking of their predecessors, but they did not add much that was new to the pre-existing knowledge and were often forbidden to even try. Only a few authors applied their wisdom to clarify and expand areas and matters that they believed to have been ambiguous. Others added new restrictions or identified passages they considered redundant.[23]

By the time of Ibn Taymiyya's activity, the compilation movement had grown in strength. The knowledge and compilation in this era expanded in influence but was marked by a lack of deep thinking, as scholars mainly transmitted and quoted prior works instead of reasoning, researching and deeply studying their accumulated knowledge. This has also been emphasised by Al-Matroudi, when he notes that jurists, in Ibn Taymiyya's time, generally neither added any new knowledge nor analysed the earlier works, because the thinking system, among the majority of jurists, was *taqlīd* rather than *ijtihād*.[24] Al-Matroudi, overall, describes Ibn Taymiyya's era as both the best and worst of times, stating:

> On the one hand, it developed a tradition of knowledge whose legacy is still regarded as a treasure by millions, not only in the Middle East but all around the world. On the other hand, it

[22] Al-Nadawī, *Rijāl al-fikr*, 2:274.

[23] Muḥammad b. Aḥmad, *"Fiqh al-usra ʿinda al-imām shekh al-islām Ibn Taymiyya fī al-zawāj wa āthārihi."* Ph.D. diss., (University of Azhar: Cairo, 1975), 1:64.

[24] Al-Matroudi, *The Ḥanbalī school*, 15.

> suffered the devastation and terror of the Mongol invasions and occupation.[25]

More specifically and in relation to Islamic law and belief, there was a widespread lassitude and imitation both among and within the various Islamic *Sunnī* schools of law during Ibn Taymiyya's time. Due to very strong imitation, at that time period, among the jurists in particular and the community in general, Ibn Khaldūn describes that nearly every single jurisprudence doctrine related to one of four Islamic schools of law was in danger of becoming an independent religion unto itself.[26] Others view this imitation environment negatively as it encouraged a growth of non-Islamic thought and teaching among Muslims, including beliefs in sorcery, in heresy, and in outright atheism.[27] Ṭāhā Jābir al-ʿAlwānī describes this dark period of Islamic history into which Ibn Taymiyya emerged:

> The intellectual crisis in Ibn Taymiyya's time reached its highest points, exacerbating matters and spreading like cancer. This crisis expanded its noxious shadow on aspects related to belief, faith, methodology, sources, relationships, transactions, politics, economy, and in different aspects of urban social behaviour, morality, and the methods of religiosity. Also, the people's understanding of religion itself has been changed in a way that involved its important constructive and functional aspects and crippled its effectiveness. In addition, innovations and divergences lead to the emergence of many of negative deviant practices and abnormal behaviours that were dressed in religiosity.[28]

This was also Ibn Taymiyya's perception concerning his time period, whatever the reality might have been and whatever others may have thought

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[25] Al-Matroudi, *The Ḥanbalī school*, 16.

[26] ʿAbd al-Raḥmān b. Khaldūn, *Dīwān al-mubtadaʾ wa al-khabar fī taʾrīkh al-ʿarab wa al-barbar wa man ʿāṣarahum min dhawī al-shaʾn al-akbar* (Beirut: Dār al-fikr, 2001), 1:577-578.

[27] ʿAbd al-Raḥmān b. Ṣāliḥ, *Mawqif Ibn Taymiyya min al-ʿashāʿira* (Riyadh: Maktabat al-rushd, 1995), 1:141.

[28] Ṭāhā Jābir al-ʿAlwānī, *Ibn Taymiyya wa islāmiyyat al-maʿrīfa* (Riyadh: al-Dār al-ʿālamiyya lil-kitāb al-islāmī, 1995), 18-19.

about it. This understanding greatly affected Ibn Taymiyya and pushed him to reconsider the whole tapestry of Islamic religion and to seek to restore it to its original form. As we can see in his major works, Ibn Taymiyya fought back against those who espoused the principles of Greek philosophy as he argued against them for lack of foresight and proper evidence.[29] He explicitly announces his battle against the Sufis who espoused many views that contradicted the original Islamic religion.[30] More specifically relevant to this thesis, Ibn Taymiyya became a great reformer and promoter of a renewal of Islamic law against the traditional and inactive jurists of the various Islamic schools of law. In addition, this can be evidenced in the selected divorce issues in this study between Ibn Taymiyya and the majority of jurists from the four main Islamic schools of law. As we will see in the next three chapters, Ibn Taymiyya's opinions are in complete contrast to the views of the majority of jurists from these schools of law.

With that in mind, we will next examine some of the religious issues that have a very strong relationship with Ibn Taymiyya's time and thinking. Studying the selected issues of divorce between Ibn Taymiyya and the majority of jurists identifies how and why Ibn Taymiyya was different to them. Without exploring these religious issues, this study would be incomplete and inaccurate. Therefore, we will discover that these issues greatly affected Islamic thinking, especially Islamic law, during the three centuries before Ibn Taymiyya's time. This ultimately led him to react against this thinking in order to save both religion

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[29] For more information look at Wael Hallaq, Trans. *Ibn Taymiyya against the Greek Logicians* (Oxford: Oxford University Press, 1993).

[30] For details look at Muḥammad Ḥarbī, *Ibn Taymiyya wa mawqifuhu min aham al-firaq wa al-diyānāt fī ʿaṣrihi* (Beirut: ʿĀlam al-kutub, 1987), 175-230.

and the community from innovated problems. Ibn Taymiyya's views regarding the selected issues of divorce in this thesis can be interpreted as a consequence of his steps against that bitter reality in the history of Islamic law.

1.2 The two main religious dilemmas that Ibn Taymiyya worked on

1.2.1 First: closing the door of independent ruling (*ighlāq bāb al-ijtihād*)

According to the agreement of Muslim scholars, there was a point in greater Islamic communities prior to Ibn Taymiyya's birth when the majority of jurists from all *Sunnī* schools of law essentially agreed that the door of independent ruling was closed to every single jurist.[31] This consensus emerged some time in the latter half of the fourth century/tenth century.[32] The majority of jurists from the four *Sunnī* schools of law implemented this decision against independent rulings by issuing a fatwa prohibiting them.[33] From western studies, Joseph Schacht confirms that there was time in which the majority of jurists from all *Sunnī* schools of law agreed amongst themselves to close the door of independent legal opinions. This can be seen in his statement:

> By the beginning of the fourth century of the hijra [Islamic calendar] (about A.D. 900), however, the point had been reached when the scholars of all schools felt that all essential questions thoroughly discussed and finally settled, and a consensus gradually established the effect that from that time onwards no one might be deemed to have qualifications for independent reasoning in law, and that all future activity be confined to the explanation, application, and, at the most, interpretation as it had been laid down once and for all.[34]

However, it is worth mentioning that there are some recent studies that refute this alleged issue in the history of the Islamic legal system. Through his comparison between Islamic law functions and common law, as Ibrahim

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[31] Nādiya Sharīf al-ʿUmarī, *Al-Ijtīhād fī al-Islām* (Beirut: Muʾasat al-risāla, 1986), 218.

[32] Muṣṭafā Aḥmad al-Zarqā, *al-Madkhal al-fiqhī al-ʿām* (Damascus: Dār al-qalam, 2004), 1:203.

[33] al-Zarqā *al-Madkhal al-fiqhī*, 1:203.

[34] Joseph Schacht, *An Introduction to Islamic Law* (New York: Oxford University Press, 1982), 70-71.

explains, Rosen makes a similarity between these two systems due to the role of judges in Islamic law. He notes, therefore, that the gates of *ijtihād* were never closed, and that Muslim judges continuously exercised their own reasoning to reach new decisions.[35] Hallaq has doubts regarding the confirmed time of this closing and shows that some believe it happened at the beginning of the fourth Islamic century, while others think it was in the seventh century.[36] In addition, Hallaq denies all studies about the history of *ijtihād* that confirmed the issue of closing the door of *ijtihād* and accusing them of being baseless and inaccurate. He explicitly, therefore, claims that this door was not closed in theory nor in practice.[37] Hallaq has used the discussions in the legal theory (*uṣūl al-fiqh*) about the methods of *ijtihād* to reinforce his claim that the door of *ijtihād* has never been closed.[38] However, Hallaq argues that the requirements of practicing *ijtihād* were too difficult for the vast majority of jurists to be qualified to do this task and this could be the reason behind the allegation of closing the door of independent legal opinions. This can be seen in his statement: "It would therefore be implausible to maintain that the qualifications for *ijtihād* as set forth in Muslim legal writings made it impossible for jurists to practice *ijtihād*."[39] However, Hallaq points out that some of the rejecters of *ijtihād* were groups from the *Sunnī* legal doctrine that originated from the people of Ḥadīth or traditionalists.[40] It seems that Hallaq is working only on the theory and neglecting what had taken place during the third, fourth and fifth centuries. He,

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[35] Ahmed Fekry Ibrahim, *Pragmatism in Islamic Law: A Social and Intellectual History* (New York: Syracuse University Press, 2015), 34-35.

[36] Wael B. Hallaq, "Was the Gate of Ijtihad Closed?", *International Journal of Middle East Studies* 16 (1984): 3–4.

[37] Hallaq, "Was the Gate of Ijtihad Closed?", 4.

[38] Hallaq, "Was the Gate of Ijtihad Closed?", 5.

[39] Hallaq, "Was the Gate of Ijtihad Closed?", 7.

[40] Hallaq, "Was the Gate of Ijtihad Closed?", 7-8.

therefore, shows his doubt about the closing of the gate of *ijtihād* by expressing: "It is difficult to assume that at the time the theory of *uṣūl* was finalised –about the beginning of the fourth/tenth century – Muslims had decided to close the gate of *ijtihad*."[41]

One of Hallaq's justifications for rejecting this issue is the reinterpretation of the original Arabic expression of closing the gate of *ijtihād*, which was used by the jurists and claims that "seventh Arabic *maṣdar* form, *insidād*, and the verb form *insadda* do not denote the agent."[42] He, however, is still uncertain about the issue and this statue influenced him to maintain another solution to his view by arguing: "Thus, whether the gate has always been open or had at one point of time been closed is virtually determined by two elements that complete each other: (1) the existence or extinction of *mujtahids*, and (2) the jurist's consensus that the gate of *ijtihād*, for the reason of extinction, was, or was not, closed."[43]

However, there is no indication or analysis in Hallaq's study of Ibn Taymiyya's *ijtihād* in the divorce law in contrast to the majority of his contemporary *Sunnī* jurists and their dispute with him.

Calder analyses both Schacht and Hallaq's studies about this issue and finds that a middle position between their views is possible through interpreting and adding limitations to their views. Calder believes that Schacht will be correct if he means that the Muslim community started the principle of school affiliation at that time. He also asserts that Hallaq will be correct if he distinguishes

[41] Hallaq, "Was the Gate of Ijtihad Closed?", 10.
[42] Hallaq, "Was the Gate of Ijtihad Closed?", 20.
[43] Hallaq, "Was the Gate of Ijtihad Closed?", 21.

between the two types of *ijtihād* independent and affiliated.[44] Rapoport also supports Hallaq's view that this gate was never closed, and in his statement, he says: "We now know that Islamic legal theory never closed the door of *ijtihād*, and there are by now quite a number of studies demonstrating actual, significant shifts in positive law."[45] In addition, Rapoport views that Hallaq has understood that most medieval jurists were continuous in their independent legal reasoning; in other words, they were against *taqlīd*.[46] Rapoport, however, considers Ibn Taymiyya as a different jurist in comparison to his contemporary jurists regarding *ijtihād* in two ways; firstly, in terms of his theoretical justifications for *ijtihād* action, and secondly, in terms of his independent reasoning on some issues of law.[47]

1.2.2 Justifications as reasons behind the decision to close the gate of *ijtihād*

There were some justifications for this decision. For one, it was believed that the four main Islamic schools of law contained the answers or fatwas relevant to all questions of law.[48] For another, it was very difficult to present a truly independent ruling that would be respected as a precedent by jurists from the fourth century onwards.[49] Another factor was the weak political authority of the Abbasid caliphs. The larger Islamic state had become divided into many smaller states which affected the lives and jurisprudence of the various jurists who in turn found little encouragement to do their best work in producing

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[44] Norman Calder, "Al-Nawawī's Typology of Muftīs and Its Significance for a General Theory of Islamic Law", *Islamic Law and Society* 3, (1996): 137 – 64 (157).

[45] Yossef Rapoport, "Royal Justice and Religious Law: Siyasah and Shari'ah under the Mukluks", *Mamlūk Studies Review* 16 (2012): 71 – 102 (73).

[46] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 199.

[47] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 199.

[48] al-ʿUmarī, *al-Ijtīhād*, 219.

[49] Muḥammad b. ʿAlī al-Mālikī, *Tahdhīb al-furūq wa al-qawāʿid al-sunniya fī al-isrār al-fiqhiyya* (Beirut: ʿĀlam al-kutub, n.d), 2:121.

jurisprudential opinions.[50] Ibn Khaldūn emphasises that one of the reasons behind this closing arose from the many ramifications of new knowledge acquired from Islamic sciences over time. This led to difficulties in reaching an independent ruling and forced the majority of jurists to announce their inability to reach this degree of thinking. Instead, they recommended that people imitate the leaders of the four Sunni schools of law.[51]

However, there are other theories for the reasons behind this decision. For instance, al-Dahlawī believes that the main reason was the emergence of many discussions and disputes among the majority of jurists as well as an increased number of unjust judges. To prevent these disputes, it was decided that a declaration or holding of one of the earlier jurists was required for any rulings about the various disputed subjects.[52] Accordingly, the four Islamic *Sunnī* schools of law were identified as the official sources of law in Islamic communities. Muḥammad al-Ṭabarī (d.310/922) is generally considered as the last jurist who could issue an independent ruling.[53]

In the aftermath of this rejection of independent rulings, the majority of jurists forbade both the people or future jurists from using laws from the Qurānic verses and from ḥadith. These relied on previous views from the leaders of the four schools and the jurists who followed them to argue that the injunction was compulsory.[54] Clearly, the majority of jurists from the four schools had no dispute among themselves concerning the role their schools

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[50] ʿAbd al-Kariym Zaydān, *al-Madkhal li-dirāsat al-sharīʿat al-islāmiyya* (Iskandariiya: Dār ʿumar b. al-khaṭāb, n.d), 147.

[51] Ibn Khaldūn,*Taʾrīkh Ibn Khaldūn*, 1:577.

[52] Al-Dahlawī, *Ḥujat Allāh al-bāligha*, 1:261-262.

[53] Murtaḍā Muṭaharī, *Mabdaʾ al-ijtihād fī al-islām*, trans: Jaʿfar Ṣādiq al-Khalīlī (Tehran: Muʾasast al-baʿtha, 1987), 17.

[54] Muḥammad b. ʿAlī al-Mālikī, *Tahdhīb al-furūq*, 2:122-123.

played as sources of imitation after their collective decision closed the door to independent rulings.

The basis for the identification and restriction of imitation within the four schools was that the schools were responsible for issuing and spreading doctrines among the Muslim communities. Al-Qarāfī confirms that reasoning and uses it as justification for the restriction, identifying the schools as worthy of acknowledgement because of their accomplishments.[55] Similarly, al-Rāʿī focuses on the consensus among jurists about the importance of these schools[56] and the need to imitate their religious practices daily.

This decision affected most Muslim communities and individuals at that time because of the resulting cessation of progress in many aspects of Muslim life, aspects which strongly related to improvements in reasoning that the decision sought to close off forever. Accordingly, some Muslim scholars have negative views about the decision and declare that: "Closing the door to independent ruling … is behind all the mental, intellectual and cultural infections that Muslims are suffering from today."[57]

Similarly, Musṭafā al-Nashār writes about "the scientific backwardness of the Arab and Muslim worlds that was related to forbidding independent rulings in the religion field."[58]

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[55] Aḥmad b. Idrīs al-Qarāfī, *Nafāʾis al-iṣūl fī sharḥ al-maḥṣūl*, ed. ʿĀdil Aḥmad and ʿAlī Muḥammad (n.p: Maktabat nzār muṣṭafā al-bāz, 1995), 9:3966.

[56] Muḥammad b. Muḥammad al-Rāʿī, *Intiṣār al-faqīr al-sālik li-tarjīḥ madhhab al-imām Mālik*, ed. Muḥammad Abū al-Ajfān (Beirut: Dār al-gharb al-islāmī, 1981), 126.

[57] ʿŪmar ʿwbayd Ḥasana, *Murājaʿāt fī al-fikr wa al-daʿwa wa al-ḥaraka* (Riyadh: al-Dār al-ʿālamiyya lil-kitāb al-islāmī, 1992), 98.

[58] Musṭafā al-Nashār, "Al-ʿAqliyya al-ʿarabiyya bayna intāj al-ʿilm wa istīrād al-thqāfa", *mujalat al-mustaqbal al-ʿarabī* 200 (1995): 116-136 (Beirut: Markaz dirāsāt al-waḥda al-ʿarabiyya, 1995), 119.

1.2.3 Ibn Taymiyya's position against closing the door of independent ruling

This new status quo had been in place for more than three centuries when Ibn Taymiyya was born. Ibn Taymiyya himself was a product of this system of common thinking and beliefs, and this was reflected in his earlier years of teaching, issuing fatwas, and writing. In the beginning, his treatises added nothing new and simply followed the mainstream views of the Islamic communities, such as in his *Sharḥ ʿumdat al-fiqh*, *Manāsik al-ḥajj*, and others. He confirmes this at one point, writing:

> I have been asked repeatedly by many Muslims to write down [a treatise] about explanations of the rites of pilgrimage that many of the pilgrims require. I wrote about one rite in my early age and mentioned many supplications in it. Also, I imitated those scholars before me that I had followed, in explaining the laws.[59]

At a young age, he received the Ḥanbalī doctrine and became a great jurist within his chosen *madhhab.* This was confirmed by Safadī who describes Ibn Taymiyya's knowledge, saying:

"He joined the Ḥanbalī doctrine which is the school of Imām Aḥmad. There was not one in his school more aware and greater than him."[60]

Ibn Taymiyya only began to issue works that were contrary to the general jurisprudential atmosphere after he had developed his own independent views within the Ḥanbalī School of law regarding various issues. His views regarding that school demonstrated an ambitious effort to change the static jurisprudential atmosphere. These efforts began with decisions relevant to Islamic law but

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[59] Ibn Taymiyya, *MF*, 26:98.

[60] KHalīl b. Aybak al-Ṣafadī, *Aʿiyān al-ʿaṣr wa aʿwān al-naṣr*, ed. ʿĀlī abū Zaīd and others (Damascus: Dār al-fikr, 1998), 1:234.

which were independent rulings of the sort that had been prohibited for more than three centuries.

In doing so, Ibn Taymiyya initially opened the door of independent ruling within his chosen school without overtly writing or arguing against the decision's theoretical basis. Henri Laoust, however, interprets Ibn Taymiyya's abstaining from discussing whether the gate of *ijtihād* was closed or not as he did not consider this gate as a closed gate.[61] This interpretation from Laoust has come after he neglects Ibn Taymiyya's theoretical and practical steps to re-open this closed gate on the face of jurists and communities. Therefore, Schacht has a contrasting view to Laoust and finds that "Ibn Taymiyya did not explicitly advocate the reopening of the door of *ijtihād* .... but as a consequence of his narrowly formulated idea of consensus, he was able to reject *taqlīd*."[62]

This picture of Ibn Taymiyya continues until the later years of his life, and has been described as an absolute independent ruling (*al-mujtahid al-muṭlaq*) because of his expanded views of Islamic knowledge. He did not issue any *fatwa*s supported by anyone from the Islamic schools of law but relied instead on his own independent ruling. This was mentioned and confirmed by al-Dhahabī who said of Ibn Taymiyya:

"He now has many years in which he has not issued a fatwa in accordance with a particular school but rather by an emergence of the proof of it for him."[63]

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[61] Henry Laoust",Ibn Taymiyya", in: *Encyclopaedia of Islam, Second Edition,* Edited by: P. Bearman, Th. Bianquis, C.E. Bosworth, E. van Donzel, W.P. Heinrichs. Consulted online on 02 March 2017 http:::dx.doi.org:10.1163:1573-3912_islam_SIM_3388 First published online: 2012 First print edition: ISBN: 9789004161214, 1960-2007.

[62] Schacht, *An introduction to Islamic Law*, 72.

[63] Muḥamad b. Aḥmad b. ʿAbd al-Hādī, *Al-ʿUqūd al-durriya min manāqib shaykh al-islām Ibn Taymiyya*, ed. Ṭalʿat b. Fuʾād (Cairo: al-Fārūq al-ḥadīth a lil-ṭibāʿa wa al-nashr, 2002), 109.

This status of Ibn Taymiyya has been emphasised by Rapoport that Ibn Taymiyya in the last years of his life went against the views of the four *Sunnī* Schools of law. He quotes al-Dhahabi's confirmation that Ibn Taymiyya issued legal opinions not according to any school of law but rather on evidence that he found convincing.[64] Al-Matroudi, therefore, transmits al-Dhahabī's view that Ibn Taymiyya was, indeed, a *mujtahid* not a *muqalīd*. He, again, confirms that al-Dhahabī has claimed that his *shaykh* had reached the rank of an absolute *mujtahid* in Islamic law.[65] In these last years of his life and after he became an absolute *mujtahid*, as Al-Matroudi mentions, "Ibn Taymiyya worked with some of his students on the correction of some of his earlier treatises."[66]

It is important to consider Ibn Taymiyya's practical steps towards opening the door of independent rulings both in the Islamic religion generally and in specific cases. To clarify Ibn Taymiyya's general views that were contrary to the mainstream jurisprudential environment, this thesis will focus on issues concerning divorce under Islamic law and particularly issues where there were conflicts between Ibn Taymiyya and the majority of jurists from the four main *Sunnī* schools of law. The thesis will also address Ibn Taymiyya's steps towards proving that the door of independent ruling was no longer closed and should be opened at all times, as well as his efforts to address the disputes among the jurists about specific issues such as those discussed herein.

We will also discuss how frequently Ibn Taymiyya identified disputed points among the jurists as starting points for his objections. In many of these

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[64] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 200.
[65] Al-Matroudi, *The Ḥanbalī school*, 21.
[66] Al-Matroudi, *The Ḥanbalī school*, 24.

instances, the majority of jurists claim that there was a consensus regarding their views and that consequently, further investigation about those issues was unnecessary and the door of independent rulings should remain closed. Ibn Taymiyya begins by investigating the question of whether consensus among the jurists truly existed, and he often discovers that the claimed consensus was not real. By invalidating the alleged consensus, Ibn Taymiyya could then move on to opening the door to an independent ruling.

Ibn Taymiyya sought to create a new perspective regarding issues in Islamic law, and by reopening the door of independent ruling he made this possible. He emphasised that there was no consensus concerning certain issues in Islamic law, and he identified clear disputes among jurists regarding those same issues, saying:

"We do justly confirm the existence of a dispute and do not acknowledge the existence of consensus for that [issue]. Instead, we justly rely on the legislative proofs from the Qurʾān and the Sunna about disputed issues."[67]

With that step, Ibn Taymiyya moved closer to opening the door of independent rulings. He changed the direction of discussion about the relevant issues, transforming what had been considered a consensus issue into a contentious issue that required further discussion among later jurists. By claiming that further discussions were needed about certain issues in Islamic law, Ibn Taymiyya reopened the closed door of independent rulings within Muslim communities. Finally, Ibn Taymiyya emphasised that the larger Muslim community should renew its perspective towards the position of public

[67] Ibn Taymiyya, *al-Radd ʿalā al-Subkī*, 1:265.

disagreement among Muslims, not only among jurists but also throughout the community.

By these means, Ibn Taymiyya reopened the door for independent rulings to other scholars as well. But he went on to warn that even the ordinary Muslims are not in the same level of imitation because there might be some amongst them who have the ability and knowledge to prove something from Islamic law. In this, Ibn Taymiyya had two goals. The first was to show that simply studying Islamic legislation and issues or relying on the views of scholars or jurists was not enough. Ibn Taymiyya saw the possibility of allowing others from the larger Muslim community to participate in legal analysis. To allow such lay analysis required a scientific methodology in arguing and proving.

His second goal was to establish that the door to independent rulings was opened to practically every single Muslim who adhered to the previous condition, which was in adherence to a scientific methodology in arguing and proving that the right of legal analysis is not limited to a particular layer within the community. Ibn Taymiyya explicitly confirmed this last point by stating:

> Also, if the lay person is able to perform the independent ruling regarding some issues, it is permitted for him to do so. Certainly, the independent ruling is a post that accepts the fragmentation and division and its single condition is about ability and disability to do so. A man may be capable when dealing with some [issues] but not capable when considering others. However, the ability to produce an independent ruling cannot be done except through sciences that are necessary to reach the right view.[68]

Finally, it might appear that in some ways Ibn Taymiyya was born into the wrong era of history, as he seems to have been greatly affected by the

[68] Ibn Taymiyya, *MF*, 20:204.

decline of Islamic jurisprudence that resulted from the decision during the fourth century to close the door to independent rulings. Consequently, Ibn Taymiyya devoted the last years of his life to writing, issuing fatwas and contemplating how to change this reality and reopen the closed door. His treatises included many special jurisprudential views that differed from those of the majority of jurists, and we will examine his divergent views about divorce law in particular in order to better understand the distinctions. We will also attempt to identify the reasons underlying Ibn Taymiyya's unique jurisprudential views on those issues where he was at odds with the majority of jurists.

1.3 Second: Doctrinal views (*tamadhhub*) and imitation (*taqlīd*) among the jurists

The four schools (*al-madhāhib al-ʾarbaʿa al-sunniyya*) were already in existence in the fourth century when the decision to close the door of independent ruling was made by the majority of jurists from those schools. Clearly, the development and spread of the doctrinal views of these schools took place very quickly within Islamic communities, and a separation between the four schools of law reached a high level among Islamic communities in general and among jurists in particular. The divergent doctrinal views of these schools are very important to understanding the development of Islamic knowledge and jurisprudence. They each elucidate the Islamic texts from both the Qurʾān and the Sunna, and they each demonstrate fundamental religious law as well as the later explanations and interpretations of that law as presented by the eponyms of the schools or their respective acknowledged followers.

Muslim scholars and jurists relied on the opinions of the eponyms of the four schools for more than three centuries prior to Ibn Taymiyya's time, and Ibn Taymiyya himself was very interested in the views of these eponyms and did his best to relate to and explain their opinions. He also had a special awareness and a deep knowledge concerning the doctrines of these schools. Al-Dhahabī describes Ibn Taymiyya's knowledge of Islamic jurisprudence and the disputed issues among the schools:

"He was one of the most knowledgeable people in knowing Islamic Jurisprudence [and] the differences between Islamic schools (*al-madhāhib al-islāmiyya*) and the Companions (*al-ṣaḥāba*) and the Followers' (*al-tābiʿūn*) legal opinions (*fatāwā*)."[69]

He also states "His transmission of the jurisprudence and the doctrine of the Companions and Followers had no peer, in addition to his transmission from the four Islamic schools."[70] Ibn Taymiyya also expanded knowledge about the views from within each of these schools that had been described by their respective jurists, and jurists from all four schools observed his lectures and received advanced knowledge concerning the doctrines of their schools that had not been previously known to them.[71]

Ibn Taymiyya emerged from a Ḥanbalī family and started his early jurisprudential journey with that school. Throughout his career, he continuously showed interest throughout his many treatises and writings in the opinions of

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[69]Ibn Rajab, *Al-Dhayl ʿalā ṭabaqāt al-ḥanābila*, ed.ʿAbd al-raḥmān ibn Sulaymān (Saudi Arabia, Maktabat al-ʿubaykān, n.d), 4:947.

[70] Ibn ʿAbd al-Hādī, *Al-ʿUqūd al-durriya*, 22.

[71] ʿAbd al-Ḥay b. Aḥmad ibn al-ʿImād, *Shadharāt al-dhahab fī akhbār man dhahab*, ed. ʿAbd al-qādir al-arnāʾuwṭ and Maḥmūd al-arnāʾuwṭ (Beirut: Dār Ibn Kathīr, 1992), 8:144-145.

Aḥmad Ibn Ḥanbal, the eponym of the Ḥanbalī School. He clearly indicates a preference for Ibn Ḥanbal's views, stating:

> Aḥmad was more knowledgeable than others about the Qurʾān, the Sunna, the opinions of the Companions and their Followers. Therefore, he has almost no opinion that contradicts an unambiguous text as others have. He also has no weak opinions in general, but there are views in his doctrines that agree with the strongest views. In most of his own jurisprudential opinions in which he did not contradict himself with later opinions, his view has become preponderant.[72]

Ibn Taymiyya's method of thought fundamentally relied on the Qurʾān and the Sunna. He frequently called for a return to the knowledge and understanding of these two main sources in Islam, as he preferred to look back to the understanding of Islam as it had evolved to the first three centuries since its emergence. He explicitly challenged his antagonists by showing suitability and agreement between his own views and those of the Muslims who had lived during the first three centuries.

> I have given reprieve of three years to anyone who has disputed me. If he brings anything from anyone from these three centuries... that contradicts what I have mentioned, I will retract it. Therefore, it is a duty for me to bring statements from all groups within these three centuries that are in agreement with what I have mentioned.[73]

According to the sources of Islamic history, after the fourth century, Islamic communities strayed far from the original faith, beliefs and thinking of true Islamic religion. This was the result of many factors but especially the decision to close the door of independent ruling. This atmosphere led to an increase in both imitation and fanaticism within the four schools and throughout Islamic communities. These problems worsened in Ibn Taymiyya's time because one of the Mamluk kings, Baybars, had earlier nominated and

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[72] Ibn Taymiyya, *MF*, 20:229.

[73] Ibn Taymiyya, *MF*, 3:169.

added a judge from every single school to the local authority system to become four judges instead of just one as earlier.[74] It is thought that this political intervention into the judicatory system negatively impacted on *taqlid* and *tamadhhub*. Also, as there are many western studies conducted about this decision in that time period, it is very important to address and examine these studies in order to gain an outcome and better understanding of what happened in the real ground in the history of Islamic law. In addition, this will help to shed light about the reality of Ibn Taymiyya's time and his reactions concerning related matters to Islamic law.

There are many opinions and studies regarding the reasons behind Baybars' decision to change the judicial system from one chief *qāḍī* to a quadruple model, including representation jurists from three other Sunnī schools of Islamic law instead of just a Shāfiʿī *qāḍī*. Ibrahim mentions that the Shāfiʿī chief judge Tāj al-Dīn ibn Bint al-Aʿazz had been asked by Baybars himself about the permissibility of a Muslim who follows the Shāfiʿī School to choose the desired rules of other schools. The chief judge refused to respond to this question and Baybars then asked him to appoint a Ḥanafī judge to deal with the matter, but the chief judge refused this order as well.[75]

This single incident, in which the Shāfiʿī chief judge would not cooperate with the political authority, was seen by Sherman Jackson as a top reason behind Baybars' decision to nominate and appoint three other chief judges to be added to judicial system in the Mamluk state. This can be found in his statement:

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[74] Ismāʿīl b. ʿUmar b. Kathīr, *al-Bidāya wa al-nihāya*, ed. ʿabd Allāh b. ʿAbd al-muḥsin (Egypt: Dār hajr, 1998), 17: 460.

[75] Ibrahim, *Pragmatism in Islamic Law*, 130.

"It seems to have been domestic politics that resulted in one of the most significant and lasting changes undertaken in the early Mamluk state, namely, Sultān al-Ẓāhir Baybars' reorganization of the judiciary."[76]

But, Jackson later confirms that Baybars' decision was a result of disputes among an important group, the jurists, in Egyptian society.[77] So, it is better to interpret and link this event to religious, social and political issues instead of just political.

However, Rapoport believes that there was a bigger concern behind Baybars' decision than the relation between Baybars and Tāj al-Dīn ibn Bint al-Aʿazz; the Shāfiʿī chief *qāḍī*. He, therefore, interprets the decision as an attempt to offer flexible laws instead of rigid laws in the *taqlīd* system.[78] So, through our analysis of Rapoport's view, it seems that the authority's one purpose behind appointing the four *qāḍīs* was to spread a notion or a practice that jurists cannot change their doctrinal schools, but people are free to choose any opinion among these four qāḍīs to their transaction, contracts, and any other issues. This is to grant a flexible legal system. However, he claims "By authorizing qāḍīs from different schools to follow their doctrine on specified points of law, the state indirectly intervened in a variety of social and economic interactions."[79]

It seems that Baybars had a prior plan two years before his reign in 660/1262 to change the chief justice from a single to quadruple judges. This is as Jackson confirms:

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[76] Sherman A. Jackson, "The Primacy of Domestic Politics: Ibn Bint Al-Aazz and the Etablishment of Four Chief Judgeships in Mamluk Egypt", *Journal of the American Oriental Society* 115, no. 1 (1995): 52–65, (53).

[77] Jackson, "The Primacy of Domestic Politics", 53.

[78] Rapoport, "Royal Justice and Religious Law", 77.

[79] Rapoport, "Royal Justice and Religious Law", 77.

"Baybars ordered the Shāfiʿī chief justice, Tāj al-Din Ibn Bint al-Aʿazz, to appoint three deputy judges (*nuwwāb/nāʾib*[sg.]) to represent the remaining *Sunnī* schools of law."[80]

However, Jackson rejects this view and explicitly announces that the purpose of his study is to state his conclusion as he points out "Baybars' reorganisation of the judiciary was not the result of a preconceived plan."[81] He also interprets this first action from Baybars as "The installation of the deputies in 660/1262, meanwhile, allowed him time to ascertain the degree of backlash from the powerful Shāfiʿī School and the extent to which the remaining schools of law would actively support him."[82]

It seems that Jackson still wants to discover the actual fact behind this decision. Therefore, he mentions two earlier studies by J. H. Escovitz[83] and J. S. Nielsen[84], which attempt to find out the reasons that encouraged Baybars to announce that decision for changing the judicial system. Here, Jackson also emphasises that the main reason which has been discovered or discussed by the medieval Muslim historians is that "Baybars' action was prompted by complaints about Ibn Bint al-Aʿazz's refusal to implement rulings that went against his Shāfiʿī view."[85] This has been ignored and received an unimportant consideration in these two studies.[86]

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[80] Jackson, "The Primacy of Domestic Politics", 53.
[81] Jackson, "The Primacy of Domestic Politics", 54.
[82] Jackson, "The Primacy of Domestic Politics", 65.
[83]Joseph H. Escovitz, "The Establishment of Four Chief Judgeships in the Mamluk Empire", *Journal of the American Oriental Society* 102 (1982).
[84] Jorgen S. Nielsen, "Sultan al-Ẓāhir Baybars and the Appointment of Four Chief Qāḍīs, 663:1265", *Studia Islamica* 60 (1984).
[85] Jackson, "The Primacy of Domestic Politics", 54.
[86] Jackson, "The Primacy of Domestic Politics", 54.

To reinforce his view regarding the nonexistence of a prior plan by Baybars, Jackson examined the aforementioned two studies that are investigated in some important history sources in the Arabic language. According to these sources, Baybars' decision dated back to a confrontation that happened between Ibn bint Aʿazz and a favoured amir, Jamāl al-Din Aydughdī.

"Aydughdī is reported to have disliked Ibn Bint al-Aʿazz for the severity of his rulings and his refusal to implement others that went against his view."[87]

The strange point in Jackson's argument and unbelievable in reality, unless it is not a prior agreement between Baybars and Amir Aydughdi, is that after a discussion of some complaints against ibn bint Aʿazz, Amir Aydughdi suggested reorganising the chief justice and suddenly Baybars decided in accordance with Aydughdi's plan and appointed chief justices from the Ḥanafī, Mālikī, and Ḥanbalī schools. Jackson, however, confirms that the two researchers do not believe that this incident is a real reason for the installation of the four chief judges.[88]

Ibrahim interprets Baybars' first intervention by requiring the Shāfiʿī chief to choose three deputies afrom other three schools as a process started in order to provide a flexible contract law for merchants, which was not considered legitimate under Shāfiʿī doctrine, in the regime of *taqlīd*. It seems that Ibrahim considers or takes the economic side of this decision into account, when he gives merchants a special and an important place in the decision-making. However, he interprets Baybars' appointing three other chief judges in Cairo, in addition to the Shāfiʿī chief judge, as the summit of the developmental change in the

[87] Jackson, "The Primacy of Domestic Politics", 54.
[88] Jackson, "The Primacy of Domestic Politics", 54.

judicatory system in order to provide an equal representation for the four Sunnī Schools at the highest levels of judicial administration.[89] In addition, Ibrahim argues that

> This quadruple system protected against the type of incidents that Baybars had likely faced at the beginning of his reign in which the Shāfiʿī chief judge overturned the decisions made by judges whose rulings contradicted the views of his school. By making this decision, Baybars was taking a position on a debate that had been preoccupying jurists before his time.[90]

Rapoport also examines Baybars' decision, and according to him, most of the studies conducted to discover the exact reason behind this decision have a political and ideological basis. Rapoport seems to criticise these studies as they pay little attention to its implications on the judiciary system. Rapoport, meanwhile, devoted his own study to this concern and decided that the decision was a reform. Contrary to Ibrahim, therefore, Rapoport considers the judicial aspect of the decision, when he interprets it as a strategy to provide litigants with the flexibility to choose from the doctrines of the four schools.[91] He also shows his agreement with Sherman Jackson's claim that studies and interpretations regarding Baybars' reorganisation of the judiciary system lack an interaction to sources contemporary with Baybars' decision.[92]

Rapoport first begins to reject Jackson's political interpretation of Baybars' decision by limiting the influence of the politically indispensable Ibn Bint al-A'azz without formally dismissing him.[93] He has two factors to strengthen his rejection of Jackson's view; one is that the decision was not the first in the

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[89] Ibrahim, *Pragmatism in Islamic Law*, 42.

[90] Ibrahim, *Pragmatism in Islamic Law*, 50.

[91] Rapoport, "Legal Diversity in the Age of Taqlīd: The Four Chief Qāḍīs under the Mamluks", *Islamic Law and Society* 10, no. 2 (July 1, 2003): 210–28, (210-212).

[92] Rapoport, "Legal Diversity in the Age of Taqlīd", 211.

[93] Rapoport, "Legal Diversity in the Age of Taqlīd", 212.

Islamic communities because there was a prior one under Fatimid's authority, and the other factor is that Baybars had intented to make this change in the judiciary system three years prior to his reign when he ordered the appointment of deputies from the three non-Shafi'i schools.[94] Here, however, Rapoport's two reasons used against Jackson's political interpretation are far from being proved because it seems that Fatimid's action was political as well as legal. The fact that Baybars appointed deputies earlier could be interpreted as being in favour of Jackson's view.

As a result of this political intervention within religious issues, however, fanatical doctrine became an official state position both sanctioned and protected by state authority. This is emphasised by Ibrahim. Judges were required to follow the dominant view within their schools by the political authorities and this can be seen in jurists' writings.[95] If it is said that the Mamluks were simply trying to keep order and balance among the different interest groups in their domain, the response could be; yes, it is correct if it is seen from only its political angle. However, from its religious angle, it can be interpreted that this decision impacted on the improvement of *taqlīd* and imitation in the Islamic communities. Previously, people found one Islamic law in the courtroom officially. However, following this decision, the imitators became delighted and encouraged in their *taqlīd* views when they found that their chosen schools of law had been officially recognised by the state. Ibn Khaldūn described the reality of jurisprudence knowledge during this era:

[94] Rapoport, "Legal Diversity in the Age of Taqlīd", 212.
[95] Ibrahim, *Pragmatism in Islamic Law*, 37.

> [Religious] imitation in the communities was stopped on those four [*Sunnī* school eponyms], and the imitators indoctrinated others. Also, people closed the door of dispute and its paths ... and they returned people back to imitate those [eponyms].... Nothing remained except the transmission of their doctrines, and every imitator acted in accordance with a doctrine of who imitated among them.[96]

As a result, studies, research, writings, and even lessons and lectures during Ibn Taymiyya's era, were remarkably characterised by an intellectual bias and complete imitation in both Islamic law and Islamic theological sciences.[97]

1.3.1 Ibn Taymiyya's perspective regarding *tamadhhub* and *taqlīd*

Ibn Taymiyya describes the process by which he frees himself from imitating others. He acts according to whatever evidence is presented and with whoever presents it, while the majority of scholars in his time imitated a particular doctrine and shortened their works by explaining and clarifying what had come before in their leaders' doctrines.[98] It seems that the understanding of Islamic law in Ibn Taymiyya's time had changed from an evidence-based analysis of both the Qurʾān and the Sunna to simply imitating the opinions of the eponyms and followers of the four *Sunnī* schools of law. This may be one of the reasons behind Calder's view concerning *taqlīd* that has two opposite angles; one is negative and weak and therefore should be avoided and disapproved, and the other is positive and necessary in which the community can achieve the fulfillment of a communal obligation, through the benefits of the past jurists' opinions.[99]

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[96] Ibn Khaldūn, *al-Muqadima*, ed. Par M. Quatremere (Beirut: Maktaba lubnān, 1992), 3:6.
[97] al-ʿUqaylī, *Takāmul al-manhaj*, 28.
[98] al-ʿUqaylī, *Takāmul al-manhaj*, 28.
[99] Calder, "Al-Nawawī's Typology of Muftīs", 152.

In that era, imitation in doctrinal views was highly recommended among the majority of jurists from the four schools in both jurisprudence and faith, both theoretically and practically.

> The majority of jurists adhere to their leader's doctrines. They do not see it as easy to diverge from him even in his details. The end effort of whoever notices himself to doing independent ruling is to go out from his leader's opinions, or to do investigation regarding preponderant opinions in the same doctrine. He definitely does not see for himself the right to take on preponderant [opinions] [outside of] his doctrine. This is because of his thinking that success is, always, with his leader.[100]

We can easily find hard statements that prefer imitating the doctrines of these schools to citing clear verses from the Qurʾān, the authentic Ḥadīth and the opinions of the Companions. For instance, al-Ṣāwī says:

> It is not permissible to imitate [from any source] other than the four schools even if it is in agreement with the view of the Companions, the authentic Ḥadīth , and a verse in the Qurʾān. Deviation from the four schools is misleading and this may lead to disbelief.[101]

In another example, al-Qāḍī ʿAyāḍ shows how imitators treated the words of their leaders: "The leader's words for his imitator are as important as the lawgiver's words."[102] However, to the eponyms of these four Islamic Schools (Mālik, Abū Ḥanifa, Shāfiʿī and Aḥmad Ibn Ḥanbal), the preferred views were those which agreed with the teachings of the Qurʾān and the Sunna.[103]

This perspective regarding the opinions of the eponyms of the four schools persisted until Ibn Taymiyya's era. This was one of the main disputed points between him and his detractors. Ibn Taymiyya's methodology followed

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[100] al-ʿUqaylī, *Takāmul al-manhaj*, 67.

[101] Aḥmad al-Ṣāwī, *Ḥāshiyyat al-ṣāwī ʿalā tafsīr al-jalālayin* (Cairo: al-Maṭbaʿa al-azhariyya, 1926), 3:9.

[102] Muḥammad b. al-Ḥassan al-Ḥajawī, *al-Fikr al-sāmī fī taʾrīkh al-islāmī* (Tunisia: Maṭbaʿa al-nahḍa, n.d), 3:3.

[103] Ibn Taymiyya quoted the eponyms' views about this issue in *MF*, 20:211-212.

the evidence that was not contradicted by the Qurʾān and the Sunna regardless of whoever mentioned it. However, the majority of jurists in his time followed figures who depended upon the reputation of the speaker without considering the convergence of the speaker's views with the teachings of the Qurʾān and the Sunna.[104]

According to Ibrahim and due to the *taqlīd* system, the judges were required to provide the flexibility needed for the functioning of the Mamluk state. This was parallel with the switch from the common law to the codification episteme in the Mamluk judicial system.[105] Ibrahim seems to interpret all the changes and processes that happened in the *taqlīd* system as the steps of reaching pragmatic eclecticism in Islamic law. This can be found when he explicitly emphasises it in another place and claims that "Pragmatic eclecticism represented the final stage in the institutionalization of *taqlīd* and the transformation of Islamic law from a common law system to a codification ethos."[106] He, therefore, considers Baybars' rearrangement of the judicial system as a shift to a pragmatic legal system when he points out that "For jurists to accept Baybars' pragmatic legal system, endorsing a certain degree of relativism and probabilism was essential".[107]

Here, Ibrahim views that Baybars' decision on the other hand changed the mind of jurists from the unity of truth to accepting the existence of multiplicity truth. He also views Baybars' decision as a contribution for additional community pressure on jurists to express their justifications for

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[104] Ṣāliḥ b. ʿabd al-ʿazeez āl manṣwr, *Iṣūl al-fiqh wa Ibn Taymiyya* (Egypt: Dār al-naṣr, 1985), 1:60.
[105] Ibrahim, *Pragmatism in Islamic Law*, 43.
[106] Ibrahim, *Pragmatism in Islamic Law*, 59.
[107] Ibrahim, *Pragmatism in Islamic Law*, 50.

pragmatic eclecticism.[108] Therefore, Ibrahim explicitly confirms that an opposition to *taqlīd* hegemony became a rejection of pragmatic eclecticism system in Islamic law. This happened when the opponents of *taqlīd* raised their main point, which was the rejection of the notion of the unavailability of *mujtahids* that the supporters of *taqlīd* used it as their justification.[109] Ibrahim argues that al-Ghazālī rejected calling laypeople *muqallid* because it is from consensus that they are obligated to follow a *mufti's* opinions and this action is based on evidence that cannot be called *taqlīd*. He uses this instance as a first approach of anti-*taqlīd* jurists to refute *taqlīd* notion by making a distinction between *taqlīd* and *ittibāᶜ* (following).[110] Ibrahim also uses Ibn Taymiyya's classification of *tarjiḥ* in two types, one of which is based on specific proofs (*dalīl khāṣṣ*) and the other on general proofs (*dalīl 'āmm*) as an instance of the second approach of the opponents of *taqlīd* system as the *ijtihād* procedure is very simple so that everyone can exercise it.[111]

1.3.2 The impact of *tamadhhub* and *taqlīd* in the communities

Imitation became official in the Mamluk legal system as claimed by Rapoport in this statement:

"Uniformity was a key feature of the Mamluk legal system. Any judge was obligated by his appointment deed to rule according to the established doctrine of his school of law."[112]

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[108] Ibrahim, *Pragmatism in Islamic Law*, 103.
[109] Ibrahim, *Pragmatism in Islamic Law*, 70.
[110] Ibrahim, *Pragmatism in Islamic Law*, 70.
[111] Ibrahim, *Pragmatism in Islamic Law*, 71.
[112] Rapoport, "Legal Diversity in the Age of taqlīd", 217.

However, with the above confirmation by Rapoport that every appointed judge was obligated not to rule outside his own school of law, intentionally, he later on asks this question, "Why were *qādīs* appointed to rule according to four different codes of law?"[113] We think, probably, the answer of this question will serve Rapoport's own interpretation regarding this decision. However, what Rapoport attempts to emphasise is that people choose their flexible laws. But, it can be said that the reality meant that Muslims chose their flexible law out of the courtrooms, even before Baybars' decision, during the Mamluk time. However, the political authorities, due to their views in accordance of their own private benefits and their survival on the throne of authority, appointed four chief *qaḍīs* everywhere regardless of whether there were people affiliated to all of these four *madhhabs.* By this, they negatively influenced both people and jurists from all schools of law. It was an intervention between people and the inherited legal system because of political goals instead of a real reform in that legal system. This can be evidenced by Wael Hallaq's point of view in his book *Sharīʿa: Theory, Practice, Transformations* as reported by Rapoport, that the ideal form of Islamic law is independent of the state.[114] Also, Rapoport himself concludes, "It follows that any intervention of the state in legislation or administration of the law is a corruption of the ideal *shariʿah.*"[115] Rapoport, however, later on states that "I will also hope to show that the evidence from the Mamluk era does not point to a corruption of an ideal and rigid Islamic law, but rather indicates a legal system in

[113] Rapoport, "Legal Diversity in the Age of taqlīd", 218.
[114] Rapoport, "Royal Justice and Religious Law", 74.
[115] Rapoport, "Royal Justice and Religious Law", 74.

which the state takes an active role in adapting the sacred law, the *shariʿah*, to social practice."[116]

In another article and in its conclusion, Rapoport points out that "As a result of *taqlīd*, the Shāfi'ī *qāḍī* had to adhere to Shāfiʿī doctrine regardless of the legal outcome"[117]. This neglects the fact that by appointing the four chief *qāḍīs*; if *tamadhhub* was widespread unofficially in the communities, now it became an official part of the state organised legal system.

Not imitating the opinions of the eponyms of the four main *Sunnī* schools was the main complaint against Ibn Taymiyya by his contemporary detractors, especially those who were very close to and had strong relationships with the authorities. They accused Ibn Taymiyya both by overemphasising what he did not say and distorting what he did say in order to claim that his opinions contradicted the Qurʾān, the Sunna and the consensus among the jurists.[118] This perspective of the imitator-jurists about Ibn Taymiyya, who simply had differing views, could be interpreted that they were simply upholding and enforcing orthodoxy as they understood it and wanted Ibn Taymiyya to conform to their way of thinking. However, it is claimed that Ibn Taymiyya's opponents' reaction was a type of intellectual terrorism by modern standards.[119]

This reality led to an emergence of aggression within the followers of the four schools themselves, and there are many instances of aggression recorded in the works of Islamic jurists or scholars. For example, al-Dhahabī quoted Muḥammad Ibn Mūsā as saying "If I had the power, I would take tribute from

[116] Rapoport, "Royal Justice and Religious Law", 75.
[117] Rapoport, "Legal Diversity in the Age of taqlīd", 227.
[118] Āl Manṣwr, *Iṣūl al-fiqh*, 1:60.
[119] Al-ʿUqaylī, *Takāmul al-manhaj*, 28.

[all] who have taken the Shāfiʿī doctrine."[120] Another such instance was the statement of Abū al-Ḥasan al-Karkhī that "every single Ḥadīth contradicted by what our friends are following is either interpreted or abrogated."[121] There were also instances of claiming the invalidity of a prayer performed by a prayer leader who followed a contrary doctrine.[122] Al-Ḥajawī mentioned that some fanatical imitators believed that "Al-Mahdī, the anticipated coming leader, when he appears, or even the son of Mary, Jesus Christ when he comes down at the end of time, will [both] imitate Abū Ḥanīfa, and they will not disagree with him in anything."[123]

1.3.3 Ibn Taymiyya as an absolute *mujatahid* in the era of *tamadhhub* and *taqlīd*

Ibn Taymiyya, though originally a Ḥanbalī scholar, found himself in an inconvenient era in which everything that is related to an understanding of Islamic thought and belief was contradicted by his own knowledge. Because of his understanding and awareness regarding the opinions and views of the four eponyms about most issues in Islamic law and about Islam in general, Ibn Taymiyya assumed the responsibility of countering doctrinal fanaticism, and he suffered many negative personal experiences both politically and socially due to his jurisprudential approach from those who were blindly fanatic. Al-ʿUṭayshān claims that Islamic science had been struck by "intellectual stagnation due to jurists rejecting all sources except their own individual doctrines as handed down by their fathers. This is without using reason or scientific ability but

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[120] Al-Dhahabī, *Mīzān al-iʿtidāl fī naqd al-rijāl* (Egypt: Dār iḥyāh al-kutub al-ʿarabiyya, 1963), 4:51.
[121] Muḥammad al-khaḍarī bik, *Taʾrīkh al-tashrīʿ al-islāmī* (n.p: Dār al-fikr, 1967), 280.
[122] Muḥammad ʿīd ʿabāsī, *Bidʿat al-taʿaṣub al-madhhabī wa āthāruhā al-khaṭīra fī jumwud al-fikr wa inḥṭāṭ al-muslimīn* (Jordan: al-maktaba al-islāmiyya, n.d), 155.
[123] al-Ḥajawī, *al-Fikr al-sāmī*, 3:3.

simply imitation".[124] In other words, jurists rejected new thoughts, interpretations and opinions without any logical or scientific discussion simply because they were not mentioned earlier by the eponyms of their schools. Socially, the rivalry among the four schools themselves bred aggression and hate that was far from the original Islamic teachings, and they ultimately imposed conditions and restrictions upon each other that led each side to accuse the other by disbelief.[125]

As mentioned previously, Ibn Taymiyya was knowledgeable about the beliefs of all four schools as is clear from his writings and legal opinions (*fatāwā*). When he mentioned or discussed an issue, he often mentioned the views of the eponyms of those schools regarding it. Then he chose an opinion from among them as his preferred one after following the proper evidence from the Quran and the Sunna. In his different selections of the jurisprudential opinions taken from the schools, Ibn Taymiyya followed his own thoughts about which opinion succeeded in establishing the most correct proof. However, as the previously discussed opinions of Ibn Taymiyya regarding the views of Aḥmad ibn Ḥanbal make clear, Ibn Taymiyya overwhelmingly prefers Ḥanbalī views over those of other schools. While this might suggest that Ibn Taymiyya was an imitator of the Hanbalī School, we will show that Ibn Taymiyya struggled against the practice of blind imitation among jurists and within the Islamic communities in his later years. When we see these eponyms in agreement with the views of their peers, it does not always mean that they were imitating each other. Aḥmad ibn Ḥanbal agreed with many opinions issued by al-Shāfiʿī and Mālik, while al-Shāfiʿī also

[124] Suʿūd b. Ṣāliḥ al-ʿUṭayshān, *Manhaj Ibn Taymiyya fī al-fiqh* (Riyadh: Maktabat al-ʿubayqān, 1999), 68.
[125] Al-ʿUṭayshān, *Manhaj Ibn Taymiyya*, 68.

agreed with Mālik's views, and yet we do not claim that they imitated each other.[126]

Here, it is worth mentioning that this point became a big difference between my study and that of Al-Matroudi. He claims that it is difficult, to researchers who study Ibn Taymiyya, to identify his sources of law. Even though he previously transmitted al-Dhahabī's statement about Ibn Taymiyya being a *mujtahid* rather than a *muqallid* in the last years of his life, Al-Matroudi argues that Ibn Taymiyya's unknown sources of law are a problematic matter to researchers concerning the question: was Ibn Taymiyya a *mujtahid* or *muqallid*?[127] Al-Matroudi himself seems to support the view that addresses Ibn Taymiyya as an affiliated *mujtahid* to Ḥanbalī School of Law rather than an absolute *mujtahid*. Nevertheless, he argues that when Ibn Taymiyya did not issue an independent treatise, like other jurists, regarding *uṣul al-fiqh*, this increased the difficulty of identifying Ibn Taymiyya's position.[128]

Al-Matroudi, therefore, raises an insignificant point regarding the position of Ibn Taymiyya in the history of Islamic jurisprudence. This can be seen in his statement:

"Some contemporary writers have argued either that Ibn Taymiyya's sources are the same as those of Ibn Ḥanbal or that he was a Ḥanbalī scholar."[129]

We see that al-Matroudi has had a difficult start in identifying whether Ibn Taymiyya was *muqallid* or *mujtahid.* He examined this by looking at several

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[126] Āl Manṣūr, *Uṣūl al-fiqh*, 2:734.
[127] Al-Matroudi, *The Ḥanbalī school*, 39.
[128] Al-Matroudi, *The Ḥanbalī school*, 39.
[129] Al-Matroudi, *The Ḥanbalī school*, 39.

studies, which have dealt with Ibn Taymiyya's sources of law. As a consequence, he found that Ibn Taymiyya's sources were mostly the same as Ibn Ḥanbal's sources. However, we think it is false analysis to decide that Ibn Taymiyya was a *muqallid* of Ibn Ḥanbal due to using the same sources. Also, we know that all eponyms of Islamic schools of law all used nearly the same sources in their writings and fatwas.

After a long discussion to discover Ibn Taymiyya's preferred schools of law, without considering his opinions different to those of the Islamic law school eponyms or his preferred views from the four schools of law, Al-Matroudi urgently and questionably claims that:

"It is clear therefore that Ibn Taymiyya admired the Ḥanbalī School. Did this admiration cause him to follow Ibn Ḥanbal's sources of law rigidly, or did he merely adapt these sources? Did he adapt them or did he have his own sources?"[130]

Later on, however, Al-Matroudi explicitly shows his desire to count Ibn Taymiyya as a follower of Ḥanbalī School when he argues that "Ibn Taymiyya's acceptance of Ibn Ḥanbal's principles would suggest that he was happy to consider himself a follower of Ibn Ḥanbal's school."[131]

However, Al-Matroudi himself is in doubt about his own claim toward Ibn Taymiyya. Therefore, he points out that "There may yet, however, be scope to

[130] Al-Matroudi, *The Ḥanbalī school*, 45.
[131] Al-Matroudi, *The Ḥanbalī school*, 49.

argue that he can be classified as an absolute *mujtahid*, independent of Ibn Ḥanbal's school."[132]

The net effect of Al-Matroudi's study suggests that Ibn Taymiyya was an absolute *mujtahid* even though he backs away from this conclusion. Unfortunately, however, it seems that due to his previous decision to count Ibn Taymiyya as a follower of Ḥanbalī School, he pursues the steps of earlier scholars within Islamic law who have classified two types of absolute *mujtahid*; one is dependent and the other is independent. This is to count Ibn Taymiyya as a dependent absolute *mujtahid* and include him in the Ḥanbalī School. The strange point is that Al-Matroudi shows that these two types of *mujtahid* are occupying the same rank of knowledge, which is a potential argument for the *ijtihād* action, and the only difference between these two types is that the independent uses his own sources but that the dependent employs another scholar's general principles of law.[133]

Al-Matroudi concludes that Ibn Taymiyya has dealt with the same sources of law as Ibn Ḥanbal, and Ibn Taymiyya's additional works were just clarifications and corrections to some matters related to the work of Ḥanbalī jurists.[134] Here, Al-Matroudi ignores or even does not interpret Ibn Taymiyya's different views on the issues of divorce and others which were opposite to Ḥanbali School and even to Ibn Ḥanbal himself. At the very end of his discussion, therefore, Al-Matroudi attempts to interpret that others calling Ibn Taymiyya an absolute *mujtahid* is also his own view when he states that:

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[132] Al-Matroudi, *The Ḥanbalī school*, 49.
[133] Al-Matroudi, *The Ḥanbalī School*, 53-54.
[134] Al-Matroudi, *The Ḥanbalī School*, 54.

> It can be said that when some scholars describe Ibn Taymiyyah as a *mujtahid muṭlaq*, they mean that he had obtained the proper requirements for a scholar to be considered as an absolute *mujtahid*, but this did not necessitate that he had developed his own general principles of jurisprudence. The safest conclusion is that Ibn Taymiyyah ought to be considered an absolute *mujtahid* who at the same time chose to be dependent on Aḥmad's general principles of jurisprudence.[135]

Here, it is important to indicate that Rapoport also attempts to examine whether Ibn Taymiyya was an absolute *mujtahid* who did not attach himself to any school of law or that he was an affiliated *mujtahid* who followed the Ḥanbalī School of Law. Therefore, he asks a direct question: Did Ibn Taymiyya view himself as a member of the Hanbalī School of Law? Therefore, because of Ibn Taymiyya's preference for Ahmad's opinions, Rapoport argues, "Ibn Taymiyya does acknowledge the validity of a legal methodology based on Ibn Ḥanbal's principles and statements."[136] However, as Rapoport confirms, Ibn Taymiyya used his attachment to the Ḥanbali school not only as mere imitation, like the majority of jurists from all the four schools of law, but as one of choice regarding legal methodology to follow in issuing legal opinions.[137]

In the later years of his life, however, Ibn Taymiyya became an independent jurist and did not associate himself with any specific *Sunnī* school of law when issuing fatwas or writings or even when simply answering Muslims' religious questions. This has been mentioned earlier in this chapter and confirmed by al-Dhahabī. To fully understand Ibn Taymiyya's jurisprudential approach, we must first understand the steps he took to grapple with the details of each case. He began with the Ḥanbali School to which he belonged, and he fought against notions concerning the imitation within that school. He

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[135] Al-Matroudi, *The Ḥanbalī School*, 54.

[136] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 200.

[137] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 201.

investigated many of Aḥmad ibn Ḥanbal's ascribed opinions before explicitly announcing that they were not Aḥmad's original views.[138] By doing so, he diluted the force of imitation within the Ḥanbali School by denying that some of its ascribed views were not actually held by the school's eponym. Next, Ibn Taymiyya boldly announced that he himself would not imitate Aḥmad ibn Ḥanbal. Ibn al-Qayyim narrated a story which occurred in one of the Ḥanbalī religious schools in which Ibn Taymiyya explicitly announced this to his disciples:

> Some imitators denied Ibn Taymiyya's teaching in Ibn al-Hanbalī's school [regarding Hanbalī's religious statement]... that an independent jurist [*mujtahid*] cannot be accepted among them.... He [Ibn Taymiyya] replied: 'But I take what I am taking from it depending on my knowledge regarding Aḥmad's doctrine not on imitating him'.[139]

Ibn Taymiyya suffered persecution because of his challenge to the tradition of imitation among the jurists of the four schools. Some of his difficulties came from judges who also belonged to the Ḥanbalī School and who disapproved of the results of his attempts to break the influence of imitation within that school. This was confirmed by one of Ḥanbalism's great jurists, Ibn Rajab, who said that:

> Many scholars, including jurists, Ḥadīth scholars, and righteous people, hated [Ibn Taymiyya's] own views of some phenomenal issues that the Predecessors denied in those who deviated from them. Even some of our just judges from our colleagues prohibited him from issuing fatwas about this.[140]

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[138] for instance look at Ibn Taymiyya, *MF*, 20: 225-226, 22:591, 25:99, Minhāj al-sunna, 2:244

[139] Ibn al-Qayyim, Iʿlām al-mwaqaʿyin ʿan rab al-ʿālamīn (Riyadh: Dār Ibn al-Jawzī, 2002), 2:542.

[140] Ibn Rajab, *Al-Dhayl ʿalā ṭabaqāt al-ḥanābila*, 4:505.

It is worth mentioning here that the divorce-related issues discussed later in this thesis were the subject of many debates between Ibn Taymiyya and the majority of jurists, debates that arose from these alleged phenomenal issues within his original school and the other three schools. Therefore, our main goal is to identify and examine those areas in detail, which were the subject of disputes between Ibn Taymiyya and the majority of jurists. Then, we can evaluate and analyse both sides' discussions and proofs in order to identify the reasons for any dispute. This will aid specialists in Islamic law to identify a better methodology for understanding and rethinking conflicting opinions from Islamic jurists in more general circumstances.

Ibn Taymiyya's theoretical methodology opposed the widespread use of imitation among Muslims. This was obvious in some statements and expressions found in his treatises, his fatwas, and even his direct answers to Muslims' questions. Therefore, it is important to show Ibn Taymiyya's statements concerning the risks of imitation or in following just one school or even all four schools regardless of whether the decision was supported by proper Qurʾānic and ḥadīthevidence.

Ibn Taymiyya explicitly declared that the school doctrinal view (*tamadhhub*) was not a duty for Muslims according to Islam because knowing about the Islamic duties is not limited to school doctrines (*madhāhib*):

> It is not an obligation upon any Muslim to commit to a particular person's doctrine except the Messenger, peace be upon him, regarding everything that he obligates and reports. On the contrary, the opinions of anyone can be taken and abandoned except the Messenger of Allah. It is only permitted to follow a particular person's doctrine due to his inability to know the religious laws without following someone else. It is

> not a duty on anyone who has the ability to know about the religious laws in another way than this. But everyone is obligated to obey Allah as best he can and to seek knowledge of Allah and His Messenger's commands. Then, he can do what is commanded and abandon what is prohibited.[141]

It seems that Ibn Taymiyya targeted imitation of one particular school or person in the above quoted statement. However, Ibn Taymiyya found that for some people, imitation is the result of a systematic procedure and affects the psychological desires of affected people instead:

> Among people are those who if they deem an act to be recommended or preponderant, they will continue protecting it more than they protect their obligations. This will continue until they act out of whim, fanaticism, and ignorant zeal. Also, you find this among those who choose some of these issues and others and consider them as a slogan of their doctrine.[142]

Ibn Taymiyya seems to blame the followers of the eponyms of the four schools instead of the eponyms themselves. He found that the eponyms did not demand either imitation or fanaticism towards other doctrines, but that their followers ascribed opinions to them that the eponyms did not announce.[143]

Ibn Taymiyya continuously targeted imitation and emphasised that the truth might well be found out of an imitator of one school who linked a real truth to his chosen school:

> If a man receives jurisprudential knowledge and behaves in a certain way of a folk among the believers, like following leaders and Shaykhs, it is not permissible for him to make his method and its owners as a norm through which he then befriends those who

[141] Ibn Taymiyya, *MF*, 20:209.
[142] Ibn Taymiyya, *MF*, 24:199.
[143] Al-ʿUṭayshān, *Manhaj Ibn Taymiyya*, 69.

> agree with them while remaining hostile towards those who disagree with them.[144]

By this, Ibn Taymiyya meant that he had not seen the complete religious truth within any one school and that loyalty must be for the truth and not for the jurists.

Ibn Taymiyya also found that some jurists or lay people followed a particular school not because they found it the most doctrinally truthful but rather due to their worldly purposes. He condemned that kind of imitation, saying:

> There is no doubt that committing to the doctrines and existing within them if it is for other than a religious issue -- for instance, committing to a doctrine in order to obtain a worldly purpose of either money or stature and similar to these matters [is wrong].... This person is not to be praised for this but to be disparaged for it.[145]

Ibrahim, in his study, confirms this point raised by Ibn Taymiyya about following or switching to a particular school due to worldly purposes. He points out that there are some confirmations of changing from one school to another in order to obtain certain salaried positions. Also, he quotes some direct instances to the issue when someone called, "My school is the school of bread and food," and one temporarily became a follower of the Mālikī school in order to have a chance to obtain an official position and then returned to follow his original Shāfiʿī School.[146] This could be a reason behind the outcome connected to Escovitz's study that "many Chief Judges even compounded the difficulties of the Islamic Community by adding their own varieties of corruption and fraud to the

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[144] Ibn Taymiyya, *MF*, 20:8.

[145] Ibn Taymiyya, *MF*, 20:222.

[146] Ibrahim, *Pragmatism in Islamic Law*, 81.

baser designs of the Mumluks."[147] However, Ibn Taymiyya saw switching between schools over religious issues as something that was acceptable and praiseworthy:

> But if his move from one doctrine to another for a religious issue, such as discerning preponderance for a view held by the other, and he follows the view that he thinks it is closer to Allah and His Messenger, he will be rewarded for this.[148]

Despite Ibn Taymiyya's resistance against widespread imitation among Islamic communities during his time, he also realised that such activity was typically the result of societal habits.

> Most people are committed to doctrines and even religions by the impact of what became apparent to them. Surely, human beings arise from the religion of their father, their master, or the people of their country. This is like how a child regarding religion follows his parent, his capturers, and his country's people. Then, if a man reached puberty he must devote himself to obey Allah and His Messenger wherever.[149]

In this passage, Ibn Taymiyya seems to emphasise that after more than three centuries, imitation had become a habit among Muslims, and it had changed from a solely religious issue into a matter for both religion and society that could be resolved by working on both sides of Islamic communities.

Ibn Taymiyya's previous statements and expressions about imitation mostly targeted the imitation of every single school to show how it was contrary to Islamic law to follow a particular doctrine that had been highly recommended in his time. But he went on to show that every single Muslim had the right to choose among Islamic schools whenever he thinks another school is closer to the proofs from the Qurʾān and the Sunna. Therefore, we find Rapoport indicates that one important issue which differentiates Ibn Taymiyya from those of the

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[147] Joseph H. Escovitz. *"The Office of Qâḍî al-quḍâ t in Cairo under the Baḥrî Mamluks."* Ph.D. diss., Mcgill University 1978, 259.

[148] Ibn Taymiyya, *MF*, 20:223.

[149] Ibn Taymiyya, *MF*, 20:225.

majority of jurists from the four schools of law is his rejection of the individual schools of law as sources of legal authority.[150] However, because of problems arising from imitation in his era, Ibn Taymiyya also worked hard to show that imitation, regardless of school, was not properly derived from religion and that Muslims must follow those opinions which agreed with the Qurʾān and the Sunna regardless of who expressed it. Therefore, we will consider some of Ibn Taymiyya's discussions concerning his justifications and also show some historical facts about the opinions of the eponyms of the four Sunni schools.

In his later years, Ibn Taymiyya himself became famous for not imitating the opinions of the four schools as they applied to many issues of Islamic law. This thesis focuses on areas where Ibn Taymiyya's views differed from those of the majority of jurists and especially areas where Ibn Taymiyya became a target of criticisms from all four schools, including the Ḥanbalī School. In fact, in response to Ibn Taymiyya's independent views, Ibn Rajab al-Ḥanbalī himself wrote a treatise called *al-Radd ʿalā man ittabaʿ ghayr al-madhdhāhib al-arbaʿa (Rebuttal of those who follow other than the four schools)*[151] Nevertheless, Ibn Taymiyya's major intention was not to target the eponyms of these schools for whom he had much respect. Instead, he preferred to consider all of their views in case he found them to agree with the Qurʾān and the Sunna. His true targets were the followers of these schools who had become fanatics of rival schools and who added positions that the eponyms had neither expressed nor thought.

> Some groups of the people of innovations and whims in which they differed from the schools' eponyms in the principles of theology, had followed them in the principles of jurisprudence [and added things] in

[150] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 204.

[151] It is a small treatise that is attributed to Ibn Rajab al-ḥanbalī which is not published yet.

> which the eponyms were innocent of [these additions by] those followers.[152]

Ibn Taymiyya also showed that it is not an obligation to follow or imitate any agreed view among these schools for any particular issue. The chosen issues for study in this thesis concern selected matters about which Ibn Taymiyya's views differed from the opinions of the majority of jurists within these schools. Despite his disagreement, however, he highly respected the eponyms of these schools and provided excuses and justifications to their incorrect opinions as he explained in his treatise *Rafᶜ al-malām ʿan al-aʾimma al-aʿlām (The Elimination of Critical Blame on Celebrities' Leaders).*[153] Rapoport examines this treatise and shows Ibn Taymiyya's purposes behind it. He finds that:

> The conclusion of the treatise is that it is not allowed for a jurist to turn away an opinion indicated by the Sunna in favour of a scholar, as knowledgeable as he may be, for that scholar may or may not have had the evidence to support this view. The valid tradition is a legal proof, the view of a scholar- even that of Aḥmad Ibn Ḥanbal is not.[154]

We will also address some of Ibn Taymiyya's declarations regarding the non-obligation of Muslims to imitate the schools on matters of Islamic law. He strengthened his position by pointing out where the eponyms of these schools themselves prohibited followers from imitating them and following the Qurʾān and the Sunna only. He, therefore, transfers some statements from those school eponyms as showing proofs of his claim. In this regard, he transfers direct quotations from Abū Ḥanīfa, Mālik and al-Shāfiʿī about their advice to not take

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[152] Ibn Taymiyya, *Kitāb bayān al-dalīl*, 132.

[153] For details look at Ibn Taymiyya, *MF*, 20:231-290. Al-Matroudi, "The Removal of Blame from the Great Imāms: An Annotated Translation of Ibn Taymiyyah's Rafᶜ al-Malām ʿan al-Aʾimmat al-Aʿlām", *Islamic Studies* 46.3 (2007): 317-380.

[154] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 204.

their opinions as the absolute and only correct views.[155] Then Ibn Taymiiya indicates an explicit statement from Aḥmad ibn Ḥanbal in which he orders not imitating himself and others: "Imām Aḥmad used to say 'Do not imitate me nor imitate Mālik, Shāfiʿī and al-Thawrī and you have to learn like we have learned'. He also used to say 'It is from a man's lack of knowledge when he imitates other men in his religion'." [156] So, it seems that Ibn Taymiyya had more confirmations from these eponyms concerning their views against the imitation generally and imitating themselves in particular. Therefore, he explicitly points out that:

> It is confirmed from them [the four eponyms] that they prohibit people to imitate them, and they command that if [people] see a view in the Qurʾān and the Sunna that is stronger than their views, to take what is provided in the Book and the Sunna, and to abandon their views.[157]

Clearly, Ibn Taymiyya sought to emphasise that under Islamic religion, the opinions or interpretations of these four eponyms have no special authority over any single Muslim because even their agreed views cannot be taken as a consensus among Muslims. He later clarified this, arguing that the "views of some of the community like the four jurists [eponyms of four Islamic schools of law] and others are neither an obligatory argument nor a consensus according to Muslims' agreement."[158] As Ibn Taymiyya concluded, many important followers of these eponyms did not imitate them regarding some issues. "Therefore, great [scholars] followers of the four eponyms still, if an indication [evidence] in the Qurʾān and the Sunna became apparent to them, followed it [even if it leads to the] opposite of the view of whom they followed."[159]

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[155] Ibn Taymiyya, *MF*, 20:211

[156] Ibn Taymiyya, *MF*, 20:212-213.

[157] Ibn Taymiyya, *MF*, 20:10-11.

[158] Ibn Taymiyya, *MF*, 20:10.

[159] Ibn Taymiyya, *MF*, 20:11.

In another statement, Ibn Taymiyya argues that the first and last judgement returns back to the Qurʾān and the Sunna regardless of the opinions of any jurist. He also argues that originally the views of jurists were supported by legitimate proofs and so their views cannot be an argument against legitimate proofs.

> It is not permissible for anyone to argue by one's view regarding disputed issues because the argument is from text [from the Qurʾān and the Sunna] and consensus, and evidence derived from them and their premises are approved by legitimate evidence. Therefore, the views of jurists can be supported by legitimate proofs, and their views cannot be an argument over legitimate proofs. But whoever emerged [with] a doctrine became accustomed to it and believed in what was included in it, and he does not understand about legitimate proofs and jurists' disputes. So, he does not differentiate between what has come from the Prophet that was received by the community in an acceptable manner and which [carries an] obligation to believe in it and what some scholars said that is difficult or impossible to make an argument from. Whoever does not differentiate between this and that [should not] speak out concerning knowledge by the words of scholars. Also, he is just among those imitators who transmit others' opinions.[160]

In Ibn Taymiyya's time, there was a mainstream perspective among Muslims and especially Islamic jurists that the most truthful knowledge about Islamic law was confined to the opinions of the eponyms of the four schools. This presented a dilemma because everyone was obligated to imitate one of them without considering different perspectives. Ibn Taymiyya seeks to destroy this notion in order to show that imitation is not from religion at all. He directly and explicitly targets this view, stating, "No one [among] Muslim scholars has said 'The truth is confined among four Muslim scholars like Abū Hanīfa, Mālik, al-

[160] Ibn Taymiyya, *MF*, 26:202-203.

Shāfiʿī and Aḥmad'."[161] However, Ibn Taymiyya realises that this idea might be misinterpreted by some people who would fail to understand his point about there being no imitation required by religion, and so he provides his own discussion to let Muslims come to understand him more clearly.

> And if someone said 'I am not going to adhere to one of these four eponyms (*imām*s), if he means that he will not adhere to a particular one without others, he is doing the best, and also it is a correct view among two [available views]. But if he means that I am not adhering to all of them and also I am going to transgress them, so he is mostly mistaken.[162]

Elsewhere, Ibn Taymiyya further emphasises this view:

> If a man followed Abū Ḥanīfa, Mālik, al-Shāfiʿī or Aḥmad and found that in some issues another's doctrine (*madhhab*) is more correct than him [and] then he followed it, he has done best in choosing that [correct madhhab]. Also, it is agreed that this [action] neither impacts his religious belief nor his justice negatively. On the contrary, this is closer to the truth and most beloved by Allāh and His Messenger than [one who is] fanatical to a particular [view] apart from the Prophet peace be upon him. This is like who is fanatical of Mālik, al-Shāfiʿī, Aḥmad or Abū Hanīfa and believes that his particular view is correct and should be followed without following another imām's dissenting view of him [man's followed imam].[163]

Here, Rapoport claims that Ibn Taymiyya did not refuse *taqlīd* as such and saw that laymen and even jurists are allowed to follow a school of law in all legal questions or in a specific one when the jurist is in a state of unawareness of evidence to the contrary. So, the school eponyms or any other person's views are just opinions and not absolute proofs that must be followed by Muslims.

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[161] Ibn Taymiyya, *Minhāj al-sunna*, 2:369.

[162] Ibn Taymiyya, *al-Mustadrak ʿalā majmūʿ al-fatāwā*, 2:250.

[163] Ibn Taymiyya, *MF*, 22:248

Therefore, Ibn Taymiyya views that school affiliation is not religious duty and objects to any manifestation of school fanaticism.[164]

Ibn Taymiyya sees this fanaticism towards a particular *madhhab* as a primary reason underlying the differences among Muslims. He also believes that Allāh punished Muslims for this.

> A reason behind Allah's giving the Mongols authority on eastern countries (Levant) was a frequent division and sedition among themselves concerning doctrines [madhāhib] and others [religious controversies]. We find a member of the al-Shāfiʿī school fanatical about his madhhab against the madhhab of Abu Hanifa until he leaves the religion. Likewise, a member of the Abū Ḥanīfa School is fanatical about his *madhhab* over the *madhhab* of al-Shāfiʿī and others until he leaves the religion. In addition, a member of the Mālik School is fanatical about his *madhhab* over this and that, and all of these [cause] division and difference which Allāh and His Messenger prohibited.[165]

Ibn Taymiyya clearly shows his anger towards imitation and warns Muslims that believing in this kind of religion was invalid and leads to unbelief. In addition to his severe reaction against the mainstream customs regarding imitation in his time, he also issues a fatwa that believers in this kind of imitation should do repentance or be killed.[166]

Hence, Rapoport claims that Ibn Taymiyya became a pluralist jurist regarding the freedom of legal interpretation as a consequence of his rejection of legal authority, whether it is a legal school or the consensus of the scholars, because a judge sometimes obliges a judgement on litigants in some cases. However, concerning some issues that are related to *ijtihād*, Ibn Taymiyya views

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[164] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 201.

[165] Ibn Taymiyya, *MF*, 22:254.

[166] Ibn Taymiyya, *MF*, 22:249.

that each knowledgeable Muslim can make his own opinion.[167] He also views Ibn Taymiyya's claim on Muslims' right to practise *ijtihād* as somewhat self-serving due to an order on himself to stop issuing fatwa against Ḥanbalī School of Law. However, Rapoport emphasises that Ibn Taymiyya throughout his work is systematically supporting his view regarding all Muslims' right to making *ijtihād* and this position of Ibn Taymiyya has many implications that have not been explored so far.[168]

To conclude, it seems that Ibn Taymiyya attempts to spread two notions. One is to show that Muslims can choose their preferred views from among any of these schools without imitating any particular one of them. The other is to clarify that his perspective about these eponyms' opinions is not about challenging whether they mostly had correct views, but rather to show that it is possible for a correct view to arise outside of these eponyms' views. Muslims must adhere to the opinions that most agree with the Qurʾān and the Sunna, and we will see how Ibn Taymiyya expands upon this general view within the specific areas of divorce law as it will be examined in this thesis.

[167] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 206-207.
[168] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 207.

CHAPTER TWO
SUNNĪ (PERMITTED) AND *BIDʿĪ* (PROHIBITED) TYPES OF DIVORCE BETWEEN IBN TAYMIYYA AND THE MAJORITY OF JURISTS

2.1 Introduction

According to Qurʾānic verses and Prophetic reports (*ḥadīthor Sunna*) there are two main types of divorce in Islamic law regarding its prohibition and permission, which are permitted (*sunnī*) and innovated or prohibited (*bidʿī*) divorce. Now, the intended action is to show the views of Ibn Taymiyya on innovated divorce, as it is *bidʿī* divorce, compared to the point of view of the majority of jurists in the four Sunni schools of law. This is to clearly explain the differences between Ibn Taymiyya and the majority of jurists in regard to each side's evidence and discussion. Disagreement exists between Ibn Taymiyya and the majority of jurists of Islamic jurisprudence on the validity of innovated (*bidʿī*) divorce in Islamic law. To best understand Ibn Taymiyya's views, we will examine his definitions, and opinions on *sunnī* and *bidʿī* divorce, respectively.

2.2 Ibn Taymiyya's definition of both *Sunnī* and *bidʿī* divorce

When speaking of divorce, Ibn Taymiyya does not use the terms *sunnī* or *bidʿī* divorce. Instead, he uses the terms permissible (*mubāḥ*) divorce for a *sunnī* divorce, and forbidden (*ḥarām*) divorce for a *bidʿī* divorce. He states that *mubāḥ* divorce is called *sunnī* divorce and *ḥarām* divorce is called *bidʿī* divorce.[169] The reasoning behind this classification seems due to the fact that Qurʾānic verses and the Prophet's (peace be upon him) reports (*aḥādīth*), which came about divorce, do not refer to *Sunnī* and *bidʿī* divorce, but instead provide special descriptions and conditions from God in which He gives His permission to

[169] Aḥmad b.ʿAbd Ḥalīm Ibn Taymiyya, *Majmūʿ al-fatāwā* (Kitāb al-Ṭalāq 33), ed. ʿAbd al-Raḥmān b. Muḥammad b. Qāsim and Muḥammad b. ʿAbd al-Raḥmān b. Muḥammad (al-Madīnat al-munawara: Mujamaʿ al-malik fahd li-ṭibāʿat al-muṣḥaf al-sharīf, 2004), 33:5,7.

divorce.[170] Also, those terms were not used in the era of the Prophet and his Companions.

Ibn Taymiyya defines *mubāḥ* (*sunnī*) divorce as follows: a husband divorces his wife with one divorce pronouncement after she has purified herself from menstruation (*al-ḥaydh*). After she washes herself, and before having sexual intercourse (*al-jimāʿ*), the husband leaves her and cannot divorce her with a second divorce until her waiting period (*ʿidda*) is over. If the husband desires to take his wife back during the waiting period, he has the right to do so without her consent, or her guardian's consent, and without requiring a new dowry. If he neglects her until the waiting period is over, he should release her out of kindness; without a new contract, she becomes unlawful for him to remarry. However, if he wants to remarry her after the waiting period is over, it is permissible for him to do so with a new marriage contract.

As such, if he marries her the first time (or another person marries her), then takes his wife back in the waiting period, and later wants to divorce her, he must do so in the aforementioned way. If he takes her back or remarries the same woman for a second time, and wants to divorce her again, he must divorce her in the aforementioned way. If he divorced his wife for a third time, his wife becomes unmarriageable to him until she marries another man.[171]

It is clear from Ibn Taymiyya's definition of *sunnī* divorce that the husband has three divorces to use against his wife in order to repudiate his relations with his wife. From the above definition of Ibn Taymiyya of *sunnī* divorce, we notice that the conditions of this type of divorce have three

[170] Aḥmad Shākir, *Niẓām al-ṭalāq fi al-Islām* (Cairo: Maktabat al-sunna, 1998), 12.
[171] Ibn Taymiyya, *MF*, 33:5-6.

elements which are purity (*al-ṭuhur*) from menstruation, abstention from sexual intercourse between a husband and his wife during that purity, and pronouncement by one divorce in each period of purity.

Ibn Taymiyya and the majority of jurists from the four Sunni schools of law agree on some elements of *sunnī* divorce. The definition of *sunnī* divorce from the books of the Mālikī School is that one divorce occurs during the purification of menstruation, before having sexual intercourse.[172] However, the Ḥanafi School makes two distinctions in *sunnī* divorce: the better (*aḥsan*) and the good (*ḥasan*). In the first case, a husband divorces his wife with one revocable divorce; he then leaves her until her waiting period is over. In the second case, a husband divorces his wife with one divorce during the purity of a menstrual cycle.[173] The Shāfiʿī School clarifies their definition of *sunnī* divorce as follows: if he wants a divorce it is desirable for a husband to divorce his wife with one divorce. In this way, the husband can release his wife with that single divorce. If the husband wants to divorce his wife with a triple divorce, it is good to use one divorce during the purity of each menstrual cycle.[174] Ibn Qudāma, from the Ḥanbalī School, defines *sunnī* divorce as follows: *sunnī* divorce occurs when a husband divorces his wife with one divorce during her purity from menstruation, and without having sexual intercourse; he then leaves her until her waiting period is over.[175] Therefore, there is agreement between Ibn Taymiyya's definitions of *sunnī* divorce and the definition of the majority of

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[172] Shams al-Dīn al-Shaykh Muḥammad ʿArafa, *Ḥāshiyyat al-dasūqī ʿalā al-sharḥ al-kabīr* (n.pl.: Maṭbaʿa ʿĪsā al-bābī al-ḥalabī, n.d.), 2:362.

[173] ʿAlāʾ al-dīn b. Masʿūd al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ fī tartīb al-sharāʾiʿ*, ed. al-Shaykh ʿAli Muḥammad Muʿawaḍ and al-Shaykh ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-kutub al-ʿIlmiyya, 2003), 4:197.

[174] Maḥī al-dīn b.Sharaf al-Nawawī, *Al-Majmūʿ sharḥ al-muhazab*, 16:74.

[175] Muwafaq al-Dīn Ibn Qudāma, *Al-Mughnī*,ed, ʿAbd Allah b. ʿAbd al-Muḥsin al-Turkī and ʿAbd al-Fatāḥ Muḥammad al-Ḥulū (al-Riyāḍ: Dār ʿĀlam al-kutub, 1997.), 10:325.

jurists from the four Sunni schools of law. If a divorce differs from one of the three conditions of *sunnī* divorce, it becomes a *bidʿī* divorce.

Ibn Taymiyya defines *bidʿī* divorce as follows: forbidden divorce (*muḥarram*) happens when a husband divorces his wife during her menstrual period, or after he has had sexual intercourse with her but before she becomes pregnant. Ibn Taymiyya confirms that all jurists from the four Islamic Sunni schools are in agreement among themselves that this is a forbidden divorce. It is also forbidden if he divorces her with a triple divorce, by one word or many words, during her purity between menstruation cycles.[176]

Agreement exists between Ibn Taymiyya's definition of *bidʿī* divorce, and the definition of the majority of jurists among the four schools of Islamic law.[177] The Shāfiʿī School and Aḥmad b. Ḥanbal do not describe triple divorce as a *bidʿī* divorce.[178] There is agreement, however, between Ibn Taymiyya and the majority of jurists about the forbidden nature of *bidʿī* divorce, because it comes in conflict with what is authorised to cause divorce by *Allah* (God) and His Messenger. It is clear that Ibn Taymiyya and the majority of jurists are in agreement on the definitions of both *sunnī* and *bidʿī* divorce, as well as the forbidden nature of *bidʿī* divorce.

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[176] Ibn Taymiyya, *MF*, 33:70-71.

[177] Shams al-Dīn al-Sarakhsī, *Kitāb al-mabsūṭ* (Beirut: Dār al-maʿrifa, n.d.), 6:4, ʿAlī b. Muḥammad al-Māwardī, al-Ḥāūī al-kabīr, ed. al-Shaykh ʿAli Muḥammad Muʿawaḍ and al-Shaykh ʿĀdil Aḥmad ʿAbd al-Mawjūd (Beirut: Dār al-kutub al-ʿilmiyya), 10:114, Ibn Qudāma, *Al-Mughnī*, 10:327.

[178] They indicated that there is not an innovation divorce related to the numbers of divorce. See: Shams al-Dīn Muḥammad b. Aḥmad al-Ramalī, *Nihāyat al-muḥtāj ʾlā sharḥ al-minhāj* (Beirut: Dār al-kutub al-ʿilmiyya, 2003), 6:455, Ibn Qudāma, *Al-Mughnī*, 10:330.

2.3 The validity of *bidʿī* divorce between Ibn Taymiyya and the majority of jurists

There is disagreement between the views of Ibn Taymiyya and the majority of jurists about the validity of *bidʿī* divorce. Knowing Ibn Taymiyya's views on what constitutes *bidʿī* divorce makes it evident that he stands in disagreement with the majority of jurists. First, we will consider Ibn Taymiyya's views on divorce during menstruation, and divorce during purity from menstruation in which the couple have had sexual intercourse in that period; because both these circumstances are against the *sunnī* divorce which requires divorce to be during purity from menstruation and without having had sexual intercourse in that period. Secondly, we consider Ibn Taymiyya's views on triple divorce using either one or many words, in one purity period.

2.4 First: Disagreement between Ibn Taymiyya and the majority of jurists about divorce during menstruation (*al-ḥayḍ*)

2.4.1 Ibn Taymiyya's view

We begin with Ibn Taymiyya's views on divorce during menstruation, and divorce in the purity of menstruation with having sexual intercourse as one issue. Ibn Taymiyya agrees with the majority of jurists of the four Sunni schools of law that it is forbidden for a husband to divorce his wife during menstruation.[179] However, the jurists disagree with him on the validity of divorce at that time. Ibn Taymiyya confirms, in more than one place, his view that divorce cannot be valid during menstruation or during the purity period when

[179] Ibn Taymiyya, *MF*, 33:77, al-Sarakhsī, *Al-Mabsūṭ*, 6:7-8, Muḥammad b. Aḥmad b. Rushd, *Bdāyat al-mujthid wa nihāyat al-muqtaṣid* (Beirut: Dār al-maʿrifa, 1982), 2:66, al-Ramalī, Nihāyat al-muḥtāj, 7:3, Ibn Qudāma, *Al-Mughnī*, 10:327.

sexual intercourse occurred between the couples. Ibn Taymiyya claims that a consensus confirms that a forbidden divorce occurs when a husband divorces his wife during menstruation or during a period of purity but after he has had sexual intercourse with her. He mentions that there are two opinions between scholars about the validity of this type of divorce, and it is more likely that this divorce is deemed invalid.[180] Ibn Taymiyya indicates the same thing in another case, claiming that if a husband divorced his wife while she was menstruating or after he had sexual intercourse with her, but before the appearance of her pregnancy, it is deemed a forbidden divorce by the Qurʾān, the Sunna and consensus. Jurists are conflicted about the validity or invalidity of that type of divorce, and it seems that it is not valid.[181]

2.4.2 Ibn Taymiyya's evidence

Ibn Taymiyya supports his position on the invalidity of a divorce during menstruation by quoting from a range of evidence as follows.

2.4.2.1 The Qurʾān

Ibn Taymiyya uses a verse of the Qurʾān where God says: "Prophet, when any of you intend to divorce women, do so at a time when their prescribed waiting period can properly start" (Q. 65:1).[182] From the interpretation of this verse, a husband can divorce his wife during a time of purity, without having sexual intercourse with her during this time.[183]

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[180] Ibn Taymiyya, *MF*, 33:66.
[181] Ibid, 72.
[182]Ibn Taymiyya, *MF*, 33:20.
[183] ʿAmād al-Dīn Ismāʿīl b. ʿUmar b. Kathīr, *Tafsīr al-qurʾān al-ʿaẓīm*, ed. Sāmī b. Muḥammad al-Salāma (n.pl.: Dār al-ṭība, 1999), 4:378.

2.4.2.2 The Sunna

He mentions that reports in ḥadīthbooks from ʿAbd Allāh b. ʿUmar state that he divorced his wife when she was menstruating. Then ʿUmar mentioned it to the Messenger, the Messenger was enraged and said:

> Command him to take her back and leave her in that state until she is purified. Then let her enter the period of second menstruation, and when she is purified, then divorce her [finally] before having sexual intercourse with her, or retain her [finally]. That is *ʿidda* [the waiting period] which Allah commanded [to be kept in view] while divorcing women.[184]

Ibn Taymiyya defends his view on menstruation divorce and says that the Prophet (peace be upon him) has said "He who did any act for which there is no sanction from our behalf, that is to be rejected." So, divorce during the menstruation period is forbidden. Because it is not a command from the Prophet, it is rejected, and because it is rejected, the divorce is invalid.[185]

2.4.2.3 Analogy (*al-qīyās*)

Ibn Taymiyya reinforces his opinion by analogy when he explains that if forbidden acts of worship and contract are performed, despite being forbidden (*muḥarram*), they are not correct and invalid. He also confirms that the Companions of the Prophet, and those who followed them (*tābiʿīn*), inferred the corruption of worship and contracts by the prohibitions from God.[186] Ibn Taymiyya uses an analogy of an invalid marriage to justify the invalidity of this kind of divorce. He claims that any contract is at times permissible, and at times is forbidden, such as with selling or marriage. If it is a forbidden act, it is not correct and not like what *Allah* and His Messenger have permitted. In the case of

[184] Ibn Taymiyya, *MF*, 33:20.
[185] Ibn Taymiyya, *MF*, 33:101.
[186] Ibid, 33: 18, 24, 71.

this law, divorce is sometimes permitted by God, and sometimes forbidden. If it is an act in the way, which is forbidden by *Allah* and His Messenger, it is not correct and not as effective as what *Allah* and His Messenger permitted. Therefore, he confirms that making an analogy between divorce and marriage is considered by the principles of jurisprudence science in Islamic law.[187]

Ibn al-Qayyim transmits Ibn Taymiyya's antagonists' discussion concerning this evidence from Ibn Taymiyya. They tried to rebut him, stating that an analogy of divorce using marriage is an invalid analogy in many aspects. For instance, the marriage contract entails that a wife be lawful (*ḥalāl*) to her husband, and that he has ownership of her body only in a lawful way. But divorce drops that right and negates his ownership in which the cause of this negation does not stop being permitted in the religion in order to be valid. They claim that another difference between marriage and divorce is that taking the private part of the woman's body (the sexual part) in a lawful way requires a precaution in order to be certain that the sexual relation is permitted and not forbidden. Therefore, that precaution requires the validity of forbidden divorce and the right to take her back or renewing the marriage contract to take her back if the *murājaʿa* period is over. Also, though marriage is a grace and does not contain forbidden things, divorce involves resentment, which may be caused by forbidden things.[188]

Ibn al-Qayyim himself responds to the jurists' discussion that Ibn Taymiyya used an invalid analogy between divorce and marriage, and he

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[187] Ibid, 33: 17-18.

[188] Ibn al-Qayim al-Jawziyya, Shams al-Dīn Muḥammad b. Abī Bakr, *Zād al-maʿād fī hadī khayr al-ʿibād*. ed. Shuʿaīb al-Arnaʾūṭ and ʿAbd al-Qādir al-Arnaʾūṭ. (Beirut: Muʾasasat al-rīsāla, 1994), 5:232-233.

answers: you claim that marriage is a contract of ownership, where the wife becomes lawful to her husband and marriages are necessarily performed with religious permission; however, divorce ends these rights, which are no longer necessary to perform with religious permission. Then Ibn al-Qayyim claims that they are distinguishing between two contracts in an act of judgement without having proof from the Qurʾān and the Sunna.

Ibn al-Qayyim then discusses their evidence and claims that the statement that marriage is an act of grace, but divorce an act of resentment, is not completely true. Divorce may be a grace if the couple do not have a good relationship, and there exists only hatred and discord. In cases where there are no other options, a divorce may be a grace. However, divorce is a resentment, according to God the Mighty who says "You will not be blamed if you divorce women when you have not yet consummated the marriage or fixed a bride-gift for them" (Q. 2:236),[189] and also "Prophet, when any of you intend to divorce women, do so at a time when their prescribed waiting period can properly start" (Q. 65:1). Regarding the statement that a marriage must be taken with precaution and rigour, this is right and accepted. However, the dissolution of marriage through divorce and the separation of a couple must also be taken with precautions. In both cases, they relate to the permission and forbiddance of taking the private part of the woman's body (sexual part) in a lawful way.[190]

2.4.2.4 Rational evidence

Ibn Taymiyya also relies on rational proofs in order to reinforce his view concerning divorce during menstruation. So, he claims that God is wise and

[189] Here and elsewhere all Qurʾānic verses are taken from the translation of M. A. S. Abdel Haleem.
[190] Ibn al-Qayyim, *Zād al-maʿād*, 5:239-240.

never forbids anything unless it is corrupting. His prohibitions are intended to prevent or eliminate corruption. Claiming that divorce during the period of menstruation is valid necessitates the very corruption that God intended to prevent and therefore stands in contradiction with the attributes of God.[191] He reports that claiming the validity of divorce during menstruation means that the Prophet's command for (Ibn ʿUmar) to take one's wife back (Ibn ʿUmar's wife) does not contain a legitimate advantage, for if the husband is interested in the woman, he has the right to take her back, but if he is not interested, he has the right not to.[192]

This clearly shows that, for Ibn Taymiyyah, a divorce is invalid if a man divorces his wife during menstruation, or if she is in a period of purity and they are having sexual intercourse. Also, we notice that Ibn Taymiyya chooses his evidence from both the Qurʾānic verses and the Messenger's reports and applies his new interpretations to them. In addition, his antagonists were not able to make any considered objections to Ibn Taymiyya's evidence. Contrary to Ibn Taymiyya's view, the majority of jurists recognise the validity of the above type of divorce, even though it is forbidden.

2.5 The majority of jurists' opinion on divorce during menstruation

Despite Ibn Taymiyya's view of the invalidity of divorce during the menstrual cycle or the purity period when the husband and wife have had sexual intercourse, the majority of jurists from the four Sunni schools of law, Ḥanafī,[193]

[191] Ibid, 25.
[192] Ibn Taymiyya, *MF*, 24.
[193] al-Sarakhsī, *al-Mabsūṭ*, 6:57.

Mālikī,[194] Shāfiʿī,[195] and Ḥanbalī,[196] have recognised the validity of this type of divorce, despite it being forbidden. These jurists are confident in their opinion on menstrual divorce; they attacked their antagonists and accused them of being the people of misguidance and innovations,[197] or by accusing them that their thinking is anomalous and that their different view is not taken into account in divorce law.[198]

2.6 The majority of jurists' proofs

As we indicated previously when discussing their views, the name of the majority of jurists has been used instead of the jurists from the four Sunni schools of law. Therefore, to know their views on the topic as well as the evidence that they carry to confirm their opinions, it is necessary to identify their views about the subject from the insights from considered books of law in each school. Then the important stage is to discover and collect their main evidence, and finally, putting and organising their evidence into the research.

The majority of jurists quote a range of evidence to justify their view on the validity of menstrual divorce. The evidence is from the majority of jurists on the validity and effectiveness of menstrual divorce, and is contrary to Ibn Taymiyya's views on the topic. It is worth discussing the majority of jurists' evidence by Ibn Taymiyya himself, his disciple Ibn al-Qayyim, because he knew his master's views well, and also the opinions and evidence of his master's

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[194] Aḥmad b. Muḥammad al- Dardīr , *Al-sharḥ al-kabīr bi- ḥāshiyyat al-dasūqī* (n.pl.: Maṭbaʿa ʿĪsā al-bābī al-ḥalabī, n.d.), 2:361-362.

[195] Ibrāhīm b. ʿAlī al-Fayrūzābādī, *Al-Muhadhab fī-fiqh al-madhhab al-shāfiʿiyya* (n.pl.: Maṭbaʿa muṣṭafā al-bābī al-ḥalabī, 1976), 2:101.

[196] Ibn Qudāma, *Al-Mughnī*, 10:327.

[197] Yūsuf b. Muḥammad ʿAbd al-Barr, *Al-Tamhīd limā fī-al-muwaṭaʾ min al-maʿānī wa al-asānīd*. Ed. Muṣṭafā b. Aḥmad wa Muʿḥammad ʿAbd al-kabīr (n.pl.: Maktabat Ibn Taymiyya, n.d), 15:58-59.

[198] Ibid.

antagonists. So we can counterbalance the strongest view in terms of evidence and its impact to reduce the number of divorce cases between couples. So, we quote their evidence as follows.

2.6.1 The Qurʾān

The majority of jurists claim that God says the following about the issue of divorce: "Divorce can happen twice" (Q. 2:229) and in another verse, He says: "Divorced women must wait for three monthly periods" (Q. 2:228). These passages confirm that those two verses from the Qurʾān and similar verses, citing evidence of divorce, which are found in the texts in a general context without making any type of divorce out of the context, demonstrate the validity of divorce during menstruation. Also, according to the principles of jurisprudence, it is not permissible to specify any general Qurʾānic verses, including the above two examples about divorce, unless they are particularised by either another Qurʾānic text or by consensus (*ijmāʿ*).[199] This evidence is discussed when menstrual divorce is forbidden by particular texts. Therefore, it does not enter within the general Qurʾānic verses of divorce, which the lawgiver depends on to arrange divorce laws. It is like not including types of forbidden sales contracts under the general verses of selling – or not including forbidden marriages under the general verses of marriage.[200]

2.6.2 The Sunna

The majority of jurists rely on reports from the Sunna to prove the correctness of their views and validate this type of divorce. Therefore, they first use the previous report from Ibn ʿUmar which is used by Ibn Taymiyya as

[199] Ibid, 5:229-230.
[200] Ibid, 5:235.

evidence for the invalidity of menstrual divorce. They claim that the word of God's Messenger, "Command him to take her back" is clear evidence that the Messenger commanded Ibn ʿUmar to take his wife back. Taking his wife back (*rajʿa*) cannot occur until after a divorce has happened; this evidence supports the validity of menstrual divorce.[201]

Ibn Taymiyya objects to this first piece of evidence, and confirms that the pronouncement (to take her back) in the Prophet's report does not indicate one meaning but has several meanings, for instance, return to the previous situation or return each one of them (husband and wife) to their partner by body (by sexual relationship). He claims that the pronouncement (to take her back) means to return to the previous situation; this may involve a new contract between the couple, as God says "if that one [second husband] divorces her, there will be no blame if she and the first husband return to one another" (Q. 2:230), or it may mean a return of each of the couple to their partners in body, and that if they did not get a divorce; for example, if one expels his wife from the home, and he is told to "take her back", he then takes her back.[202] An answer to this objection is that carrying the conception of pronouncement on the legitimacy of its meaning is more essential than carrying it on the meaning of language.[203] Also, Ibn ʿUmar did not mention that he expelled his wife from his home and was commanded to take her back; rather he mentioned that he divorced her and the appropriate means for divorce is the meaning of "take her back" by using it in a legitimate

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[201] al-Sarakhsī, al-Mabsūṭ, 6:16. ʿAbd wahāb b. Naṣr Abī Muḥammad, *Al-Maʿūna ʿalā madhhab ʿālim al-madīna*, ed. Muḥammad Ḥasan Muḥammad (Beirut: Dār al-kūtū al-ʿIlmiyya, 1998), 1:562-563. al-Māwardī, *Al-Ḥāwī al-kabīr*, 10:116. Ibn Qudāma, *Al-Mughnī*, 10:327.

[202] Ibn Taymiyya, *MF*, 33:99-100.

[203] Muḥammad b. ʿAlī Ibn Ḥajar, *Fatḥ al-bārī bi-sharḥ ṣaḥīḥ al-bukhārī*, ed. ʿAbd Qādir Shaība al-Ḥamd (al-Riyyaḍ: Maktaba al-malik fahd, 2001), 9:265.

terminology.[204] It seems that this objection is too weak, because it can be said that the Prophet has not mentioned that his command: 'take her back' was about the meaning of (*rajʿa*) after divorcing the wife.

They also quote that the Prophet (peace be upon him) said, "Whoever divorced in an innovated way, we obligated him with his innovation".[205] This obligation indicates the effectiveness of divorce for those who divorced in an innovation way. Ibn al-Qayyim's objection to this piece of evidence, is that the report is void and not from the Messenger. However, imposing its confirmation from the Messenger means that we subjected him to the sin of his heresy; it does not mean taking his divorce into account.[206]

2.6.3 Analogy

The majority of jurists also use analogy to show that their view about the issue is also powered by analogy. So, they quote that the prohibition of menstrual divorce does not prevent its resulting impacts, such as the *ẓihār*; which happens when a husband says to his wife, "Be thou to me as the back of my mother". So, if a man makes this pronouncement, his wife becomes forbidden to him until he makes atonement for his wrong deed.[207] Certainly the *ẓihār* is forbidden. However, it also has consequential impacts.[208] Ibn Taymiyya objects to this piece of their evidence, which was an analogy of divorce on the *ẓihār*. He explains that divorce is sometimes permissible from God, and it is at other times forbidden when it is contrary to what has been prescribed by a lawgiver.

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[204] al-Māwardī, *Al-Ḥāwī al-kabīr*, 10:116.

[205] ʿAlī b. Aḥmad b. Saʿyyd Ibn Ḥazm, *Al-Muḥallā bi- al-āthār*, ed. Muḥammad Munīr al-Dimashqī (Egypt: al-ṭibāʿat al-munīriiya, 1972), 10:164.

[206] Ibn al-Qayyim, *Zād al-maʿād*, 5:237-238.

[207] Hammudah ʿAbd al-ʿAtī, *The family structure in Islam* (n,pl: n.p, n.d), 238.

[208] Ibid, 231.

However, the *ẓihār* is totally forbidden by God's law and is not permitted. He explains that stating that this is different from the type that is forbidden, such as the *ẓihār*, defamation, lying, or perjury. According to God's judgement, the punishment is deserved for those who do those things; it is not sometimes correct and sometimes corrupts, nor is it what was forbidden from one side and permissible from the other side (e.g. ransoming prisoners).[209] Ibn Taymiyya continues to illustrate the invalidity of the analogy (divorce on *ẓihār*), saying that it is permissible for the oppressed to do it and for him to annul the contract, which is different from an unjust act because his act itself is invalid. Ibn Taymiyya states that divorce is sometimes permitted or forbidden by God; if it is an action which is forbidden by God and His Messenger; it is not correct and not permitted.[210]

Also, the majority of jurists' next proof from analogy is that they claim that menstrual divorce is a divorce from a person who is in the position to enact that divorce, so it is as valid as divorcing a pregnant woman, because both are uttered by persons who are in the position of having the right to pronouncement in the law.[211] Ibn Taymiyya objects to this evidence and explains that there is a difference between a pregnant woman and a menstruating woman in the divorce issue. It is prohibited to divorce menstruating women in Islamic law, but it is permissible to divorce pregnant women.[212]

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[209] Ibn Taymiyya, *MF*, 33:18.

[210] Ibid.

[211] ʿAbd wahāb b. ʿAlī b. Naṣr Abī Muḥammad, , *Al-Ishrāf ʿalā nikat masāʾil al-khilāf*, ed. Al-Ḥabīb b. Ṭāhir (Beirut: Dār Ibn ḥazm, 1999), 1:736, al-Māwardī, *Al-Ḥāwī al-kabīr*, 10:116, Ibn Qudāma, *Al-Mughnī*, 10:328.

[212] Ibn Taymiyya, *MF*, 33:7.

2.6.4 The Companions' narrations

The majority of jurists also reinforce their view to validate menstruation divorce by quoting from the Companions directly or narrations from them regarding the issue. Therefore, they claim that it was transmitted from Ibn ʿUmar, the owner of the story, from whom the report came. He said, "[Divorcing my wife during her menses] was counted as one legal divorce."[213] Also, his saying when he was asked, "Did you count that divorce which you pronounced in the state of menses? He said: Why should I not have counted that?"[214] Also, they claim that he was asked about the law of menstrual divorce, "Did you count (this pronouncement of divorce) in her case? He said: What (after all) prevents him from doing so? Do you find him [Ibn ʿUmar] either helpless or foolish?[215] This means: is his divorce not taken into account if he is helpless or invalidated because of his foolishness? Here, the answer is omitted, indicating an answer in the speech.[216] The majority of jurists say this is from Ibn ʿUmar, the owner of the story, which is evident because he counted that divorce and understood it as valid.[217] Concerning this piece of their evidence, it is narrated from Ibn ʿUmar that he had said "He [the Prophet] rejected it [divorce] and he did not see it as a thing [he did not count it as an effective divorce]."[218] This indicates that menstrual divorce is not effective and does not count. In response to the vast span of narrations from Ibn ʿUmar, according to the Prophet's report, Ibn al-Qayyim says that the narrated reports were disordered from Ibn ʿUmar about

[213] Ibn Ḥajar, *Fatḥ al-bārī* , 9:267.

[214] Yaḥīyā b.Sharaf al-Nawawī, *Ṣaḥīḥ muslim bi-sharḥ al-nawaūī* (Egypt: al-Maṭbaʿa al-miṣriyya, 1929), 10:66.

[215] Ibn Ḥajar, *Fatḥ al-bārī*, 9:265.

[216] Ibid.

[217] al-Sarakhsī, *Kitāb al-mabsūṭ*, 6:17, Abī Muḥammad, *Al-Maʿūna*, 1:563, , Yaḥyā b.Sharaf al-Nawawī, *al-Majmūʿ sharḥ al-muhazab*, ed. Muḥammad Najīb al-Muṭīʿī (Jidda: Maktabat al-Irshād, n.d), 18:220-221, Ibn Qudāma, *Al-Mughnī*, 10:328.

[218] Ibn Ḥajar, *Fatḥ al-bārī*, 9:266.

that issue; all are correct and are coming from him. This indicates that he did not have a clear text from the Messenger concerning the effectiveness of his divorce and whether it counts or not. Therefore, if contradiction exists among Ibn ʿUmar's words regarding the issue, we can look to his doctrine and opinion. We found it explicit concerning the ineffectiveness of the divorce, and not counting that divorce. His explicit narration supports his opinion on the ineffectiveness of that divorce.[219]

In addition, they quote the saying of Nāfiʿ; who was one of the reports' narrators from the Prophet. He was asked, in the era of the Prophet, if Ibn ʿUmar was divorcing his wife during the menstruation period, and if that was taken into account. His answer was yes.[220] Ibn al-Qayyīm claims that this evidence is not taken into account because nobody knows who took Ibn ʿUmar's divorce into account. Was it he or his father; ʿUmar b. Khatāb or the Prophet?[221]

2.6.5 The consensus among jurists

To confirm their views on the topic, the majority of jurists quote a different kind of proof out of the Qurʾān and *ḥadith*. They claim that consensus exists between scholars about the validity of menstrual divorce.[222] This piece of evidence was objected to by claiming that the consensus between scholars in this case is just allegation and nothing else. However, the truth is that it is a

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[219] Ibn al-Qayyim, *Zād al-maʿād*, 5:236.

[220] Muslim b. al-Ḥajāj Abū al-Ḥussayn, *Ṣaḥīḥ muslim bi-sharḥ al-nawawī* (Egypt: al-Maṭbaʿa al-miṣriyya, 1929), 10:63-64.

[221] Ibn al-Qayyim, *Zād al-maʿād*, 5:229.

[222] Ibid, 5:235.

controversial issue between scholars regarding the validity of that divorce and there is no existence of scholars' consensus about it.[223]

2.6.6 Rational evidence (*al-dalīl al-ʿaqlī*)

Another source of the majority of jurists' evidence concerning their view about the validity of menstruation divorce is rational proof. So, they claim that divorce during the menstrual period is not a preferred religious conduct for one to gain religious honours. Therefore, it does not require approval by the Sunna to its consideration and effectiveness. On the contrary, it concerns removing perceived infallibility and cutting ownership ties, so that it is effective in the menstrual period, and it is a primary punishment for him.[224] We can add that this evidence can be objected by saying: this is true that divorce in that time is not about getting religious honours, but its effectiveness or validity also needs evidence from the Qurʾān and the Sunna. Moreover, the law does not apply the validity of divorce as a punishment to divorce doers.

Furthermore, they claim that to take the private part of a woman's body (the sexual part) in a lawful way precautions are required from husbands to justify that their sexual intercourse relationships are permissable. Therefore, the necessity of this precaution is also to say that an effective way of divorcing during the menstruation time of their wives is to avoid their falling into forbidden relationships.[225] This piece of the majority of jurists' evidence is objected by saying that being aware of the precautions is admitted for taking the private part of a woman's body. However, taking precautions here does not mean

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[223] Ibn Ḥazm, *Al-Muḥallā*, 10:163-164.

[224] ʿAbd al-barr, *Al-Tamhīd limā*, 15:59, Ibn Qudāma, *Al-Mughnī*, 10:328.

[225] Ibn al-Qayyim, *Zād al-maʿād*, 5:232.

practising menstrual divorce. On the contrary, remaining as a couple is a precaution based on the certainty of their marriage, until whatever comes to eliminate that certainty. Then, if it is estimated that the person who said "this divorce did not occur" has erred, he has only erred on one side. But if he erred by saying, "Divorce has occurred", he has erred from two sides: by prohibiting the woman from him who was actually permissible to him, and then by making her permissible to other.[226]

It is noticed that Ibn Taymiyya mentions the dispute between himself and the majority of jurists about the validity and invalidity of forbidden divorce; he claims that it is a dispute between predecessor and successor, where the majority of jurists claim that it is forbidden and valid.[227] Regarding the dispute surrounding the validity of a divorce during menstruation, the dispute is positioned between two extremes. It is caused by differences in understanding Ibn ʿUmar's report. Ibn ʿUmar divorced his wife while she was menstruating, and when ʿUmar mentioned it to the Prophet, he commanded him to take his wife back. Also, Ibn Taymiyya claims that in the case of divorce during menstruation, the origin of the conflict is surrounding the validity of the Prophet's claims. The Prophet told ʿUmar b. Khaṭṭāb when he told Prophet that ʿAbd Allah b. ʿUmar divorced his wife when she was menstruating, and was commanded to take his wife back until she had finished menstruating and was purified. Some jurists interpret this command (the command to take his wife back) to be about revocable divorce. They built on this, claiming that after divorcing this woman

[226] Ibid, 5:240, Ibn Ḥazm, *Al-Muḥallā*, 10:166.
[227] Ibn Taymiyya, *MF*, 33:81.

during menstruation he was commanded to take her back, and the divorce was valid[228].

According to Ibn Taymiyya, some scholars indicated that this saying (take her back) does not necessarily indicate the validity of the divorce. Instead, when Ibn ʿUmar divorced his wife using the forbidden divorce, he abstained himself from her because he thought his divorce was valid. The Prophet commanded him to take her back again, to restore things to how they were.[229]

It is evident from the above discussion that extreme differences exist between Ibn Taymiyya and the major jurists of the four Sunni schools of law concerning whether menstrual divorce truly occurs. Evidence on both sides superficially underscores the impossibility of overbalancing one perspective with the other. In spite of this, through careful consideration of evidence from both sides, it can be said that God does not give a permission to this kind of divorce due to His intension to protect the husbands' favour. As the time of this divorce on the real ground of the spouses' relationship is not a preferred time due to the menstruation. So, there is not any real sexual relationship between them. Therefore, if a husband divorced his wife at this time, he may strongly regret later. Also, God protects the wifes' favour as well by prohibiting a divorce in this period. So, if they are been divorced in this time, it affects the length of their waiting periods to be longer than if divorced in the purity period. So, it is possible to prefer Ibn Taymiyya's views. Ibn Taymiyya's evidence is stronger than the evidence presented by the majority of jurists because they were not able to rebut or discuss Ibn Taymiyya's evidence. However, Ibn Taymiyya was

[228] Ibid, 98.
[229] Ibid, 99.

able to invalidate the majority of their evidence and provide a legitimate rebuttal. Also, the stronger evidence from the jurists regarding the occurrence of menstrual divorce was correctly reported (by Ibn ʿUmar) as taking that divorce into account. It is only his opinion and was not from the Prophet (May peace be upon him). Nevertheless, it was also reported for him that divorce during menstruation was not valid. Also, it is not wisdomly accepted that the Prophet orders someone to take his wife's back after a permitted divorce because if it is a permitted and valid kind of divorce then husbands religiously have an option to take their wife back after first time divorce. So, this means by validating a menstrual divorce a corruption will happen instead of a benefit. Also, it has appeared that this issue is not from consensus but from the disagreement issues amonge the jurists in which open to accept every possible opinion. Therefore, Ibn Taymiyya chose his view regarding this issue based on his investigations to the available evidence and has taken those which can be agreed with the teaching of the Qurʾān and the Sunna.

2.7 The reasons behind the prohibition of innovated divorce

As we mentioned above, agreement exists between Ibn Taymiyya and the majority of jurists from the four Sunni schools of law regarding the prohibition of divorce during the menstruation period. Another difference or issue between Ibn Taymiyya and the majority of jurists concerns the reason behind the prohibition.

2.7.1 Ibn Taymiyya's view

Ibn Taymiyya views the cause as having an unreasonable meaning for human understanding and it has a devotional (*taʿabudī*) meaning. He explains

that divorce is forbidden during menstruation because the requirement of God's prohibition is to keep away from corruption and divorcing at that time is contrary to God's command.[230]

2.7.2 The majority of jurists' opinions

The majority of jurists are divided among themselves, with two prevalent explanations behind a menstrual divorce prohibition. The reason from the Shāfiʿī[231], the majority of Ḥanbalī,[232] and both Ḥanafī[233] and Mālikī[234] schools, is the fear of lengthening the waiting period for divorced menstruating women. To strengthen this view, they explain that the time of menstruation does not count towards her waiting period; she is required to wait for her purity period before beginning her waiting period. This harms her, and harm is forbidden.[235] There is another view from Ḥanafī[236] and Ḥanbalī[237] that the time of menstruation is a time of remoteness from the husband, when he has no desire for her. They explain their view as follows: the origin of the divorce is to occur in a state of strong desire of the husband for the divorce; this only happens during a time of purity because it is the time of intercourse. So, divorcing his wife during her menstrual period may not indicate his lack of desire, but may be due to his alienation because of her menstruation.[238]

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[230] ʿAlī b. Muḥammad al-Baʿlī, *Al-Akhbār al-ʿIlmiyya min al-Ikhtyyārāt al-fiqhiyya min fatāwā shaykh al-islām Ibn Taymiyya*, ed. Muḥammad Ḥāmid al-faqī (n.pl: Maktabat al-sunat al-muḥammadiyya, n.d), 256.

[231] al-Nawawī, *Al-Majmūʿ sharḥ al-muhazab*, 18:216.

[232] Ibn Qudāma, *Al-Mughnī*, 10:329.

[233] al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, 4:201.

[234] Ibn Rushd, *Bidāyat al-mujtahid*, 2:66. This book has been translated to English by Emran Ahsan Khan Nyazee, *The Distingushed Jurist's primer (*n.p: Garnet publishing, n.d).

[235] Ibn Qudāma, *Al-Mughnī*, 10:329.

[236] al-Sarakhsī, *Kitāb al-mabsūṭ*, 6:7.

[237] ʿAlī b. Sulaymān b. Aḥmad al-Mardāwī, *Al-Inṣāf fī maʿrifat al-rājiḥ min al-khilāf*, ed. Muḥammad Ḥasan Muḥamma (Beirut: Dār al-kutub al-ʿIlmiyya, 1997), 8:448.

[238] al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, 4:201.

2.8 Two: Ibn Taymiyya and the majority of jurists' perspectives concerning the law of triple divorce (*al-ṭalāq al-thalāth*)

2.8.1 The definition of triple divorce

In Islamic law, a triple divorce occurs when a husband divorces his wife by pronouncing the phrase "I divorce you" or "You are divorced" three times, whether in one place or many places, with all occurrences taking place within just one purity period instead of three times in three consecutive purity periods respectively, as it is advised in the Qurʿānic verses and the ḥadīth. It happens by pronouncing the divorce as a single sentence, such as, "I have divorced you thrice", or, "you are divorced thrice", or by repeating the word 'divorce' three times, as in, "you are divorced, you are divorced, and you are divorced".[239] These statements can take many different forms. Based on Ibn Taymiyya's previous definition of innovated or sinful divorce, we can clearly see that Ibn Taymiyya views triple divorce as a type of *bidʿī* divorce. The reason is that this type of divorce contrasts to one condition of a permissible (Sunnī) divorce. A husband must divorce his wife just once within one purity period of menstruation, instead of three times. However, in Ibn Taymiyya's view, triple divorce has broken this condition and has become a form of innovated divorce.[240]

2.8.2 Three main opinions regarding the legitimacy (*mashrūʿiyya*) of triple divorce in Islamic law

Regarding the legitimacy of triple divorce in Islamic law and its governance, the opinions of jurists in each of the four Sunni schools of law generally fall under three main opinions, which we will examine.

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[239] Muḥammad Abū Zahra, *Ibn Taymiyya: ḥayātuhu wa ʿaṣruhu – Ārāʾuhu wa-fiqhuhu* (Cairo: Dār al-fikr al-ʿarabī, 1991), 352.

[240] Ibn Taymiyya, *MF*, 33:9.

2.8.2.1 First opinion

The supporters of this view see this type of divorce as innovated and prohibited. However, they still consider it as a valid divorce. So, if a husband initiates the divorce, it will occur. This is the majority of jurists' opinions from the Mālikī, Ḥanafī, and Ḥanbalī schools of Islamic law.[241]

2.8.2.2 Second opinion

Those who support this view see triple divorce as a permissible divorce and they refuse other jurists' classification of it as an innovated divorce. Therefore, it is considered valid, and three divorces occur when a husband initiates them. Shāfiʿī himself holds this view, as he declares in his book, *al-Umm*.[242] This is also the one view of two narrations from Aḥmad ibn Ḥanbal.[243] Ibn Taymiyya, however, considers this narration from Aḥmad ibn Ḥanbal as his older opinion on the issue,[244] which means that Aḥmad altered his former opinion and decreed a new view on the issue.

2.8.2.3 Third opinion

The supporters of this view see this type of divorce as innovated and prohibited. So, if a husband pronounces it, only one divorce occurs instead of three. It is worth mentioning that Ibn Taymiyya is the sole narrator of this opinion, although he makes sure to note that this view was held by some of the Companions and Followers. He also assigns this view to some Ḥanafī and Mālikī jurists, and that this view was also the doctrine supported by his grandfather,

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[241] Al-Sarakhsī, *Kitāb al-mabsūṭ*, 6:57, Abī Muḥammad, *al-Maʿūna*, 1:556, al-Mardāwī, *al-Inṣāf*, 8:453.
[242] Muḥammad b. ʾIdrīs al-Shāfiʿī, *Al-Umm*, ed. Rifʿat Fawzī ʿAbd Muṭalib (Al-Manṣūra: Dār al-wafāʾ, 2004), 6:464.
[243] Muḥammad b. Mufliḥ, *Kitāb al-furūʿ*, ed. ʿAbd Allah b.ʿAbd Muḥsin (Beirut: Muʾassasat al-risāla, 2003), 9:46.
[244] Ibn Taymiyya, *MF*, 33:8.

Abū Barakāt, from the Ḥanbalī School of Law.[245] However, this third opinion is now shared by many famous contemporary scholars, like Aḥmad Shākir[246] and ʿAbd ʿAzīz bin Bāz.[247]

2.9 Ibn Taymiyya's approach in triple divorce law

It is worth mentioning that Taymiyya does not mention his own view directly when discussing the different views and arguments about the issue. Instead, he utilises his own method to show his detractors' opinions. This is to inform the audience about the existence of disagreements amongst the jurisprudences from Islamic schools of law. Therefore, at the beginning of Ibn Taymiyya's discussion about triple divorce, we find that he mentions the existence of these differing views on triple divorce among jurists when he says, "There are three opinions amongst jurists from the predecessors (*al-salaf*) and the successors (*al-khalaf*)".[248] At this point, it seems that Ibn Taymiyya knows that his opinion is opposite to the majority of jurists' opinions on this issue, and that it will be difficult for other jurists, and Islamic society at large, to accept it. That is because this type of divorce has been accepted as valid for so long that they do not even see room for argument against it. Therefore, Ibn Taymiyya wants to make it easy for jurists and members of the community by opening a path for them to accept his view. Thus, Ibn Taymiyya starts his discussion by mentioning the opinions between jurists about a triple divorce without showing his own contrary view directly. He then goes on to state that he will present the opinion

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[245] *MF, 33: 84.*

[246] Aḥmad Shākir, *Niẓām al-ṭalāq fi-alIslām*, *35.*

[247] ʿAbd ʿAzīz b. Bāz, *Majmūʿ Fatāwā wa maqālāt mutanaūīʿa*, ed. Muḥammad bin Saʿd, published on the Ibn Baz website, 21:469.

[248] Ibn Taymiyya, *MF*, 33:8.

that views triple divorce as being innovated and that just one divorce should occur when it is initiated.

Ibn Taymiyya declares that his reason for choosing this opinion is that it is supported by proof from the Qurʾān and the Sunna.[249] After that, however, Ibn Taymiyya begins to show his position by quoting verses from the Qurʾān about divorce. This is the starting point he uses to declare his own views and make his stance clear regarding the majority opinion on triple divorce law. Ibn Taymiyya starts his stance by saying, "Every divorce sanctioned by God in the Qurʾān about a woman who really practises a married life is a revocable divorce (*al-ṭalāq al-rajʿī*), and then God does not prescribe to one the use of a triple divorce in one time, and also does not prescribed him to divorce the woman by irrevocable divorce".[250] Alongside this, however, Ibn Taymiyya mentions a fourth opinion on the issue, which some Muʿtazilites and Shīʿites support, but he remarks that this opinion is not considered valid by any of his predecessors.[251] It seems this is the reason behind Ibn Taymiyya's decision to neglect mentioning this opinion within the text, as he says, "There are three opinions amongst jurists from the predecessors and the successors". Notice that he does not say "four opinions".

The triple divorce law became the main subject of disagreement between Ibn Taymiyya and the majority of Islamic jurists. However, in his time, Ibn Taymiyya became famous amongst the Mamluk community on this issue more than any other issue that he and the majority of jurists disagreed upon. The reason for this may be due to his early declaration about the invalidity of triple

[249] *MF*, 33:9.
[250] *MF*, 33:9.
[251] *MF*, 33:9.

divorce, unlike the views of the jurist majority. Ibn Taymiyya himself has pointed out that there were many jurists before him who shared his view regarding triple divorce in Islamic law.[252]

As a result of these allegations, Abdul Hakim al-Matroudi, in his recent study, carried out a thorough investigation to determine whether or not Ibn Taymiyya was correct. Therefore, he tried to find evidence in favour of Ibn Taymiyya's claim by examining it twice, once before Ibn Taymiyya's advisory opinion (fatwā) and the second time after a dispute occurred between Ibn Taymiyya and the majority of jurists from four Islamic schools of law on the triple divorce law. Al-Matroudi concluded that there was no clear evidence that triple divorce had ever been used as a single divorce instead of three. He found this to be true even among the Ḥanbalī School, to which Ibn Taymiyya, and his grandfather who Ibn Taymiyya had claimed shared his opinion, belonged.[253] However, al-Matroudi also concluded that it was not possible to say for certain that there was a clear consensus amongst the jurists concerning triple divorce law.[254]

This in of itself is very strange, as al-Matroudi had previously stated on at least two separate occasions, as mentioned above, that there was no evidence supporting Ibn Taymiyya's charges regarding views on triple divorce law before his time. So, the question would be this: if there was not a clear consensus between jurists about the validity of triple divorce, this means that there were jurists without the validity of triple divorce. However, Al-Matroudi did not find

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[252] *MF*, 33:83.

[253] Abdul Hakim al-Matroudi, *The ḥanbalī school of law,* 181.

[254] *The Hanbalī School of Law*, 185.

the names of these jurists. He also did not trust Ibn Taymiyya's confirmation that there were some jurists before him who have had the same view about the invalidity of triple divorce.

At this point, we could say that what Ibn Taymiyya narrated and assigned to a group of jurists seems to be true without any doubt. It should also be noted that Ibn Taymiyya suffered many problems because of his views on this issue, including being prohibited from issuing legal opinions on the matter, as well as being jailed for his views.[255]

In order to understand the importance of this dispute between Ibn Taymiyya and the other jurists, as well as their respective arguments and objections, we have to explore and discuss the issue from both sides. This discussion will allow us to get a clearer picture of how Ibn Taymiyya came to have such a different opinion to the jurist majority. It will also help us to understand his particular approach towards divorce jurisprudence, which will allow us to then form a generalised idea of his overall legal philosophy.

2.10 Ibn Taymiyya's evidence

Ibn Taymiyya relies on proofs from Qurʾānic verses, ḥadīth , analogy, and rational evidence to support his view that triple divorce, whether spoken in one word or by repeating it three times in one place or in many places, is just as valid as a single divorce. His specific points are as follows.

[255] ʿAbd Raḥmān al-Sharqāwī, *Ibn Taymiyya: al-faqihu al-muʿadhdhab* (Cairo: Dār al-shrūq, 2004), 264-267.

2.10.1 Proofs from the Qurʾān

The first verse that Ibn Taymiyya quotes from the Qurʾān is: "Divorce can happen twice, and [each time] wives either be kept on in an acceptable manner or released in a good way" (Q. 2:229). Ibn Taymiyya attempts to convey a simple and clear interpretation of this verse in a way that supports his view. Therefore, he claims that this expression requires and ensures that a whole divorce cannot happen at once. So, the divorce in this verse is a revocable divorce in which a husband has the right to take back his wife two times after two divorces [one in each divorce].[256] Here, Ibn Taymiyya makes an analogy from ordinary language to support his interpretation by saying:

> This is like if it is said to a man: he glorified God two times or he glorified God three times, or a hundred times, in this instance, he must say: glory to God, glory to God until the number meets, however, if he wanted to sum up the number and says: glory to God two times or hundred times, in this circumstance he had glorified God only once, so, God did not say: divorce is two divorce pronouncements. Instead He said: two times. Therefore, if a [husband] said to his wife: you are divorced, divorced twice, or thrice, or ten, or one thousand, he had divorced her only once.[257]

In this analogy, Ibn Taymiyya first gives an example in common language rather than considering the ḥadīth , which he uses next to support his view when he says, "Then the Prophet (peace be upon him) says to Juwayrīyya, the mother of believers, 'I recited four words three times after I left you and if these are to be weighed against what you have recited since morning these would outweigh them and (these words) are: 'Glory be to Allah' and praise is due to Him according to the number of His creation and according to the pleasure of His Self and according to the weight of His Throne and according to the ink (used in

[256] Ibn Taymiyya, *MF*, 33:11.
[257] *MF*, 33:12.

recording) words (for His Praise)".[258] This means that He Almighty deserves praise by that number.[259]

Next, Ibn Taymiyya reinforces his view by claiming that the Prophet said, "God, thanks to you, fill the heavens and fill the earth and fill what is between them and fill what you will of something after".[260] Ibn Taymiyya says "It is not intended that he glorify God to that extent. However, the number sometimes acts as a description of the act of a creature, and his act is limited, and sometimes it is for what the Lord deserves, which is glorified by his power. Otherwise, if a worshiper in his prayer said, 'Glory to God due to the number of His creation', then he did not glorify God except once. The Prophet legislated the praise of God at the end of each prayer thirty-three times, to thank God thirty-three times, and to glorify God thirty-three times. Thus, if he said, 'Glory be to God, God is the greatest, the number of His creation', then he only glorified God once".[261]

The second Qurʾānic verse, which is cited by Ibn Taymiyya is "These are the limits set by God – whoever oversteps God's limits wrongs his own soul – for you cannot know what new situation God may perhaps bring about" (Q. 65:1). According to this verse, Ibn Taymiyya says,

> More than one narration from Companions, Followers and other scholars said this indicates that divorce which is mentioned by God [in the previous verse] is about revocable divorce; because if triple divorce was legislated and prescribed on this verse, then when a divorcee regrets it, there is no way to take her back, so he is harmed because of it, but God has commanded people to benefit from them and has abstained them from what harms them.[262]

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[258] Muslim b. Ḥajāj, *Ṣaḥiḥ Muslim* (Beirut: Dār al-kutub al-ʿilmiyya, n.d), 7:142-143. Text translation from: Abd-al-Hamid Siddiqui, *Sahih Muslim*, ed. Mika'il al-Almany (n.pl: n.p, 2009), 1628.
[259] Ibn Taymiyya, *MF*, 33:12.
[260] Muslim b. Ḥajāj, *Ṣaḥiḥ Muslim,* 2:204.
[261] Ibn Taymiyya, *MF*, 33:12.
[262] Ibn Taymiyya, *Majmūʿ al-fatāwā*, 3:33.

After this discussion, Ibn Taymiyya asserts his point by emphasising what God says after this verse: "When they have completed their appointed term, either keep them [wives] honourably, or part with them honourably" (Q. 65:2). Ibn Taymiyya claims that this verse confirms this being a revocable divorce; it would actually not be considered thrice or irrevocable (*bāʾin*).[263]

The third Qurʾānic verse, which is used by Ibn Taymiyya to support his view about triple divorce is, "Prophet, when any of you intend to divorce women, do so at a time when their prescribed waiting period can properly start, and calculate the period carefully" (Q. 65:1). He mentions that this will be in the waiting period (*ʿidda*); therefore, it is not permissible for a divorce to come after a divorce until the waiting period is over, or if a husband takes his wife back, because He only allowed divorce during a waiting period or approaching a waiting period.[264]

The fourth Qurʾānic verse, which is also cited by Ibn Taymiyya is, "When you divorce women and they have reached their set time, do not prevent them from remarrying their husbands" (Q. 2:232). Ibn Taymiyya says that this verse shows that a divorce will be without triple divorce, as it includes every divorce, and therefore, the validity of triple divorce is not legal.[265]

From the above proofs offered by Ibn Taymiyya, we notice how he quotes a number of Qurʾānic verses and appropriately links them to the subject. He makes their significance evident regarding his opinion on the issue. Also, he tries to confirm that Qurʾānic verses are essential in proving this case. Further, he

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[263] *MF*, 33:33.
[264] *MF*, 33:78-79.
[265] *MF*, 33:80.

does not address the subject of annulment in the Qurʾānic verses and he did not mention that those verses are not abrogated.

2.10.2 Ibn Taymiyya's evidence from reports and narrations (*al-aḥādīth*)

Ibn Taymiyya cites a number of ḥadith reports in order to support his view on triple divorce law. He also describes these cited reports as the most authentic reports available concerning the triple divorce issue.[266] The first report Ibn Taymiyya uses to reinforce his opinions and confirm that this type of divorce is valid as a single divorce instead of thrice is a narration from Ibn ʿAbbās, who reported that

> The [pronouncement] of three divorces during the lifetime of Allāh's Messenger (may peace be upon him), and that of Abu Bakr, and two years of the caliphate of Umar, it (was treated) as one. However, ʿUmar ibn Khaṭṭāb said, verily the people have begun to hasten in the matter in which they are required to observe respite. So if we had imposed this upon them, then he imposed it upon them.[267]

Ibn Taymiyya's inference of this narration is very clear: the pronouncement of triple divorce in one word, or many words within one occasion during a single purity period of menstruation was treated as one divorce. This was from the era of the Prophet and the first caliph, Abū Bakr, up until the first two years of the caliphate of ʿUmar. So, caliph ʿUmar did not change the divorce law from single divorce to triple divorce until he discovered that the people had begun using triple divorce with increasing frequency. Thus, it seemed that ʿUmar wanted the people to abstain from using triple divorce and return to what was a common law in the era of the Prophet.

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[266] Ibn Taymiyya, *MF*, 33:12-13.

[267] Muslim, *Ṣaḥiḥ Muslim*, 4:109.

However, Ibn Taymiyya's opponents object to this evidence and argue that counting triple divorce as a single divorce is an abrogated law because it seems unlikely that ʿUmar and the Companions took a contrary position against the Prophet's view about it. They also point out that Ibn ʿAbbās, the narrator of this report, has also said that triple divorce in one word does count as three, which means that Ibn ʿAbbās was aware of the abrogation of the previous law.[268] Ibn Taymiyya, however, firmly replies to his opponents' objections by stating:

> It is impermissible for one to think that the Prophet's Companions made an agreement after his life that was contrary to his religion and this is from the people of atheism's belief. Also, it is impermissible for anyone to allege, after the Prophet's life, an annulment by consensus from any one, to what the Prophet legislated. This is like the thinking of a mistaken group. However, all issues that Muslims are agreed upon are only in agreement to what was stated by the Prophet, and are not contrary to it. Also, every abrogated text (verses) created by Muslim community consensus already has an abrogating text, and the community protects both the abrogating and abrogated texts. Additionally, protecting the abrogating text is more important, and obligatory, for the nation than protecting the abrogated one and ʿUmar and the Companions are prevented from making an agreement contrary to the Prophet's teachings. However, some may strive in his opinion and others may dispute him, and this exists in many issues.[269]

Next, Ibn Taymiyya makes inferences on another report (*ḥadīth*) to support and reinforce his view on triple divorce. This report, from Ibn Abbas, was narrated by Aḥmad ibn Ḥanbal.

> Rukānah ibn ʿAbd Yazīd; one of al-Muṭṭalib's sons, divorced his wife three times in one session and was very saddened [in his longing] for her. The Prophet questioned him, "How did you divorce her?" He replied, "I divorced her thrice" [Ibn ʿAbbās] said. Then the Prophet asked him, "Was it in one session?" He answered, "Yes". Then the Prophet said, "That is

[268] Ibn Ḥajar, *Fatḥ al-bārī*, 9:276.

[269] Ibn Taymiyya, *MF*, 33:32.

> one divorce [revocation], return her back if you wish". [Ibn Abbas] said, "He returned her back".[270]

Ibn Taymiyya's inference of this report is meant to confirm that triple divorce in one session is just as valid as single divorce. He then tries to defend an incorrect interpretation from his opponents to the portion of the report that says, 'Was it in one session'? This is their claim that the report's concept indicates that if a triple divorce happens in many sessions, but within one purity period of menstruation, it is equivalent to triple divorce. Therefore, he explains this and makes sure to emphasise that the phrase 'Was it in one session'? indicates that, if it was not in one session, then it is possible, as per tradition, that he took her back [after a previous divorce] and she is still with him. Thus, the divorce after taking a wife back is valid (*yaqaʿ*).[271]

Ibn Taymiyya's opponents from the four Sunni schools of law, nevertheless, attempt to debunk his inferences. They do this by alleging that the true intention of the triple divorce in the report (*ḥadīth*) is in the pronunciation of the term 'definitely' (*al-batta*). Also, this ḥadīth as interpreted by the other narration is more authentic than the report that Ibn Taymiyya used.[272] The reasoning is that if a triple divorce was initiated on the utterance of 'definitely', then some narrator interpreted the report by meaning instead of pronunciation.[273] However, Ibn Taymiyya invalidates this objection and confirms that the report that contains the pronunciation 'definitely' is a weak report[274]

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[270] Ahmed b. Hanbal, *Musnad*. Ed. Shuʿaīb al-Arnaʾūṭ wa ʿadil Murshid (Beirut: Mūʾasasat al-risāla, 1995), 4:215.
[271] Ibn Taymiyya, *MF*, 33:14.
[272] Ḥamad b. Muḥammad, *Maʿālim al-Sunan* (Syria: al-Maṭbaʿa al-ʿilmiyya, 1933), 3:236.
[273] Ḥamad b. Muḥammad, *Maʿālim*, 3:236.
[274] Ibn Taymiyya, *MF*, 33:15.

[according to its narration from the Prophet]. Therefore, it is not correct to say that this weak report explains Ibn Taymiyya's report. Furthermore, Ibn Taymiyya's opponents reject the trueness of the report, and their allegation is that it is a weak report and does not have any argument.[275]

In response to the first objection from his opponents above, Ibn Taymiyya himself mentions the report that is used by his opponents. They claim that the report they used explains the one used by Ibn Taymiyya to support his view on triple divorce law. He also mentions how other Ḥadīth scholars have taken notice of it. This is a clear explanation and he shows his opinion by expressing that:

> Abū Dāwūd and others have narrated that Rukānah divorced his wife definitely (*al-batta*) then the Prophet said to him "By God did you want only one [divorce]". Then Rukānah replied "By God I wanted to divorce her only a single divorce", then the Prophet returned her to him. When Abū Dāwūd did not narrate in his book (*sunan*) the report that was narrated by Aḥmad ibn Ḥanbal in his report book (*musnad*), Abū Dāwūd said: The report that includes the pronunciation "definitely" (*al-batta*) is more authentic than the report narrated by Ibn Jurayj "that Rukānah divorced his wife thrice" because the people of his home are better known. However, the greatest scholars who know about weakness in both reports (*aḥādīth*), and jurisprudence (*al-fiqh*) in this report, like Aḥmad ibn Ḥanbal, al-Bukhārī and others, such as Abū ʿUbayd, Abū Muḥammad ibn Ḥazm, weakened the 'definitely' report. They explained that the narrators of that report are unknown; hence their credibility is also unknown. On the contrary, Aḥmad ibn Ḥanbal confirmed the report that includes 'thrice' and indicated it is correct. This is like his saying that the Rukānah report does not confirm that he divorced his wife definitely. Also, he said the Rukānah report which includes 'definitely' is nothing, because Ibn Isḥāq narrates it from Dāwūd ibn al-Ḥuṣṣayn from ʿIkrima from Ibn ʿAbbās, that "Rukānah divorced his wife thrice" and the people of Madina called whoever was divorced thrice as divorced definitely.[276]

After his rebuttal to their first objection, Ibn Taymiyya replies to their second objection and shows the strength of his evidence according to the

[275] Ibn Rushd, *Bidāyat al-mujtahid*, 2:61.

[276] Ibn Taymiyya, *MF*, 33:14-15.

standards of the science in the report (*ḥadīth*). He indicates that his report was evaluated by Ibn Isḥāq, who said that:

> He was told this report from Dāwūd, who was one of Mālik's masters and one of al-Bukhārī's trusted men. Also, when Ibn Isḥāq used the term "told me" [someone gives a report from the Prophet], it indicates to the report scholars that it is an authentic report (*ḥadīth*). This is good supporting evidence, and the same report contains another proof that Abū Dāwūd has narrated in his report book (*al-sunnan*), but he did not mention this one. Therefore, Abū Dāwūd thought that irrevocable single divorce was correct, but the issue was different than he thought. Conversely, Aḥmad Ibn Ḥanbal favoured this narration over that one.[277]

Ibn Taymiyya refers to another report to support his view. This report reveals that Abū Ṣahbā said to Ibn ʿAbbās, 'Do you know that three (divorces) were treated as one during the lifetime of Allah's Messenger (May peace be upon him), and that of Abū Bakr, and during the beginning of the caliphate of ʿUmar?' Ibn ʿAbbās replied, 'Yes'.[278]

However, in considering Ibn Taymiyya's evidence we can notice that Ibn Taymiyya cites a number of reports without mentioning which one is a recurrent report (*mutawātir*) [there is more than one narrator from the Prophet] and which is a solitary report (*āḥād*) [there is just one narrator in every chain from the Prophet]. Also, he does not make any distinction between these two types of reports, but he asserts that the report, which includes "definitely" is a weak report. From this point, he shows the methodology that he uses when accepting reports. Recurrent reports (*mutawātir*) are not limited numerically, but the assessment, analysing and evaluating opinions regarding a certain report from both the expert jurists of ḥadīthscience and the jurists of Islamic law are the basis for whether to accept or reject this kind of ḥadīth.

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[277] Ibn Taymiyya, *MF*, 33:85.

[278] Muslim, *Ṣaḥiḥ Muslim*, 4:109-110.

2.10.3 Analogy

After he invokes Qurʾānic verses and ḥadīthreports, Ibn Taymiyya goes on to use an analogy as a legal source for Islamic ruling. He repeats the same analogous evidence that he used when he discussed his opinions about the invalidity of menstruating divorce.

After invoking Qurʾānic verses, ḥadīthreports, and analogies, Ibn Taymiyya tries to present his views about how the divorce law changed from the validity of single divorce to triple divorce in Islamic society, as he is acting as a legal historian here. He attempts to do this by expending significant effort to explain the truth of triple divorce legitimacy to the community. Therefore, we can find him clearly mentioning a fact of a dispute between him and the majority of jurists. This is particularly true when he explains that

> Those who dissent from the analogy of their principles in divorce law dissented because it has been proven to them from the other Companions that they validated triple divorce in one session. So, they said, the Companions did so because it is legally required. Another group believed in the validity of this type of divorce because there was a consensus between jurists about the issue, and they did not know there was any dissidence between scholars about it, especially when the different views about the issue were known by the Shīʿa group.[279]

Next, Ibn Taymiyya shows their mistake in two ways. First, they thought that if they decided on the validity of triple divorce as a single divorce, this would mean a victory for Shīʿite doctrine. However, this was not the case, because the Shīʿa themselves made a mistake when they believed in the invalidity of triple divorce, and that it was not as valid as a single divorce. However, we have narrated a consensus between jurists about its validity, so a dispute is not about the validity of triple divorce, but rather about how many

[279] Ibn Taymiyya, *MF*, 33:89.

divorces happen, one or three. Thus, believing in the validity of triple divorce in order to take precautions regarding what was said by the Shīʿa is incorrect. Second, the dispute between predecessors exists and cannot be ignored. Also, it is not an argument from the Qurʾān, Sunna, or consensus with those who made the validity of triple divorce legitimate, so it should be followed. Some of these arguments are alleged from the Qurʾān, some from Sunna, some from consensus, and some even alleged from two different sources or more. However, all of these are weak argements.[280]

Then, Ibn Taymiyya tries to present his counter argument by asserting that:

> The evidence from the Qurʾān, the Sunna, and analogies indicate that the validity of triple divorce is denied. Also, it is well-known that there is no consensus on the issue. However, remaining evidence from whoever among the companions who made the validation of triple divorce indicates that the law was not made according to the correct legal guidelines, such as those the Prophet legislated to his nation. This is similar to when the Prophet made a wife unlawful to her husband after a third divorce. Thus, they only made triple divorce valid as a punishment if it became more frequent and people did not use it.[281]

Ibn Taymiyya next tries to discuss the issue using another effective method, interpreting religious and social life during the era of the caliph ʿUmar, whom all agreed had changed the triple divorce law to be valid as thrice. Therefore, Ibn Taymiyya claims

> That in the era of ʿUmar, when there was no existence of permitted marriage (*taḥlīl marriage*) [making a triple divorced woman be lawful to her first husband by a subterfuge marriage contract], ʿUmar saw that enforcement of the validity of triple divorce may deter them from doing this prohibited act, and he did that only by his independent reasoning (*ijtihād*). However, if a wrongdoer does not deserve a punishment and the enforcement of the validity of triple divorce leads to a sinful permitted

[280] Ibn Taymiyya, *MF*, 33:91.

[281] Ibn Taymiyya, *MF*, 33:91.

> marriage contract (this is defined by text and the Companions' consensus). This can also lead to further corruption. It is not permissible in Islam to remove a corruption by greater corruptions. Therefore, treating a triple divorce as a single divorce in such a case is more consistent to the original intent of God's Messenger and Abū Bakr. This was why a group of scholars, like Abū Barakat [Ibn Taymiyya's grandfather] among them, has decreed the validity of triple divorce in some circumstances without decreeing it in other circumstances, similar to what is narrated by the Companions. However, this is because they saw it was from discretionary censure punishment, which is permissible as needed, such as an additional number of floggings above forty floggings for drinking wine with exiles from where they live, and shaving the head in addition It could also be because of their different independent reasoning, that they saw it as valid at some times and invalid at other times.[282]

At this point we conclude that it seems that Ibn Taymiyya has spent most of his efforts to examine, explain and object to his antagonists regarding the triple divorce issue because he looked at his different opinions to those of the majority of jurists about this single issue as the focus of his jurisprudential battle with the majority of jurists. Therefore, he attempts to quote the most important evidence from Qurʾānic verses, reports and analogies to reinforce his stance and view about triple divorce law and its validity as a single divorce.

2.11 The majority of jurists' opinion and proofs on triple divorce

Now, it is important to examine proofs from the majority of jurists from the four Sunni schools of law regarding this subject, as well as Ibn Taymiyya's responses to those proofs. This is important primarily as a way to distinguish the methodology behind Ibn Taymiyya's differences with the majority of jurists, according to his reading and interpretation of the religious texts, and the reality of the Muslim community historically. It is also important to know which side has the evidence with the strongest legal backing according to Islamic law, and the impact these differing views would have in Islamic societies, historically and

[282] Ibn Taymiyya, *MF*, 33:93.

in the present day. The majority of jurists from the Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī schools of Islamic law see the pronouncement of triple divorce as just as valid as three divorces.[283] They have reached this conclusion based on evidence from the Qurʾān, the Sunna, narrations from the Companions and religious analogies, as follows.

2.11.1 Proofs from the Qurʾān

The majority of jurists have made inferences from this verse in the Qurʾān: "Divorce can happen twice, and [each time] wives are either kept on in an acceptable manner or released in a good way" (Q. 2:229). It is perhaps surprising that this proof has also been used by Ibn Taymiyya to reinforce his own view about the validity of triple divorce counting only as a single divorce. However, the majority of jurists interpret the same verse as an argument for the validity of triple divorce as three divorces. Therefore, it would seem that the majority of jurists interpret God saying, "Divorce can happen twice", as granting the validity and permissibility of using two out of three divorces in a single session. They claim that if the divorce is valid for two divorces, then it is also valid if combined and pronounced through triple divorce.[284] However, as previously discussed, Ibn Taymiyya's interpretation of this verse is that "twice" in traditional Arabic language means "happening time after a time". This interpretation necessitates an understanding of the conventional concepts of Arabic spoken folk language. According to this interpretation, the intention behind a husband saying, "You are divorced twice," denotes just a single divorce.

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[283] al-Sarakhsī, *al-Mabsūṭ*, 6:57, Abī Muḥammad, *al-Maʿūna*, 1:556, ʿAli b. Muḥammad al-Māwardī, *al-Ḥāwī al-kabīr*, ed. ʿAli Muḥammad Muʿawaḍ and ʿAdil Aḥmad ʿAbd Mawjūd (Beirut: Dār al-kutub al-ʿilmiyya, 1994), 10: 122, Muḥammad b. Mufliḥ, *Kitāb al-Furūʿ*, 9:53.
[284] Ibn Ḥajar, *Fatḥ al-bārī*, 9:278.

Ibn Taymiyya's disciple, Ibn al-Qayyim, objects to his master's opponents' evidence by citing an example from the Qurʾān in defence of his master's interpretation of this verse:

> This explained what God says about one who cursed (*lāʿana*) his wife [accusing her of adultery]. "As for those who accuse their own wives of adultery, but have no other witnesses, let each one call God to witness four times that he is telling the truth" (Q. 24:6). Therefore, in this case of imprecation law [The *liʿān* ruling] applied and a husband says, "I bear witness to God by four witnesses that I am being truthful," so this was just his calling God to be witness once instead of four times and there are also many examples in the Qurʾān which are like this.[285]

The second proof from the majority of jurists is given in this verse: "If a husband re-divorces his wife after the second divorce, she will not be lawful to him until she has taken another husband" (Q. 2:230). This verse is also used by Ibn Taymiyya to support his view on the subject. Similarly, we find that Ibn al-Qayyim mentions this proof from the majority of jurists and argues against their claim that this verse does not actually distinguish between three divorces in combination with any single word or by separation.[286] Next, Ibn al-Qayyim supports his master's interpretation of this verse by asserting that it does not discuss the permissibility of combining three divorces at all, but instead explains that a husband has three divorces, and his wife, after a third divorce, is not lawful to him until she remarries another man.[287]

The majority of jurists' third proof is this verse: "These are the limits set by God–whoever oversteps God's limits wrongs his own soul–for you cannot know what new situation God may perhaps bring about" (Q. 65:1). The majority

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[285] Ibn al-Qayyim, *Ighāthah al-lahfān ilā lṣāid al-shaṭān*, ed. Muḥammad Sayīd Kaīlānī (Qairo: Makatabah dār al-turāth, 1961), 1:306-307,318.

[286] Ibn al-Qayyim, *Zād al-maʿād*, 5:252.

[287] Ibn al-Qayyim, *Zād al-maʿād*, 5:245.

of jurists interpret this verse as a husband experiencing remorse after divorcing his wife three times. So, if triple divorce is not valid, there would be no need to even mention remorse.[288] However, taking a closer look at the first paragraph of the same verse, we notice something interesting at the beginning of the verse: "Prophet, when any of you intends to divorce women, do so at a time when their prescribed waiting period can properly start" (Q. 65:1). The prescribed waiting period of a divorce is three different divorces, during three periods of purity, which can include a single divorce in each period. However, combining triple divorce together does not constitute a proper prescribed waiting period, meaning that it does not support the majority of jurists' opinions of the discussed verse at all.

There was more significant evidence from the Qurʾān used by the majority of jurists to support their view on the validity of triple divorce; however, anyone who investigates their evidence will find that they have used all the verses that discuss the legitimacy of divorce in general, but have interpreted them to suit their own arguments about the validity of triple divorce. Therefore, Ibn Taymiyya's interpretation regarding those verses is more convincing, especially when he says, "For every divorce sanctioned by God in the Qurʾān about a married woman is a revocable divorce, then God does not prescribe the use of a triple divorce, and also does not prescribe a husband to divorce his wife by irrevocable divorce."[289]

2.11.2 The evidence from reports (Aḥādīth)

The majority of jurists support their arguments from some reports narrated from the Prophet to support their views on triple divorce. Their first

[288] al-Nawaūī, *Sharḥ ṣaḥīḥ muslim* , 10:70-71.
[289] Ibn Taymiyya, *MF* 33:9.

report is a narration from the Prophet in ʿUwaymir al-ʿAjlānī's story, when he asked the Prophet

> "O Allāh's Messenger! If a man finds his wife with another man, should he kill him (in *Qiṣāṣ*)? Or otherwise, what should he do?" Allāh's Messenger said, "Allāh has revealed something concerning the question of you and your wife. Go and bring her here". So they both carried out the judgement of imprecation (*liʿān*) while I was present among the people (as a witness). When both of them had finished, ʿUwaymir said, "O Allāh's Messenger! If I should now keep my wife with me, then I have told a lie". Then he pronounced his decision to divorce her thrice before Allah's Messenger ordered him to do so.[290]

The majority of jurists claim that ʿUwaymir combined triple divorce in a single pronunciation and the Prophet did not deny the divorce, indicating that it is permissible and valid.[291] However, Ibn Taymiyya objects to this interpretation by mentioning a practical detail in this report. This is to show what the ḥadīth really says and also to rebut the proof of the four Sunni schools. Therefore, we find that Ibn Taymiyya mentions the correct verdict in the reported incident by interpreting the situation that the report speaks to which was imprecation (*al-liʿān*). In this regard he says

> However, the divorce of the imprecator (*al-mulāʿin*) occurred after irrevocability, or after an obligation of irrevocability, in which a woman becomes unlawful to her husband after more than three divorces, and this was what happened because of imprecation (*al-liʿān*). However, a dispute is about someone's divorce, with the possibility that her husband could take her back as his wife, especially when the Prophet has separated his marriage to her. So, if the separation happened before the husband pronounced the triple divorce, it meant that no triple divorce occurred by it because by the Prophet's separation she became unlawful to him, but if separation happened after triple divorce, it indicated the invalidity of his triple divorce and a survival of the marriage, then it is well-known that the Prophet separated them after he triply divorced his wife and this indicates that a triple divorce is not valid. If it had been valid this would mean a man's wife would become unlawful to her

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[290] Muḥammad b. Ismāʿīl al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ al-musnad min* ḥadīth *rasūl allah ṣalā allah ʿalaīhi wa sallam wa sunnattihi wa ayāmihi*, ed. Muḥib al-dīn al-khaṭīb. Kitāb: al-ṭalāq, Bāb: Man jawaza al-ṭalāq al-thalāth (Cairo: al-Maṭbaʿa al-salafiyya, 1400h), 3:402.

[291] Ibn Qudāma, *al-Mughnī*, 10:330.

> husband until she remarries another man, which would cause the Prophet to refrain from granting them a separation because they would become foreign persons to one another. In other words, it could be said that the Prophet made a wife unlawful to her husband forever. It is said that the Prophet had to make her unlawful to him in order not to separate them. So because he separated them, it meant the marriage would survive and show the invalidity of triple divorce.[292]

However, the majority of jurists deny Ibn Taymiyya's interpretation of this report and assert that proving an occurrence of separation between an imprecated couple because of imprecation without divorce is a matter of debate between scholars, and there are some who believe that a separation in this case was caused by divorce.[293] However, Ibn Taymiyya's interpretation is supported by a narration from Ibn ʿUmar, who said, "The Prophet made an Anṣārī man and his wife carry out *liʿān*, and then separated them".[294] In addition, Ibn Ḥajar said, "Sahil's and Ibn ʿUmar's reports are from the same story".[295] From this, it can be concluded that the previous report does not support the majority of jurists' views and is not a suitable proof of their claims.

Next, the majority of jurists bring up a narrated report that includes the following passage: "Rukāna ibn ʿAbd Yazīd divorced his wife definitely and told the Prophet about it, then the Prophet asked him: "By God, did you intend just a single divorce"? Then he replied: "By God, I did intend just a single divorce", and then the Prophet returned her to him."[296] The majority of jurists use this report to reinforce their views about triple divorce, claiming that the Prophet's oath is proof that if he intended more than a single divorce it would be valid, as that was

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[292] Ibn Taymiyya, *MF* 33:77-78

[293] Muḥammad al-Amyīn al-Shanqīṭī, Aḍwāʾ al-bayyān fī ʾiḍāḥ al-Qurʾān bi al-Qurʾān (Jaddah: Dār ʿālam al-fawāʾid, n.d), 1:189.

[294] al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ*, Kitāb al-Ṭalāq, Bāb: al-tafrīq baīyna al-mutalāʿinaīn, 3: 416.

[295] Ibn Ḥajar, *Fatḥ al-bārī*, 9:458.

[296] Sulaīmān ibn al-Ashʿath, *Sunan Abī Dāwid*, Kitāb al-ṭalāq, Bāb: fī al-batta (Beirut: Dār ibn ḥazim, 1997), 2:455.

what he originally intended.[297] However, as previously shown, Ibn Taymiyya has strongly disputed this report, asserting that it has no validity as an argument. In addition, some of the greatest scholars of report (ḥadīth) science, including Aḥmad ibn Ḥanbal, al-Bukhārī, and Ibn Ḥazm have also disputed the report's validity.

Furthermore, the majority of jurists also use a narrated report from Fāṭima bint Qays, where she states that her husband divorced her thrice, and then she asked the Prophet about her expenses due from him, to which the Prophet replied: "There is no expense due to you from him", and he commanded her to complete the waiting period (*ʿidda*).[298]

Furthermore, the majority of jurists present another report, which is narrated by ʿĀʾisha that the wife of Rifāʿa al-Quraẓī, who went to Allāh's Messenger and said, "O Allah's Messenger! Rifāʿa divorced me thrice. After him I married ʿAbd-Raḥmān bin al-Zubaīr al-Quraẓī, who proved to be impotent". Allāh's Messenger said to her, "Perhaps you want to return to Rifāʿa? Nay (you cannot return to Rifāʿa) until you and ʿAbd-Raḥmān consummate your marriage".[299]

The majority of jurists argue that these reports indicate that the Prophet did not deny the man who divorced his wife thrice and judged him according to his triple divorce. Therefore, this proves the validity of triple divorce.[300] Ibn Taymiyya counters these arguments by pointing out that

> Fāṭima and the wife of Rifāʿa were divorced on three different occasions, which is affirmed by an authentic report that a third divorce was the last one out of three divorces. Thus, none of them divorced his wife thrice

[297] al-Shanqīṭī, *Aḍwāʾ al-bayyān*, 1:202.
[298] Muslim, *Ṣaḥiḥ Muslim*, Kitāb al-ṭalāq, bāb: al-muṭṭlaqa al-bāʾin lā nafaqa lahā, 4:123.
[299] al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ*, Kitāb al-Ṭalāq, Bāb: man jawwaza al-thalāth, 3: 402.
[300] Ibn al-Qayyim, *Zād al-maʿād*, 5:252-253.

> altogether. Therefore, when the Companion (report narrator) says, "Divorced thrice", this means that a husband divorced his wife three times separately. For instance, he divorces her and then takes her back, and then he divorces her and takes her back a second time, then he divorces her for a third time. This is a permissible divorce, validated by agreements from several scholars. This was also a well-known meaning of triple divorce in the era of the Prophet (May peace be upon him). However, combining three divorces in a single word was contrary to their view and happens rarely. So, it is not permissible to carry out the absolute word on the little evil without carrying it on much right. So, it is not permissible to say: he divorces combined neither this one nor this. However, this is judgement without evidence, and it is in contrary to the existence evidence as well.[301]

The next report offered as evidence by the majority of jurists describes what the Prophet was told about a man who triple divorced his wife, causing the Prophet to angrily stand up and angrily proclaim: "Is the book of God played with when I am still among you"?[302] The majority of jurists claim that this report reveals that if three divorces combined together were invalid, then the Prophet would explain it in this example, because it is impermissible for him to delay the necessary explanation.[303] Ibn Taymiyya responds to this evidence by asserting that this report does not contain anything that indicates that the Prophet allowed or permitted that divorce. On the contrary, Ibn Taymiyya explains, the report explicitly declares a prohibition on combining and using three divorces together because it is contrary to the book of God.[304]

These are the primary reports cited by the majority of jurists to reinforce their view on the validity of triple divorce. However, through a deeper, neutral examination into these reports, as well as considering the criticisms levelled against them by scholars, including Ibn Taymiyya's disciple, Ibn al-Qayyim, we

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[301] Ibn Taymiyya, *MF* 33:77.

[302] Aḥmad ibn Shuʿaīb al-Nasāʾī, *Sunan al-nasāʾī*, Kitāb al-ṭalāq, bāb: al-thalāth al-majmwʿa wa mā fīhī min al-taghlīẓ, ed. Muḥammad Nāṣir al-dīn al-Albānī (al-Riyadh: Makatabah al-maʿārīf, n.d), 526.

[303] Ibn al-Qayyim, *Ighāthah al-lahfān*, 1:326.

[304] Ibn al-Qayyim, *Ighāthah al-lahfān*, 1:332.

find that these reports do not include any explicit examples proving that the pronouncing of a triple divorce is equivalent to a triple divorce in a single word. Therefore, it is worth mentioning Ibn Taymiyya's general comment about all of those reports:

> We do not know of any one during the time of the Prophet who triple divorced his wife with a single word and was permitted three valid divorces by the Prophet. Additionally, there is no authentic (*ḥasan*) report, and no transmission from any reliable source that suggest otherwise. However, several ḥadīth scholars have agreed through their own narrated reports that the reports presented by the majority of jurists are weak or fabricated.[305]

2.11.3 The narrations from the Companions

After presenting their evidence in these reports, the majority of jurists rely on several narrations from the Companions to support their view about triple divorce law. Their narrations are as follows:

> From Ibn ʿAbbās, who reported
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> That (Pronouncement) of three divorces during the lifetime of Allāh's Messenger, (may peace be upon him) and that of Abu Bakr, and the first two years of caliphate of ʿUmar (was treated), should be treated as one. But regarding this matter, Umar said, "Verily the people have begun to hasten in the matter in which they are required to observe respite. So if we had imposed this upon them, then he imposed it upon them".[306]

The majority of jurists claim that this is ʿUmar's view and that the Companions agreed with his view, and did not contradict him. So, this was treated like a consensus on the issue, and not a contradiction to what was reported in the era of the Prophet, because the Companions might have possessed a religious text which abrogated the text which counted triple divorce as a single divorce. Furthermore, it is difficult to believe that ʿUmar and the

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[305] Ibn Taymiyya, *MF* 33:12-13.

[306] Muslim, *Ṣaḥiḥ Muslim*, Kitāb al-ṭalāq, bāb: ṭalāq al-thalāth, 4:109.

Companions would have taken a contrary position to the Prophet.[307] It should be noted that this narration is the same one which Ibn Taymiyya used in order to reinforce his own view on the issue, meaning that both he and the majority of jurists were trying to use the same report to support their respective arguments.

However, Ibn Taymiyya, as a legal historian, firmly counters their claim and tries to explain the issue in greater detail by confirming that this narration is only ʿUmar's while the other Companions disagreed. Thus, if a contradiction between the Companions is confirmed, there is no way to prove the existence of the Companions' consensus about the issue. Additionally, Ibn Taymiyya believes that the majority of jurists claim that the treatment of triple divorce as a single divorce is an allegation without any evidence. If treating a triple divorce law as a single divorce was abrogated, it would become famous among the Companions, and it was also mentioned by ʿUmar in this narration.[308] Furthermore, Ibn Taymiyya rebuts the majority of jurists' accusations that he stands against ʿUmar's view by discussing those views directly and recounting ʿUmar's opinions and the majority of jurists' stances on them. Regarding these charges about contradicting ʿUmar, Ibn Taymiyya declares

> You opposed ʿUmar in many well-known issues from him, which all the Companions agreed on, even issues in which he presented evidence from the Qurʾān and Sunna. [For example], from those of you who grant permission to *taḥlīl* marriage although it was confirmed from ʿUmar that he said "I will stone (*al-rajim*) both [men] who engage in *taḥlīl* marriage (*al-muḥallīl and al-muḥallal lahu*). Also, there is an agreement about its prohibition among the Companions, including ʿUthmān, ʿAlī, Ibn Masʿūd, Ibn ʿAbbās, Ibn ʿUmar, and others. In addition, it is unknown amongst the Companions, whether they returned the wife to her husband by *taḥlīl* marriage. Furthermore, ʿUmar and all of the Companions have proofs from the Qurʾān and the Sunna, such as "the Prophet imprecated both

[307] Ibn Qudāma, *Al-Mughnī*, 10:335.

[308] Ibn Taymiyya, *MF* 33:32, Ibn al-Qayyim, *Zād al-maʿād*, 5:270.

> [men who engage in *taḥlīl* marriage] *al-muḥallīl and al-muḥallal lahu*".[309] However, some have opposed the Companions on this issue and have another view; this is by their independent reasoning opinions.[310]

Next, Ibn Taymiyya tries to object to the majority of jurists' views and to persuade not only them, but also the community, about the originality of using the triple divorce law as a single divorce. Ibn Taymiyya also tries to teach that ʿUmar did not change this issue's law, but rather that it was just a temporary procedure and that the majority of jurists were wrong when they decided to uphold this temporary change after ʿUmar's time. Ibn Taymiyya supports his argument by mentioning more case laws that show where ʿUmar's views were opposed by the majority of jurists. Regarding these differences, Ibn Taymiyya says:

> Also, ʿUmar confirmed that he views the pronunciation of both statements, "[you are] unhanded (*al-khaliyya*)" and "released (*al-barriyya*)", as single revocable divorces, but the majority of jurists oppose ʿUmar's view about this issue. In addition, ʿUmar also confirmed that he gave two options to the missing [husband] who came back and found his wife had married another man, those two choices being to either choose his wife or a dowry [which he paid to his wife when he married her]. Also, this is a well-known account among the other Companions, including ʿUthmān, ʿAlī, and Aḥmad ibn Ḥanbal who narrated ʿUmar's view from eight Companions and he said "Whoever opposes those people, to where are they going?" However, the majority of jurists opposed both ʿUmar's and all of the Companions' views about this issue.[311]

Next, we find that Ibn Taymiyya rebuts all narrations used by the majority of jurists to support their views about a triple divorce law. Ibn Taymiyya sees the issue as a controversial one among his predecessors, who never reached any consensus about it. Ibn Taymiyya mentions all of these things when discussing caliph ʿUmar's decision to change the triple divorce law from

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[309] Muḥammad ibn ʿIsā al-Tirmizī, *Sunan al-Tirmizī*, Kitāb al-Ṭalāq, bāb: mā jāʾa fī al-muḥill wa al-muḥallal lahu, ed.Muḥammad al-Albānī (Riyadh: Maktabah al-maʿārīf, n.d), 265.

[310] Ibn Taymiyya, *MF* 33: 30-31.

[311] Ibn Taymiyya, *MF* 33:31

single revocable divorce to thrice irrevocable divorce in Muslim communities. Therefore, according to Ibn Taymiyya, when ʿUmar saw that people had begun to use a method of divorce prohibited by God, they needed to be punished in order to be persuaded not to use it. Thus, he saw fit to punish them by imposing it upon them in order to force them to abstain from using it. This was done either as a type of discretionary censure punishment (*taʿdhīr*), which is done when needed, or it was done out of misgiving for defining triple divorce as a single divorce, which was was a conditional solution, and then removing this condition.[312] It should be noted here that Ibn Taymiyya explains the excuses of the Imāms and the scholars regarding the validation of triple divorce as three divorces in a single session; ʿUmar ibn Khaṭṭāb also used this excuse as a type of discretionary censure punishment (*taʿzīr*) carried out by a ruler.

After presenting a reason for ʿUmar's actions, Ibn Taymiyya takes on a more severe and strident tone against the four Sunni schools of law. He starts by referring to this verse: "You, who believe, obey God and the Messenger, and those in authority among you. If you are in dispute over any matter, refer it to God and the Messenger, if you truly believe in God and the Last Day, that it is better and fairer in the end" (Q. 4:59). Ibn Taymiyya then interprets this verse to mean that God commands Muslims to return all their disputes to God and His Messenger, so what became a dispute among the predecessors and the successors should return to the Qurʾān and the Sunna, and there is nothing in the Qurʾān or the Sunna about compulsion and validating triple divorce, either with one word or many words, without a husband taking his wife back before her waiting period is over. On the contrary, the Qurʾān and the Sunna compel triple divorce on a husband who divorced his wife.[313] Here, Ibn Taymiyya tries to refer the matter to the Qurʾān and the Sunna and he cites a verse to back up his argument. By referring the matter to the Qurʾān and the Sunna, this reveals that

[312] Ibn Taymiyya, *MF* 33:16

[313] Ibn Taymiyya, *MF* 33:17-18.

Ibn Taymiyya does not consider this Companion's views as relevant, no matter who this Companion is, even if it were revealed to be ʿUmar ibn Khaṭṭāb.

2.11.4 The majority of jurists' proofs from religious analogies and rational evidence

It is worth mentioning that the majority of jurists also cite several proofs from religious analogies to reinforce their views about the validity of triple divorce in a single session and one pronouncement. However, most of these proofs are the same evidence that they used to support their views about divorcing a menstruating woman. Thus, Ibn Taymiyya replies to these proofs using the same objections he used when discussing the divorce of a menstruating woman. Therefore, we will not discuss those arguments again.

In conclusion, we have found that triple divorce is a very important issue in Islamic family law among the Islamic communities, as it could result in a couple's relationship being separated forever. As we saw, this law was changed in Islamic communities during the era of Caliph ʿUmar as a punishment to the community at that time when they started to use this prohibited form of divorce and continued in this changed form for hundreds of years. However, this came to be changed back again almost solely through the efforts of Ibn Taymiyya. He found it as a temporary punishment to that specific era and needed to be returned back to its original form in Islamic law which came from the Qurʾān and the Sunna. Also, ʿUmar chose this punishment in his time when the tahlil marrage was not recognised in the community but after this decision to validate triple divorces, the community needed to find a solution to protect the relationships between wifes and husbands who became separated because of this decision. So, the tahlil marrage has been found as the only solution of this raised problem in the Muslim communities. It can be said, if the validation of a triple

divorce was a right punishment in a time that there was not the practice of tahlil marrage, so after this punishment lead to the spreading of this kind of prohibited marrage in Islam, it is better to choose Ibn Taymiyya's view regarding the invalidity of triple divorce and count it as only one divorce. Noticeably, he had a major role in returning and protecting the original triple divorce law from Mamluk societies from his time all the way to the present day. This can be evidenced from the written works of many of the jurists who came after Ibn Taymiyya's time in which they have mentioned that there is a view about the invalidity of the triple divorce in Islamic law. However, there are still those who oppose Ibn Taymiyya's views even today, just as in his own time. We can also find traditional fatwas and written books, which I call the modern imitator's scholars as they attempt to refute Ibn Taymiyya's view on the triple divorce law. But today his views have become the formal views everywhere in Islamic societies, including the Islamic courts.

CHAPTER THREE
THE VALIDITY OF DIVORCE ACCORDING TO PERSONAL CIRCUMSTANCES

3.1 Introduction

Ibn Taymiyya has opinions which differ from those of the majority of jurists from the four Sunni schools of law concerning further important issues. These issues are relevant to divorce pronouncements by a person in accordance with the person's mental state in terms of awareness, as well as his psychological state in regard to a psychologically calm and legal state and having legitimacy and legal proxy. We will find that Ibn Taymiyya differs from the majority of jurists concerning the validity of a person's divorce, with respect to mental, psychological and legal aspects. Ibn Taymiyya tries to reinforce his views by providing evidence from his own reading and interpreting it in detail, as well as by making a strong linkage to the reality of a person's state. In addition, he shows the overall advantage of this evidence regarding legitimacy. Relating to these issues, in this chapter, we will discuss Ibn Taymiyya's stances and views about the validity of divorce pronounced by an intoxicated person, the validity of an angered person, the validity of father's pronouncement of the divorce of his younger or mentally ill son's wife and the validity of an attorney's pronouncement of divorce against his client's wife.

3.2 First: The validity of divorce pronounced by an intoxicated person (*al-sakrān*)

It is worth mentioning that there is agreement between Islamic scholars and all Sunni schools of Islamic law that if an intoxicated person did not willingly become drunk, for example, if he was forced to drink or was ignorant about his

drinking, his divorce will be invalid. In contrast, there are different views regarding the validity of divorce pronounced by an intoxicated person who drank with foreknowledge and by his own choice.

3.3 Ibn Taymiyya's view regarding an intoxicated person's action

Ibn Taymiyya sees that all of the actions of an intoxicated person are invalid because he is absentminded.[314] He comments on the scholars' disagreement on this issue, saying that "they disputed about intoxicated contracts [like divorce], which all of the religious texts and the Companions' views show that his pronouncement is wasted like insane speech, and this does not have influence on a divorce and other issues."[315]

Ibn Taymiyya provides several proofs to support his opinion that all intoxicated actions are invalid, as described below.

3.4 Ibn Taymiyya's proofs concerning the invalidity of all intoxicated actions

3.4.1 The first proof

It is confirmed in the ḥadīththat Māʿiz ibn Mālik came to the Prophet and admitted that he had committed adultery. So, the Prophet asked, "Have you drunk wine?" A person stood up and smelt his breath but noticed no smell of wine.[316] According to Ibn Taymiyya, the Prophet's command regarding Māʿiz's awareness had to do with determining whether he was drunk. If he were drunk, then his admission would not be accepted. If his admission was not correct, it would mean that what he said was invalid, as though he were mentally ill,

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[314] Ibn Taymiyya, *MF* 33:102-103.
[315] Ibn Taymiyya, *MF* 14:115.
[316] Al-Nawawī, *Ṣaḥīḥ muslim bi-sharḥ al-nawawī*, 11:200.

because an intoxicated person does not know what he says. In addition, if he does not know what he says, it means that he does not have true intention, and his drinking is a sinful act that has made him think unclearly. Although this would have occurred because of committing a sin, his divorce and other words would still be invalid.[317]

3.4.2 The second proof

Ibn Taymiyya asserts that:

> Intoxicated worship like prayer is invalid, and this is confirmed by Qurʾānic verse and the consensus among scholars. God prohibited praying while intoxicated so that the person praying would understand what he was saying, and the scholars agreed on this issue. This is in contrast to the non-intoxicated drinker, because his worship is valid under these conditions. It is known that a drunken person's prayer is not valid because he does not understand what he says, and this is confirmed in the Qurʾān. Therefore, we [Ibn Taymiyya] say: everyone whose prayer is invalidated because of the absence of his mind, so the invalidation of his contract is fundamental and he may be considered similar to a sleeper, mentally ill person and so on. However, an individual's worship is valid whose act is invalid because of lack of mental capacity, like young boys and those interdicted for foolishness.[318]

Here, Ibn Taymiyya refers to an analogy in the Qurʾān about the lack of validity of intoxicated worship and the validity of non-intoxicated drinkers' worship. So, Ibn Taymiyya finds that if intoxication leads to the invalidation of worship, it is also more likely to lead to the invalidation of acts like divorce.

3.4.3 The third proof

Ibn Taymiyya claims that:

> All the sayings and contracts [in religion] are conditional on the existence of discernment and mind. So, if someone does not have discernment or a mind, there is no consideration of his words in the religion. This is like what the Prophet said: there is in the body a clump of flesh; if it becomes good, the whole body becomes good and if it becomes bad, the whole body becomes bad, and indeed it is the heart.[319] So, if the heart's mind disappears when a person speaks, and he acts on this, so, he is permitted

[317] Ibn Taymiyya, *MF* 33:102.

[318] Ibn Taymiyya, *MF* 33:106-107.

[319] al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ*, Kitāb al-Imān, Bāb: faẓl man istabraʾa li-dīhihī, 1:34.

> to make a command or prohibition towards him. He can also remove property, and this is known as rational evidence with the lawgiver's confirmation of it.[320]

In this evidence, Ibn Taymiyya tries to link up this specific issue with the general legitimacy principles whereby all Muslim sayings and contracts are conditional on an existence of the mind. In addition, he tries to reconcile religion and the mind's vision concerning the invalidation of the action without the mind's existence.

3.4.4 The fourth proof

Ibn Taymiyya sees that

> All contracts and other actions are conditional on the intention; this is because the Prophet said "the reward of deeds depends upon the intentions".[321] Therefore, every pronunciation of a speaker occurring by mistake or through the nonexistence of mind does not result in any religious judgement. However, if the pronunciation is intended without its meaning, so, this is another issue and it has implications.[322]

Here, Ibn Taymiyya's meaning when using the term 'intention' is the mental intention which is relevant to the mind. This intention on its own is not enough for the validation of contracts and actions, because mentally ill people, young boys and others have such an intention and nevertheless their pronouncements are invalid if they have not reached the age of accountability [legal, moral].[323] We see how Ibn Taymiyya differentiates between two types of intentions, which are relevant to the mind and body, and how he asserts that the body's intention is the animalistic intention, which exists within each animal (living creatures). However, the point here is to prove the invalidity of

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[320] Ibn Taymiyya, *MF* 33:107.

[321] Al-Bukhārī, *al-Jāmiᶜ al-ṣaḥīḥ,* Kitāb badᵓ al-waḥī, Bāb: kayfa kāna badᵓ al-waḥī ilā rasūl allah ṣalā Allah ᶜalayh wa salam, 1:13.

[322] Ibn Taymiyya, *MF* 33:107.

[323] Ibn Taymiyya, *MF* 33:107-108.

intoxicated divorce without the mental intention, which is considered non-existent in an intoxicated state.

3.4.5 The fifth proof

Ibn Taymiyya says:

> This issue is relevant to one's situation in religion and it is not from commissioning order in religion. Therefore, the allegation that intoxicated people should be punished or not punished does not relate to the validity or corruption of his contracts; this is because contracts do not relate to worship in terms of reaping spiritual rewards, and it is not a crime which should be punished. However, it exhibits actions, which involve well-doers and wrongdoers, as well as believers and unbelievers. It is necessitated by habitual existence, because covenants and their fulfilment are issues relevant to human advantage – some people need others to gain benefits and ward off misfortune. This comes from the mind and he who does not have a mind or ability to discriminate has not covenanted, allied, sold, married, divorced or manumitted.[324]

In this proof on the invalidity of intoxicated divorce, Ibn Taymiyya tries to illustrate the differences between contracts and worship regarding rewards and punishments in the world and hereafter. Furthermore, he proves and asserts that those who do not have a mind when carrying out an action, including divorcing their wives, have not committed valid acts.

Next, Ibn Taymiyya tries to explain his view accurately and in detail. He accomplishes this through presenting concrete examples from the Prophet's era. Thus, he says:

> This explains that it was well-known before the interdiction of wine that intoxicated speech was invalid by agreement. Therefore, when Ḥamza ibn ʿAbd al-Muṭṭalib [the Prophet's uncle] was intoxicated and said [to the Prophet], "Are you not the servants of my father?" he was not blamed for this. In addition, when one of the first groups of migrants [from Mecca city to Madina] before the prohibition of wine became confused in reciting a Qurʾānic verse (O disbeliever), he was not blamed. Furthermore, when unbelievers drank wine they were conditioned, so believers agreed not to pay attention to them [concerning their covenant and condition]. In addition, if an individual became intoxicated, for example, by drinking something that he did not know would intoxicate

[324] Ibn Taymiyya, *MF* 33:108.

> him, then he would not be punished. On the other hand, if drinking something forbidden intoxicated a person, he would doubtlessly be sinning, and therefore would deserve a punishment in both this world and the hereafter from what God commands. This difference is constant between a person who drinks willingly and another who becomes intoxicated but has an excuse. However, the validity of a covenant exhibits no difference between excused and unexcused intoxication, since its validity hinges on whether the owner [covenant doer] willingly and mindfully engaged in it. This is not the same as judging between right and wrong.[325]

It is worth mentioning that some of the jurists from each of the four Sunni schools of law from Ḥanafī[326], Mālikī[327], Shāfiʿī[328] and Ḥanbalī[329] have the same view as Ibn Taymiyya that divorce pronounced in an intoxicated state is invalid. For this reason, Ibn Taymiyya mentions this dispute between jurists concerning this issue, and says: "This issue has two opinions among scholars, and the more correct is the one saying it is invalid".[330]

3.5 Ibn Taymiyya's evidence regarding the invalidity of an intoxicated person's divorce

Ibn Taymiyya provides several pieces of evidence concerning his view that intoxicated divorce is invalid from the Qurʾān, the Sunna, narrations from the Companions and analogies, as described below.

3.5.1 The Qurʾān

We find Ibn Taymiyya's evidence about this issue in the Qurʾān in another treatise of his collected treatises, *Majmūʿ al-fatāwā*. Here, he gives his interpretations of some verses in the Qurʾān, including a verse that he considers to support his view that intoxicated divorce is invalid. In this verse, God says,

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[325] Ibn Taymiyya, *MF* 33:108-109.
[326] al-Sarakhsī, *al-Mabsūṭ*, 6:176.
[327] Ibn Rushd, *Bidāyat al-mujtahid*, 2:82.
[328] al-Sharbīnī, *Mughnī al-muḥtāj*, 3:384.
[329] al-Mardāwī, *al-Inṣāf* , 8:433-434.
[330] Ibn Taymiyya, *MF* 33:102.

“You who believe, do not come anywhere near the prayer if you are intoxicated, until you know what you are saying” (Q. 4:43). According to Ibn Taymiyya, God is saying that an intoxicated person does not understand what he is saying, and his words do not come from the heart and understanding. Therefore, his saying is invalid, and this indicates that his words should not be taken seriously, including pronouncements of divorce.[331] It is observed that Ibn Taymiyya just uses this verse in the Qurʾān to reinforce his view.

3.5.2 The Ḥadīth

He also relies on two main ḥadīthto support his view that intoxicated divorce is invalid, which are as follows:

1-The story of Māʿiz, who confessed to committing adultery in front of the Prophet, and then the Prophet, asked him, “Did you drink wine?”. Then, a person stood up and smelt his breath but noticed no smell of wine.[332] Ibn Taymiyya considers that this ḥadīthproves the invalidity of an intoxicated confession of adultery. So his divorce is also invalid because this is a pronouncement, which is like a confession.[333]

2-When Ḥamza ibn ʿAbd Muṭṭalib cut off ʿAli’s two camels’ humps, and then the Prophet started blaming Ḥamza for what he had done. Ḥamza was drunk and his eyes were red. He looked at the Prophet, then raised his eyes to look at his knees and raised his eyes more to look at his face and said, “You are only my father's slaves.” When the Prophet understood that Ḥamza was drunk, he retreated, walking backwards, and went out.[334] The inference in this ḥadīthis that the Prophet ignored Ḥamza’s words because he was intoxicated; this means that an

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[331] Ibn Taymiyya, *MF* 14:116.

[332] Al-nawawī, *Ṣaḥīḥ muslim bi-sharḥ al-nawawī*, 11:200.

[333] Ibn Taymiyya, *MF* 14:117.

[334] al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ, Kitāb al-maghāzī, Bāb: shuhūd al-malāʾika badara*, 3: 92.

individual divorce is invalid as well, because this also comes from his words.[335] However, it is observed that the other jurists from the four Sunni schools of law reject this proof, claiming that this story occurred before the prohibition of wine, while the dispute about intoxicated divorce arose afterwards.[336] They are answered, however, that the ḥadīthproves that intoxicated words should not be taken seriously, and this does not change whether drinking is permitted or prohibited.[337]

3.5.3 Analogy

In his evidence concerning the invalidity of intoxicated divorce, Ibn Taymiyya uses some analogies as evidence to support his view, as follows:

1-He asserts that a boy's prayer – who has reached the age of moral and legal account ability [who can make distinction between good and bad things] – is valid. Nevertheless, such a boy's divorce is invalid; thus, if the intoxicated person's prayer is invalid, it is even more appropriate to say that his divorce is invalid as well.[338]

2-He claims that all statements and contracts are conditional on an existence of the mind, the ability to make distinctions and perception. The intoxicated person does not have the ability to make distinctions, so his words are not considered valid in the religion, as well as in divorce.[339]

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[335] Ibn Taymiyya, *MF* 33:108.
[336] Ibn Ḥajar, *Fatḥ al-bārī*, 9:391.
[337] Ibn Ḥajar, *Fatḥ al-bārī*, 9:391.
[338] Ibn Taymiyya, *MF* 14:116.
[339] Ibn Taymiyya, *MF* 33:107.

3-He uses an analogy between intoxicated persons, the insane and sleepers, whose divorces are all invalid because of the nonexistence of the mind in all cases.[340]

It is observed that in all of the types of evidence he uses, Ibn Taymiyya makes presence of mind and having the ability to distinguish between good and bad things essential points for correctly judging the validity or invalidity of actions and words.

3.6 The majority of jurists' views and proofs

The majority of jurists provide several proofs from the Qurʾān, ḥadīth , narrations from the Companions and analogies to reinforce their views about the validity of the intoxicated divorce. These are described below.

3.6.1 The Qurʾān

It seems that the majority of jurists' proofs originate from the same verse from the Qurʾān, which Ibn Taymiyya also uses to reinforce his view. However, the majority of jurists interpret this in the opposite manner. They say that the intoxicated person is obligated in religion to carry out worship. They support their claim through God's statement in the following verse: "You who believe, do not come anywhere near the prayer if you are intoxicated" (Q. 4:43). They claim that God is talking to them when they are intoxicated, and this shows that they are charged with certain responsibilities despite their situation. If this is confirmed, it must mean that the divorce of intoxicated people is also valid.[341] However, Ibn Taymiyya objects to this interpretation, asserting that the speech in the verse is directed towards telling individuals not to become intoxicated, as

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[340] Ibn Taymiyya, *MF* 33:102-103.

[341] Abū bakr ibn Muḥammad al-Ḥusaynī, *Kifāyat al-akhyār fī ḥall ghāyat al-Ikhtiṣār*, ed. Kāmil Muḥammad ʿUwayḍa (Beirut: Dār al-kutub al-ʿilmiyya, 2001), 2:538.

this will result in their missing out on their prayer. Therefore, the speech in this verse is not about talking to them when they are already intoxicated.[342]

3.6.2 The ḥadīth

To support their view that intoxicated divorce is valid, the majority of jurists use this ḥadīth: Abu Hurayra narrated that the Prophet said, "Every divorce is permissible except for divorce where the individual is mentally ill."[343] They explain that this ḥadīthsignifies that all divorces are permissible and valid. In addition, it does not make an exception to any type of divorce except one related to mental illness, and this shows that intoxicated divorce is valid because intoxicated people are not necessarily mentally ill.[344] However, this evidence raises two objections: the first is that this ḥadīth is weak and has no argument, and the second is that even supposing it is an authentic ḥadīth; it includes intoxicated people in the exception, because an intoxicated person does not understand what he is saying. Therefore, he should be considered mentally ill for the duration of his intoxication.[345]

3.6.3 The Companions' narrations

The jurists appeal to two main narrations from the Companions to reinforce their view that intoxicated divorce is valid, as follows:

1-They claim that some of the Companions saw the validity of intoxicated divorce. It was reported that a man drank wine and then divorced his wife, and

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[342] Ibn Taymiyya, *MF* 33:106.

[343] al-Tirmidhī, *Sunan al-tirmidhī, Kitāb al-Ṭalāq, bāb: mā jāʾa fī ṭalāq al-maʿtūh*, 283.

[344] al-Sarakhsī, *al-Mabsūṭ*, 6:176.

[345] Ibn al-Qayyim, *Zād al-maʿād*, 5:214.

some women witnessed this, so Caliph ʿUmar permitted his divorce.[346] In addition, it was reported that Muʿāwiya permitted intoxicated divorce[347], as well as Ibn ʿAbbās.[348] However, Ibn Taymiyya's disciple Ibn al-Qayyim rejects this argument and asserts that other Companions had the opposite view to that of the majority of jurists, including ʿUthmān ibn ʿAffān; therefore, there was no agreement amongst the Companions concerning this issue.[349]

2-They also recount that ʿUmar Ibn Khaṭṭāb consulted the Companions about a wine drinker's punishment in relation to increasing the sentence of forty lashes, and the Companions saw that ʿUmar increased it to eighty lashes. The Companions explained that if the man were intoxicated he would rave, and if he raved, he would defame, so they made his punishment the same as that for defamer.[350] The majority of jurists' evidence in this narration is that the Companions considered intoxicated words in terms that the individual would be punished if he defamed. If this were confirmed, it would indicate that the divorce was also valid, because both have to do with the individual's words.[351] However, this evidence is also rejected by Ibn al-Qayyim, who states that the narration used is very weak and does not support the majority of jurists' views.[352] Furthermore, it is possible to claim that by considering this as an authentic narration, it could be used as evidence to support the claim that intoxicated divorce is invalid, because the Companions saw intoxicated speech as raving, and

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[346] Aḥmad ibn al-Ḥusayn al-Baīḥaqī, *al-Sunan al-kubrā,* Kitāb al-khulʿ wa al-ṭalā1, Bāb: man qāla yajūz ṭalā1 al-sakrān wa ʿitquhu, ed.Muḥammad ʿAbd Qādir ʿAṭṭā (Beirut: Dār al-kutub al-ʿilmiyya, 2003), 7:589

[347] ʿAbd Razāq ibn Hamām al-Ṣanʿānī, *al-Muṣanaf*, kitāb al-ṭalāq, Bāb: ṭalāq al-sakrān, ed.Ḥabīb al-Raḥmān al-Aʿẓamī (Beirut: al-Maktab al-islāmī, 1983), 7:83, Ibn Ḥazm, al-Muḥallā, 10:209.

[348] Ibn Ḥazm, *al-Muḥallā*, 10:209.

[349] Ibn al-Qayyim, *Zād al-maʿād*, 5:214.

[350] ʿAbd Razāq al-Ṣanʿānī, *al-Muṣanaf*, kitāb tābiʿ kitāb al-ṭalāq, Bāb: ḥad al-khamr, 7:378.

[351] Ibn Qudāma, *al-Mughnī*, 10:347.

[352] Ibn al-Qayyim, *Zād al-maʿād*, 5:213.

they punished intoxicated people with eighty lashes because of their drinking, not because of defamation.

3.6.4 Analogy

The jurists infer some proofs from the analogy to support their view concerning intoxicated divorce, including the following:

1-The intoxicated person is insubordinate by virtue of his intoxication, so this sin will not be a cause of alleviating his responsibility; on the contrary, his divorce should be validated as a punishment to him.[353] This claim, however, is discussed and rejected by Ibn Taymiyya from two perspectives; the first is that whether the intoxicated person is punished or not is irrelevant to the divorce issue, because the divorce does not have to do with the worship part of religion, which provides reward, or with crimes, which are punished.[354] The second argument is that the lawgiver has allocated punishment to intoxicated people, and this is a legitimate punishment, but according to Islamic law, the divorce is not punishment. In addition, the lawgiver does not have this kind of punishment to punish couples by separating them.[355] Moreover, validating the intoxicated divorce causes harm to the drunken person's innocent wife, and it is confirmed that nobody should be punished for another person's sin.[356]

2-The intoxicated person is not a mentally ill person or a sleeper, and proof of this is that he can be punished for damages and crimes he commits while drunk.[357] However, Ibn Taymiyya counters that if the jurists are saying a drunken person can be charged solely for his intoxication, they are wrong and their claim

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[353] al-Sarakhsī, *al-Mabsūṭ*, 6:176.
[354] Ibn Taymiyya, *MF* 33:108.
[355] Ibn Taymiyya, *MF* 33:108
[356] Ibn Taymiyya, *MF* 33:104.
[357]Ibn Taymiyya, *MF* 33:105-106, Ibn al-Qayyim, *Zād al-maʿād*, 5:213.

is invalid. On the other hand, if they mean that the intoxicated person is charged for his crime, this is a controversial issue between scholars. In addition, intoxicated divorce is included in an individual's contracts rather than crimes and damages.[358]

This was the opinion of the majority of jurists from the four Sunni schools of law, together with Ibn Taymiyya and his disciple's objection. It is worth mentioning that when Ibn Taymiyya reveals his opinion about this issue, he simultaneously tries to discuss the majority of jurists' proofs. Therefore, we find that Ibn Taymiyya draws the majority of jurists' evidence from their above two points of evidence in order to refute them.

In conclusion, it seems that Ibn Taymiyya's view about the invalidity of intoxicated divorce is stronger than that of the majority of jurists. This is because his evidence is powerful according to both the philosophy of the entire Islamic religion and the reasoning regarding an intoxicated person. In addition, he is able to weaken the majority of jurists' proofs by discussing and refuting them. We also find that Ibn Taymiyya's view on this issue is suitable to Islamic guidance, which commands the protection of the foundation of the family, which includes relationships between couples. Furthermore, a divorce has significant consequences and is subject to many rules; therefore, only a reasonable and aware person should carry it out. Finally, it is important to note that Ibn Taymiyya's view has become an article in personal status law in most Islamic courts.

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[358] Ibn Taymiyya, *MF* 33:106-108.

3.7 Second: Divorce pronounced in circumstances of anger (*al-ghaḍab*)

3.7.1 Definition of anger and its types

Before discussing the validity of divorce pronounced by an angry husband, as debated between Ibn Taymiyya and the majority of jurists from the four Sunni schools of law, we must explain and define anger in terms of its cause as to being a praiseworthy or blameworthy emotion. To understand this point, it is important to reference its definition by the famous legal jurist Mustafā al-Zalmī. He defines anger as:

> A psychological attribute, which is related to the human psychology aspect; it causes some implications that might be illegal. However, this attribute, in its essence, is not considered as prohibited, because it is not voluntary on the one side, and it sometimes pushes the angry person to do praiseworthy acts on the other side. This is like defending the self or dignity or money or others; however, it could push the person to blameworthy actions like divorcing his wife without any justification.[359]

Thus, it is explained from the previous definition that anger is not voluntary for human beings, and it might also push the angry person to act in a legal or illegal fashion. According to this definition, it seems that the dispute between Ibn Taymiyya and the majority of jurists is limited to this point of illegality because the debate between these two sides is whether an angry person's divorce as a blameworthy action is valid or not.

3.7.2 Classifications of anger

Before reviewing Ibn Taymiyya and the majority of jurists' views and evidence from their discussion, it is important to explain the classifications of anger for human beings and indicate the type that caused the dispute. In this

[359] Mustafā Ibrāhīm al-Zalmī, *Madā sulṭān al-irāda fi al-ṭalāq fi al-sharāʾiʿ wa al-qawānīn wa al-aʿrāf khilāl arbaʿat ālāf sanah* (n.pl.: Nashr iḥsān lil-nashr wa al-tawzīʿ, 2014), 290.

regard, Ibn al-Qayyīm divides the classifications of anger in terms of their influence on the validity of divorce into the three types below:

1–A man who becomes angry at a low level that does not affect any change to his mind, and he understands his words and intentions. For this type, there is no ambiguity or dispute about the validity of his divorce, manumission and the validity of contracts. This is especially true if it occurred after serious hesitation and thought on the idea.

2–A man whose anger has reached its end, therefore closing the door of knowledge and will. He does not know what he says and does not want to know. For this type of anger, it is not disputed that his divorce is invalid.

3–A man who mediates in anger between two ranks, exceeding its principles and not reaching its end; he becomes like someone who is mentally ill. This is a subject of dispute and under consideration.[360]

3.7.3 Ibn Taymiyya's fatwa regarding an angry person's divorce

We see here how Ibn al-Qayyim explains the types of anger within humans and the stance of the jurists about them. It is confirmed by Ibn al-Qayyim that there is disagreement among jurists concerning the legitimate law of the third type. It seems that Ibn-Qayyim's intention is the dispute between his master, Ibn Taymiyya, and the majority of jurists. This is because what remained from Ibn Taymiyya's view regarding the angered person divorce law is only his legal opinion (*fatwā*). It was stated in *Majmūᶜ al-fatāwā* that he was asked about a man who quarrelled intensely with his wife; the man's mind was affected and

[360] Ibn al-Qayyim, *Ighāthat al-lahfān fi ḥukm ṭalāq al-ghaḍbān*, ed. ᶜabd al-Raḥmān b. Ḥasan (n.pl.: Dār ᶜālam al-fawāʾid, n.d), 20-21.

changed. He then told his wife that she was triply divorced. Was his divorce valid or not? Ibn Taymiyya replied, "If the matter reached a degree that was inconceivable, and he speaks as if crazy, it does not validate anything, such as a divorce, and God is the knower".[361]

In addition, we did not find in *Majmūʿ al-fatāwā* – or in other books written by Ibn Taymiyya – evidence of this subject or a discussion that included the majority of jurists' views on it. Nevertheless, the law concerning an angry person's divorce is one of the famous issues discussed by Ibn Taymiyya. It is supposed that some of Ibn Taymiyya's opinions, proofs and discussions against the majority of jurists are missing. Fortunately, we have found that Ibn Taymiyya's disciples transmitted their master's views about this subject, which came to them directly from Ibn Taymiyya.

Before mentioning any views or discussion, we would like to show the essential points regarding the dispute between Ibn Taymiyya and the majority of jurists.

1- The existence of differences between them concerning the interpretation of the Prophet saying, "There is no divorce during the closing (*ighlāq*)".[362] Ibn Taymiyya interprets "closing" as meaning anger (*ghaḍab*), but the majority of jurists see it as coercion (*ikrāh*).

2-Their difference in considering the intent in divorce; Ibn Taymiyya sees intent as important when considering divorce, and because of that he says that an

[361] Ibn Taymiyya, *MF* 33:109.

[362] Sulaīmān ibn al-Ashʿath, *Sunan Abī Dāwid*, Kitāb al-ṭalāq, Bāb: fī ṭalāq ʿalā ghallat , 2:446.

angry person's divorce is invalid.[363] However, the majority of jurists believe that it is sufficient to validate an angry person's divorce by using its explicit formula, and they further state that it does not need to be accompanied by intention.[364]

3.7.4 Supporting Ibn Taymiyya's view by his disciples

Ibn Taymiyya's view, regarding divorce pronounced by an angry person is confirmed in many places by his disciples. We found that Ibn Taymiyya sees this type of divorce as invalid even if the state of anger has not reached a degree that causes mental instability.[365] This is asserted by Ibn al-Qayyim[366] and stated by al-Mardāwī in his book *al-Insāf*.[367] In addition, Ibn Taymiyya's disciple, Ibn Mufliḥ talks about his view of an angry person's divorce and that this type of divorce is invalid if a person was going to be angered until he fainted or lost consciousness. He says, "Our master [Ibn Taymiyya] said, 'There is no doubt that he has mentioned if he has divorced or not'."[368]

Next, we find in *Majmūʿ al-fatāwā* that Ibn Taymiyya considers the degree of anger as optional if one does not understand what he says.[369] As mentioned above, the origin of this difference is due to a narrated Ḥadīth from ʿĀʾisha who said, "I heard the Prophet (peace be upon him) say: 'there is no divorce and manumission in 'closing' (*ighlāq*)". Here, we discovered an important point regarding the issues previously discussed about Ibn Taymiyya's views because

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[363] Ibn Taymiyya, *MF* 33:109.

[364] al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, 4:222, Muḥammad b, Aḥmad b. Juzay, *al-Qawānīn al-fiqhīyya fi talkhīṣ madhhab al-mālikiyya*, ed. Muḥammad b. Sīdī, (n.pl: n.p, n.d), 371, Aḥmad b. Ḥajar al-Haytamī, *Tuḥafat al-muḥtāj bi-sharḥ al-minhāj*, (Egypt: Maṭbaʿh Muṣṭafā Muḥammad, n.d), 8: 32-33. Ibn Qudāma, *al-Mughnī*, 10:358 -360.

[365] Ibrāhīm b. Muḥammad b. Abī Bakr, *al-Masāʾil al-fiqhiyya min Ikhtiyārāt Shaykh al-Islām Ibn Taymiyya*, ed. Aḥmad Mwāfī, (Riyadh and Cairo: Dār Ibn al-Qayyim and Dār Ibn ʿafān, 2007), 18.

[366] Ibn al-Qayyim, *Zād al-maʿād*, 5:215.

[367] al-Mardāwī, *al-Inṣāf*, 8:433.

[368] Ibn Mufliḥ, *al-Furūʿ*, 9:9.

[369] Ibn Taymiyya, *MF* 33:109.

we find that Ibn al-Qayyim transmitted Ibn Taymiyya's interpretation of the word "closing" in the previous ḥadīth . Ibn al-Qayyim says,:

> Our master [Ibn Taymiyya] said, 'Closing' (*ighlāq*) means clogging the door of knowledge and intention upon him, and this includes bedlamite, insane and intoxicated divorce. It also includes an angry person who does not understand what he says, because every one of those persons has closed the door of knowledge and intention upon himself, and the divorce is only valid if it comes from one who intended it and has knowledge about it.'[370]

As mentioned before, because of the nonexistence of Ibn Taymiyya's evidence and discussion about this issue, as well as it being a well-known subject from him among jurists, Ibn al-Qayyim wrote the book *Ighāthat al-lahafān fī ḥukm ṭalāq al-ghaḍbān* (*Distressed Rescue in the Angry's Person Divorce Judgement*). In this book, Ibn al-Qayyim tries to explain his master's views as well as giving proof, and discusses his master's opponents' evidence from the majority of jurists.

3.7.5 Ibn Taymiyya's disciples' supported proofs

Ibn al-Qayyim supports his master's view and asserts that legitimacy proves the invalidity of an angry person's divorce, manumission and contracts, where both choice and satisfaction are considered. This is a part of closing as it was interpreted by leaders [he means his master, Ibn Taymiyya].[371] Furthermore, he offers more than twenty five points about the reality of this view to assert that his master's view is very strong and likely, and below are selected points of proof.

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[370] Ibn al-Qayyim, *Tahdhīb al-sunan*, ed. Ismāʿīl b. Ghāzī Marḥabā, (Riyadh, Maktabat al-maʿārif, 2007), 2:911.

[371] Ibn al-Qayyim, *Ṭalāq al-ghaḍbān*, 21.

3.7.5.1 Proof from the Qurʾān

Ibn al-Qayyim uses the following verse to support the invalidity of the angry divorce view. God says "If Satan should prompt you to do something, seek refuge with God. He is all hearing, all knowing" (Q. 7:200). Ibn al-Qayyim, through his master's system of thinking and interpreting, sees that this verse means that all of an angry person's words, intense in stressful situations, such as his divorcing, cursing and others, are from Satan. The Prophet said, "The anger comes from Satan"[372] and if so, a judgement does not result in what the angry person has said.[373]

3.7.5.2 Proof from the ḥadīth

Ibn al-Qayyim reinforces his master's view by selecting many Ḥadīths as follows: A ḥadīth, narrated by ʿĀʾisha, said: "The Prophet said 'there is no divorce and manumission in closing'".[374] Ibn al-Qayyim asserts that this ḥadīthdenies the validity of divorce in closing circumstances, though some scholars interpret closing as anger.[375] However, jurists from two of the four Sunni schools of law object to this as proof. One states that this ḥadīthis weak and does not make a valid argument.[376] The second states that even by supposing it as an authentic ḥadīth, the intended meaning is coercion, not anger.[377]

Another important ḥadīthused by Ibn al-Qayyim is what is proven from the Prophet who said: "None of you should judge between two persons when he

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[372] Sulaīmān ibn al-Ashʿath, *Sunan Abī Dāwid*, Kitāb al-adab, Bāb: mā īuqāl ʿnda al-ghaḍab, 5:93.
[373] Ibn al-Qayyim, *Ṭalāq al-ghaḍbān*, 37.
[374] Sulaīmān ibn al-Ashʿath, *Sunan Abī Dāwid*, Kitāb al-adab, Bāb: mā īuqāl ʿnda al-ghaḍab, 5:93.
[375] Ibn al-Qayyim, *Ṭalāq al-ghaḍbān*, 17.
[376] Ibn Ḥajar, *Fatḥ al-bārī*, 9:301.
[377] Muḥammad b. ʿAlī al-Shawkānī,*Nayīl al-awtār min ʾasrār muntaqā al-akhbār*, ed. Muḥammad Ṣubḥī, (Riyadh, Dār Ibn al-jawzī, 2008), 12:414.

is angry."[378] This ḥadīthis interpreted to mean that anger would influence the judge's intention and judgement. Therefore, the Prophet prohibited from making judgements in angry situations. It certainly shows that there is no consideration given to the words of an angry person, including words related to his divorce.[379] From this ḥadīth, Ibn al-Qayyim also mentions that the Prophet said: "The vow (*al-nadhr*) made in anger is not valid, and its atonement is like breaking the oath's atonement".[380]

Ibn al-Qayyim claims that the Prophet invalidated the angry person's vow and did not give it any consideration. Therefore, if a praised and desired action is invalid because of anger, it is logical that an angry person's divorce is also invalid, because divorce is an unwanted and undesirable action in the Islamic religion.[381] Using this ḥadīthas proof to invalidate an angry person's divorce is debated in two regards; the claim that this ḥadīthis weak and has no argument,[382] and that if considering it an authentic ḥadīth, it still means there is no vow of God's anger, which is a person's sin.[383] However, Ibn al-Qayyim objects to these theories, asserting that the weakness of this ḥadīthis not approved among all scholars. Conversely, there are those who have taken it as an authentic ḥadīthand approved it. Regarding the interpretation that anger is God's anger and is not binding on a violator, some scholars interpret it as human anger instead of God's anger.[384]

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[378] al-Bukhārī, *al-Jāmiᶜ al-ṣaḥīḥ*, Kitāb al-aḥkām, Bāb: hal yaqḍī al-qāḍī aw īuftī wahūa ghaḍbān, 4: 332.

[379] Ibn al-Qayyim, *Ṭalāq al-ghaḍbān*, 23-24.

[380] al-Nasāʾī, *Sunan al-nasāʾī*, Kitāb al-aīmān wa al-nudhur, bāb: kafārat al-nadhr, 592-593.

[381] Ibn al-Qayyim, *Ṭalāq al-ghaḍbān*, 22.

[382] Ibn Rushd, *al-Bayān wa al-taḥṣīl wa al-sharḥ wa al-taūjīh wa al-taᶜlīl fī masāʾil al-mustakhrajah*, ed. Aḥmad al-Ḥabābī, (Beirut: Dār al-gharb al-Islāmī, 1988), 3:151.

[383] Ibn Rushd, *al-Bayān wa al-taḥṣīl*, 3:151.

[384] Ibn al-Qayyim, *Ṭalāq al-ghaḍbān*, 22-23.

3.7.5.3 The rational proof

Next, Ibn al-Qayyim tries to support his and his master's view about the invalidity of an angry person's divorce by using a rational proof. He states that validation of divorce is legitimised by law; therefore it needs legitimate evidence either from the Qurʾān, the ḥadīth, consensus among scholars or an analogy. However, in regard to an angry person's divorce, there is no such proof, so it is obviously invalid.[385]

3.8 The majority of jurists' views and proofs about an angry person's divorce

The above mentioned evidence are important forms of proof that Ibn Taymiyya's disciples have presented to reinforce his view that an angry person's divorce is invalid. Similar to the previous issues, the majority of jurists support the view that an angry person's divorce is valid with some forms of proof as follow.

3.8.1 Proof from the ḥadīth

They claim that the Prophet said "The pen is lifted [sins not recorded] from three, the sleeper until he wakes, the little child until he grows up and the insane until treated."[386] The majority of jurists claim that the concept of this Ḥadīth indicates that the pen is not lifted for an angry person because they are not among the mentioned persons in the ḥadīth; therefore, an angry person's divorce is valid.[387]

The majority of jurists' second proof from the Sunna is that Khawla bt. Thaʿlaba's husband became angry with her and made *ẓihār* against her, in which

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[385] Ibn al-Qayyim, *Ṭalāq al-ghaḍbān*, 56-57.

[386] al-Tirmidhī, *Sunan al-tirmidhī*, Kitāb al-ḥudʿd ʿan rasūl Allah, bāb: mā jāʾa fīman lā yajib ʿalaīh al-ḥad, 336.

[387] Ibn Rushd, *al-Bayān wa al-taḥṣīl*, 3:150.

a man says to his wife "Be thou to me as the back of my mother" and it is another form of divorce in Islamic law. So, Khawla came to the Prophet and reported that to him and then the *ẓihār* verse came down, and she said to the Prophet, "He did not want divorce". The Prophet replied, "I see you prohibited to him."[388] The majority of jurists claim that the Prophet validated this *ẓihār* despite the fact that it came from the husband in anger. It means that divorce is valid, even in situations of anger.[389]

3.8.2 The majority of jurists' proofs from the Companions' narrations

It is narrated that a man came to Ibn ʿAbbās and said, "Oh Ibn ʿAbbās, I divorced my wife thrice when I was angry", to which Ibn ʿAbbās replied, "Ibn ʿAbbās cannot give permission to what is prohibited to you, you disobeyed your Lord, and your wife became unlawful to you".[390] The majority of jurists claim that Ibn ʿAbbās validated an angry person's divorce, and this was also the opinion of a Companion who made such an argument.[391]

3.8.3 The majority of jurists' proofs from analogy

The majority of jurists' proof from analogy is that an angry person is morally accountable in religion; so their divorce is valid.[392] However, this analogy faces objection by Ibn-Qayyim, who states that an angered person's designation does not necessitate the validity of their divorce. We also know that an obliged

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[388] al-Baīḥaqī, *al-Sunan al-kubrā*, Kitāb al-ẓihār, Bāb: al-muẓāhir al-lazī tugzimuh al-kafārah, 7:632.
[389] ʿAbd al-Raḥmān Shihāb al-Dīn Ibn Rajab, *Jāmiʿ al-ʿulūm wa al-ḥikam fi sharḥ khamsin ḥadith min jawāmiʿ al-kalim*, ed. Māhir Yāsīn al-Faḥl (Beirut: Dār Ibn kathīr, 2008), 357.
[390] ʿAli b. ʿUmar al-Dāraquṭnī, *Sunan al-Dāraquṭnī*, ed. Shuʿaīb al-Arnaʾūṭ wa ākharūn, (Beirut: Mūʾasasat al-risālah, 2004), 5:25.
[391] Ibn Rajab, *Jāmiʿ al-ʿulūm*, 358.
[392] Ibn al-Qayyim, *Ṭalāq al-ghaḍbān*, 57.

person is morally accountable, although, their divorce is invalid, because a designation is one issue and the validity of divorce is another.[393]

In conclusion, this issue is important among divorce issues, which happen frequently between Muslim couples and lead to the separation of families. Therefore, by giving deeper consideration to both sides' proofs and families' advantages, Ibn Taymiyya's view and his disciple Ibn al-Qayyim's evidence are most appropriate and convincing. This is because the majority of jurists' opinions about the validity of an angry person's divorce are built on their views about the quantity of anger. Their intended meaning might be about the validity of divorce in a case involving a lesser level of anger, which does not affect presence of mind. This confuses their view when they discuss the validity of an angry person's divorce without explaining which type of anger they mean.

3.9 Third: A father's divorce on behalf of his young or mentally incapacitated son

3.9.1 Introduction

The above title refers to a father's right, according to Islamic religious law, to cancel the marriage contract between his son and his son's wife under certain circumstances. This cancellation is achieved when the father utters a divorce pronouncement against his son's wife. This issue arises when the son marries at an age before he is legally empowered to make his own decisions. For this reason, his right to divorce his wife on his own is controversial. In addition, there are some cases in which divorce is appropriate, but a man may not recognise this because of his age. The question of a father's right to initiate divorce also extends to situations that involve a son's mental incapacity.

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[393] Ibn al-Qayyim, *Ṭalāq al-ghaḍbān*, 57.

3.9.2 Discussing Ibn Taymiyya and the majority of jurists' views

In this section, we present Ibn Taymiyya's views on this issue. His opinion differs from the majority of jurists. At the beginning, it is worth mentioning that there is not any direct and explicit evidence from the Qurʾān or ḥadith about this issue, nor is there a consensus on the validity of a father's right to divorce the wife of his young or mentally incapacitated son. However, both Ibn Taymiyya and the majority of jurists have seriously considered the legal implications of the issue. In order to do so, they use their dependent legal opinion (*Ijtihād*) to interpret situations that are not specifically mentioned in a religious text and form their legal opinions by using their knowledge of the religion as a whole. For this reason, the evidence presented by the two sides may not take the traditional form of discussion and objection to the opposing argument. Eventually, however, we will show how Ibn Taymiyya's legal opinion (*fatwā*) does not match the judgements of other jurists and differs in this matter, like the rest of the previously mentioned issues. This is because he offers his opinion on the matter relating to this topic.

We find Ibn Taymiyya's opinion of the validity of a father's right to proclaim the divorce of his young or mentally incapacitated son in volume thirty-two of *Majmuʿ al-fatāwā.* This whole volume is devoted to Ibn Taymiyya's views about topics relating to Islamic marriage law. Here, his thoughts are presented in the form of legal opinions (*fatāwā*) and answers to questions. However, it is mentioned in the specific fatwa "that Ibn Taymiyya was asked about the fathers' permission to force their adult daughters into marriage, is it

permissible or not?"[394]. The nature of this question is related to a father's authority over his children as their protector. Simply, we find that Ibn Taymiyya's answer to this specific question contains his views on the issue of a father pronouncing divorce on behalf of his son. Ibn Taymiyya emphasised the permissibility of a father's divorce on behalf of his young or mentally incapacitated son if the father sees this decision has benefit[395] (*maṣlaḥa*) for both husband and wife on the one hand and their families on the other. Ibn Taymiyya's fatwa mandates the existence of benefit if fathers are to instigate divorce. So, a father must be sure that divorce is the best course of action because his son's wife may suffer from being married to a man who is too young or mentally incapable. In such cases, divorce is in the best interests of both parties; therefore, Ibn Taymiyya's recommendation serves to protect the family structure as it is described in Islamic religious law.

It is notable that the views of Ibn Taymiyya run contrary to those of the majority of scholars from three of the four Sunni schools of law, the Ḥanafī, Shāfi'ī and Ḥanbalī. His interpretation is consistent with only the Mālikī jurists' opinions. The majority of Mālikī jurists view a father's uttered divorce of his young or mentally incapacitated son's wife as permissible and valid. This view has become official and well-known in Mālikī doctrine. In fact, renowned Mālikī scholars have spoken explicitly about this scenario. For example, the prominent Mālikī jurist al-Kharshī declared that if a young or mentally incapacitated son's

[394] Ibn Taymiyya, *MF* 32:22.
[395] Ibn Taymiyya, *MF* 32:26.

father sees an advantage in divorcing his son's wife, it is permissible for him to do so.[396]

In contrast, the majority of jurists from the other three schools of law, Ḥanafī[397], Shāfi'ī[398] and Ḥanbalī,[399] insist that it is absolutely not permissible for fathers to divorce on behalf of their young or mentally incapacitated sons under any circumstances. They reason that divorce is the only the right of a husband, so it is not acceptable for anyone else to end the marital relationship between a husband and wife.

In conclusion, on the one hand, Ibn Taymiyya's opinion on this issue is in line with Mālikī doctrine. Clearly, both Ibn Taymiyya and the Mālikī jurists base their opinions on the granting of benefit (*maṣlaḥa*) for both spouse and their families. On the other hand, the majority of scholars from the other three Islamic schools argue that fathers never have the authority to divorce their sons' wives because the lawgiver has given the right of divorce only to husbands and not to their fathers. The majority's view has come from their reliance on the evidence that shows the divorce is only the husbands' right in its original form in Islam. However, the majority of jurists declare that sometimes it would be a case that necessitates the relationship between a husband and his wife to be ended. So, in this situation, a case should be seen and investigated by a judge in Islamic family court in order to make a decision regardin the case and for the interest of both spouses and their families. Therefore, Ibn Taymiyya and the majority of Maliki jurists seem to to knew that in these kind of cases judges choose separation

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[396] Abu ʿAbd Allah Muḥammad al-Kharshī, *Sharḥ al-kharshī ʿalā mukhtaṣar khalīl*. (Egypt: Maṭbaʿa al-kubrā al-amīriyya, 1938), 4:17.
[397] al-Sarakhsī, *al-Mabsūṭ*, 6:176.
[398] al-Māwardī, *al-Ḥāūī al-kabīr*, 9:132.
[399] al-Mardāwī, *al-Inṣāf*, 8:387.

between a husband and his wife as an interest for all parties. We believe that Ibn Taymiyya's consideration of the interests of both spouses makes his fatwa acceptable due to the sons' inability to use his right to divorce, when it is the best option. Therefore, in such situations, fathers should be granted this power; especially since we do not find any clear direction on this issue in the Qurʾān or the Sunna.

3.10 Fourth: Proxy divorce of a client wife

Islamic jurists also disagree about a husband's right to empower another to divorce his wife on his behalf. Specifically, they differ on whether a divorce enacted by proxy is still valid if the husband claims to have cancelled power of attorney before the divorce was initiated.

3.10.1 Ibn Taymiyya's narrated fatwa on the issue

Ibn Taymiyya disagreed with the majority of jurists about the validity of such divorces. His view about this particular issue was expressed in a very short narrated and transmitted fatwa.[400] This is another issue not addressed in the Qurʾān or the Sunna. This omission suggests that this practice did not exist in the Prophet's era. However, it is now a part of Islamic family life, so Ibn Taymiyya and the majority of jurists issued fatwas about it. According to Ibn Taymiyya, the husband's allegation alone does not impact the divorce uttered by the proxy. However, he has quite a different view if the husband can produce evidence of the cancellation, such as the testimony of a witness.[401] In other words, the husband's allegation that he altered or cancelled the proxy relationship before the divorce was initiated cannot be accepted without a sincere witness. This

[400] al-Baʿlī has narrated this fatwa from Ibn Taymiyya in his *al-Ikhtyyārāt al-fiqhiyya.* I have attempted to find it in Ibn Taymiyya's treatises elsewhere, but I was unsuccessful.
[401] al-Baʿlī, *al-Ikhtyyārāt al-fiqhiyya*, 258.

means that Ibn Taymiyya's fatwa requires the husband to provide official proof of cancelling his agency to the proxy before uttering divorce by him. Otherwise, his allegation that he has altered the proxy agreement is invalid, and the proxy's divorce stands.

3.10.2 Two opinions from the majority of jurists on this issue

3.10.2.1 Ḥanafī and Mālikī's view

The majority of jurists separate into two groups on this issue. Both Ḥanafī and Mālikī scholars explicitly declare that the proxy's action must stand unless the husband is told about the cancellation of the proxy arrangement. Ḥanafī scholars maintain that a husband cannot alter the agreement without the proxy's knowledge.[402] Mālikī scholars assert that the proxy is not officially removed from his position until he is informed that the power of attorney has been cancelled.[403] Both the Ḥanafī and Mālikī schools consider the proxy's lack of awareness of cancellation crucial to the validity of such a divorce. If a proxy divorces his client's wife and alleges that he did not know that his client had cancelled the power of attorney, the divorce remains valid without any conditions. This diverges from Ibn Taymiyya's view. Specifically, if a husband cancels his proxy arrangement and has an official witness of that cancellation, Ibn Taymiyya believes that the divorce is no longer valid. However, if the proxy insists that he did not know about the cancellation, Ḥanafī and Mālikī scholars view the divorce as legitimate.

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[402] al-Kāsānī, *Badāʾiʿ al-ṣanāʾiʿ*, 4:267.

[403] Ibn Juzay, *al-Qawānīn al-fiqhīyya*, 494.

3.10.2.2 Shāfi'ī and Ḥanbalī's views

Shāfi'ī[404] and Ḥanbalī[405] scholars offer yet another opinion; they accept the husband's claim unconditionally. Their reason is that divorce is a husband's right; therefore, it is essential that his words about it are accepted. However, although divorce is originally the right of a husband, when he makes an agreement with someone else regarding his divorce, he shares that right with another. So, it is better not to accept his claims without an official witness.

In conclusion, we see that Ibn Taymiyya's view about accepting a husband's claim that he cancelled a proxy relationship is superior to those of other jurists. The obvious reason is that accepting the proxy's word can harm the husband who probably cancelled the agreement based on the fact that Ibn Taymiyya requires the husband to produce a witness. However, accepting the husband's claim without any condition encourages lying about cancelling the power of attorney in order to invalidate a valid divorce.

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[404] Muḥammad b. Muḥammad al-Ghazālī, *al-Wajīz fī fiqh al-Imām al-Shāfiʿī*, ed.ʿAlī Muʿawaḍ and ʿĀdil ʿAbd al-Mawjūd (Beirut: Dār al-arqam ibn abī al-arqam, 1997), 1:365.

[405] Manṣūr b. Yūnīs al-Bahūtī, *Sharḥ muntahā al-irādāt*, ed. ʿAbd Allah ʿAbd al-Muḥsin al-Turkī (n.pl, Muʾasasat al-risālah, 2000), 3:518, al-Mardāwī, *al-Inṣāf*, 8:446.

CHAPTER FOUR
THE VALIDITY OF DIVORCE OATHS BETWEEN IBN TAYMIYYA AND THE MAJORITY OF JURISTSTS

4.1 Introduction

Ibn Taymiyya also disagreed with the majority of jurists about the validity of divorce oaths. A divorce oath does not involve pronouncing the divorce words against one's wife directly. Instead, the divorce is either an oath or suspended on a condition that will trigger it when it is stipulated.

4.2 Explanation

This subject is the most complicated of divorce issues because it is intertwined with another branch of Islamic law: the law of oaths (*ḥalif, yamiyn or qasam*). Ibn Taymiyya points out this complication when he says at the beginning of presenting his views about divorce oaths, "Brief summary about the oath and divorce issues as well as what is the meeting or parting of ways between them; because [sometimes] an issue may be related to the issue of oaths without divorce, or it may be from issues of divorce without oaths, or it may be related to both oaths and divorce issues."[406] Therefore, in order to judge between Ibn Taymiyya's opinion and those of other jurists, we need to examine both types of issues.

Given the importance of this topic and its relevance to the fate of the marital relationships of Muslims, Ibn Taymiyya is especially keen to address it. He therefore wrote a special treatise entitled *al-Ijtimāʿ wa al-iftirāq fī al-ḥalif b-al-ṭalāq (The Meeting and Parting of Ways Concerning Divorce Oaths*). In this treatise, he expresses his view explicitly and explains all subjects linked to both divorce and

[406] Ibn Taymiyya, *al-Ijtimāʿ wa al-iftirāq fī al-ḥalif b-al-ṭalāq*, ed. Muḥammad ibn Aḥmad (n.pl: n.p, 1988), 59, Ibn Taymiyya *MF* 33:44.

oaths from the perspective of Islamic law. He also relates the views of great scholars who agreed with his interpretation. In addition, he discusses the issue of divorce oaths in many other fatwas and treatises.

Ibn Taymiyya considers clarity on this point crucial to all Muslims. Therefore, he attempts to re-explain his comments about it in many of his writings and fatwas (for instance, *al-Fatāwā al-kubrā* and *al-Qāwāʿid al-nurāniyya al-fiqhiyya*).[407] He was imprisoned and prevented from writing fatwas many times because of his opinion on this subject.[408] In his work about Ibn Taymiyya and divorce oaths, Youssef Rapport asserts that "Ibn Taymiyya composed many more treatises and fatāwā on this issue, which seems to have occupied him until his final arrest in 726/1326".[409]

Before pointing out Ibn Taymiyya's concerns about this issue, it is worth mentioning that there is not any explicit text from the Qurʾān and the Sunna confirming the validity or invalidity of divorce oaths in Islamic law. This is a discretionary matter of law (*masʾala ijtihādiyya*) that one can do his own judgement according to his understanding and interpretation of the religious texts. This means that dissenters cannot be censured because of their opinions. To understand all of Ibn Taymiyya's concerns and opinions about divorce oaths, we will examine in detail his many works related to this issue.

4.3 Historical context

Ibn Taymiyya sees this as an innovated issue in Islamic society because there were no examples from the era of the Prophet and the Companions that

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[407] Ibn Taymiyya, *al-Fatāwā al-Kubrā* ed. Muḥammad ʿAbd al-Qādir ʿAṭā and Muṣṭfā ʿAbd al-Qādir ʿAṭā (Beirut: Dār al-kutub al-ʿilmiyya, 1987), *al-Qāwāʿid al-nurāniyya al-fiqhiyya*, ed. Aḥmad ibn Muḥammad (Saudi Arabia: Dār ibn al-Jawzī, 2001).

[408] ʿAbd Raḥmān al-Sharqāwī, *Ibn Taymiyya: al-Faqih al-muʿadhdhab*, 264-267.

[409] Rapoport, *Marriage, Money and Divorce,* 96.

treat divorce oaths as valid or invalid. He opens his statement by describing the Companions' forms of divorce and mentions that the Companions did not add anything to their divorces, including oaths. This explains the lack of any special narration about divorce oaths: their teachings concern only the validity of divorce, not any added conditions or oaths.[410] Ibn Taymiyya asserts this view in his treatise *al-Qawāʿīd al-nurāniyya,* which he devotes to elucidate various issues of Islamic law. He shows the views of great jurists about the selected issues, and then he gives his opinions or choses a correct one among them, according to his analysis and interpretation. In this treatise Ibn Taymiyya devotes an important portion to examine the issue of divorce oaths. So, he declares that "divorce oaths are the innovated issue in the Muslim community; [therefore] I have not received anything from anybody that divorce has been used as an oath in the era of the greatest Companions".[411] However, although the Companions did not provide a view of this new form of divorce, it is possible to understand this subject by analysing the similarities between it and other issues. For that purpose, we will note how Ibn Taymiyya makes a direct connection between divorce and vows (*al-nadhr*) used as oaths.

Before exploring Ibn Taymiyya's view, we must consider a vital point that he raises about the reasons behind the creation of this type of divorce in Islamic societies. He asserts that some Companions mention this type of divorce with the oaths of allegiance to Sultanate authority arranged by Yūsuf Ibn al-Ḥajjāj so that rulers could protect their thrones.[412] Ibn Taymiyya claims that these oaths created by al-Ḥajjāj included an oath by God, an oath that stipulated a monetary

[410] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 63, Ibn Taymiyya *MF* 33:36, 45.
[411] Ibn Taymiyya, *al-Qawāʿid al- nūrāniyya al-fiqhiyya*, ed. Aḥmad ibn Muḥammad (Saudi Arabia: Dār ibn al-Jawzī, 2001), 326.
[412] Ibn Taymiyya, *al-Qawāʿid al-nūrāniyya*, 304-305.

donation, an oath that mentioned divorce and one that mandated the manumission of slaves.[413] So, it seems that the origin of this kind of divorce in Islamic societies was political: al-Ḥajjāj created this new formula and used it among those who had some authority in the Sultanate. This act was designed to protect the most powerful sultans and their retinue because oath takers thought that violation of their oaths would result in divorce. Nonetheless, Ibn Taymiyya declares that he has not heard any comments from the Companions about divorce oaths. However, he asserts that the views they have apply only to manumission oaths.[414] After admitting the reality of political influence on the religious aspects of Islamic societies, Ibn Taymiyya gives his own interpretation of the reason behind the continuation of this innovative form of divorce.

> Then this innovated divorce has spread widely among the community. Then because of the wrong view of those who believed that the divorce [oath] is definitely valid, [this thinking] of the validity of divorce oaths became shackles on the community like shackles that were on the children of Israel. This became a great factor in the emergence of many types of corruptions and subterfuges in oath law until they took the verses of God as nonsense.[415]

It seems that the validity of divorce oaths permeated into the Islamic jurisprudence step-by-step after al-Ḥajjāj's first innovation.

4.4 Ibn Taymiyya's view on types of divorce

As we previously asserted, Ibn Taymiyya finds a direct connection between a divorce and a vow used as an oath. He explains that there is an obvious difference between divorce and using divorce as an oath. He illustrates his claim by comparing using a divorce as an oath with using a vow as an oath. He declares that there is a difference between a vow itself and using a vow as an

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[413] Ibn Taymiyya, *al-Qawāʿid al- nūrāniyya*, 352.
[414] Ibn Taymiyya, *al-Qāwāʿid al-nurāniyya*, 352.
[415] Ibn Taymiyya, *al-Qāwāʿid al-nurāniyya*, 352

oath.[416] Ibn Taymiyya then gives an example to clarify the difference between making a vow and using a vow as an oath and to illustrate the different consequences of those two acts under Islamic law. He said:

> If a man asks God about his needs and says, "If God treats my illness, or pays my debt or [anything else]. Then I will obligate myself for God to donate a thousand dirhams, or I will fast a month". This is a suspended vow that he should fulfil [if violated] by the [proofs] of the Qurʾān, Sunna and the jurists' consensus. However, if he suspended his vow in the form of an oath and says, "If I travel with you, I must beat a person, or if I did not travel from you, then pilgrimage [to Mecca city] is my obligation". According to the Companions and the majority of jurists, this [example] is using a vow in the form of an oath and [a person] is not a vower, so if he did not fulfill what he obligated [on his self-] oath's atonement can recompense him.[417]

This means that there is a difference between making a vow and using a vow as an oath: a vow must be fulfilled, but if a vow is used as an oath and violated, atonement must be made.

To clarify the differences between divorce and using divorce as an oath, and between vows and using them as oaths, Ibn Taymiyya divides divorce into three categories: the accomplished form, the oath form and the suspended on a condition form. The accomplished form is enacted by proclaiming the divorce authentically and directly without adding any restrictions, conditions or oaths. For example, a man might say to his wife, "You are divorced", or "I divorce you". In these examples, the divorce is valid, and (according to most Muslims) atonement cannot be substituted for the divorce validation.[418]

The oath form of divorce involves a husband's swearing on oath that includes divorce, such as, "I am obligated to divorce you if I do this thing or do not do this thing". A man swears such an oath in order to exhort himself or

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[416] Ibn Taymiyya, *MF,* 33:36.

[417] Ibn Taymiyya *MF* 33:36.

[418] Ibn Taymiyya. *al-Ijtimāʿ wa al-Iftirāq*, 59, *MF* 33:36, 45, 58

others or if he wants to prove or deny it. In these situations, the man makes his oath and does not use his real and intended divorce. Arabic language experts and jurists agree that these formulations constitute oaths. The jurists have not quarrelled about whether these are oaths; however, they have disagreed about how the law should judge such oaths.[419]

Ibn Taymiyya narrates the jurists' views about using divorce as oaths by saying, "Jurists have three different opinions concerning these oaths. First, if he violated his oath, then he is obligated to suffer the consequences prescribed in his oath. Second, he is not obligated to anything. Third, he is obligated to give oath's violation atonement instead of accounting the validity of his divorce".[420] Ibn Taymiyya also offers his view about these opinions: he believes that the third option is correct and provides proofs from the Qurʾān and the Sunna. In particular, he cites two verses. The first is God's statement that "He has ordained a way for you [believers] to release you from [such] oaths" (Q. 66: 2). The second is God saying that "this is the atonement for breaking your oaths" (Q. 5:89).[421] It is notable that Ibn Taymiyya simply offers these two verses as evidence without giving any interpretation of them. He also provides a ḥadīthas evidence to support his view, the Prophet's direction that "he who took an oath and (later on) found something better than that should do that, and make amends for (breaking) his vow".[422] Again, he simply presents this ḥadīthwithout providing any further elaboration.

The suspended form of divorce on a condition (*al-ṭalāq al-muʿallaq*) is executed by suspending a divorce, manumission or a vow on a condition. For

[419] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 61. *MF* 33:45, 58.
[420] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 61-62, *MF* 33:58.
[421] Ibn Taymiyya, *MF* 33:58-59.
[422] Muslim b. Ḥajāj, *Ṣaḥiḥ Muslim*, 4:372.

instance, a husband can say, "if you enter the house, you are divorced". A husband might use divorce in such a vow to prevent his wife from doing something even if he does not actually want to divorce his wife if she breaks his condition. However, he may also make the vow so that he can divorce his wife if the condition is met.[423] Therefore, in order to determine the validity of this form of divorce, it is necessary to look at the husband's intention. If he has no intention of divorcing his wife even if the condition is met, he should be judged as a swearer under the law of oaths. However, if he is not simply using the oath to influence his wife's behaviour but wants his divorce to be valid if the condition is met, then his divorce should be granted under such conditions.

It is clear that Ibn Taymiyya looks at the intention to determine whether a case should be judged under divorce law or under the law of vows. In addition, he mentions that the difference between these two circumstances is confirmed by the Companions and the greatest Followers and also proven in the Qurʾān and the Sunna. Furthermore, this view is the doctrine of the majority of jurists.[424] Therefore, Ibn Taymiyya asserts that divorce achieved by an oath is not valid. Additionally, the suspended form of divorce is invalid if the user has no real intention to divorce: in this case, divorce is used as an oath and violation necessitates atonement.

4.5 Ibn Taymiyya's view on types of oath

To assert that using a divorce as an oath is similar to and should be covered by the laws governing oaths, and to persuade his opponents of the same, Ibn Taymiyya explains the types of oaths in detail. He clearly classifies them into

[423] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 64, *MF* 33:46, 59.
[424] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 64, *MF* 33:60-61.

three main types: the first is to make oaths by God, the second is to make oaths for God, and the last one is to make oaths by something other than God or for something other than God.[425] To elucidate his position and show from where his opinion about divorce oaths emerges, Ibn Taymiyya explains these kinds of oaths in regard to their facts in reality, as well as their inclusion of expiation in the case of perjury.

He asserts that the origin of the first type, to make oaths by God, is obvious and is permitted and evidenced by the Qurʾān, the Sunna and the jurists' consensus.[426] Due to his desire to focus on the second type of oaths, Ibn Taymiyya here skips explaining the second one and goes on to define the third type in detail. As such, he shows that the third type is similar to making oaths by a created thing or for a created thing (other than God). For instance, examples could include a person making an oath by tyrants, his father, the *Kaʿba*, or others among the created things.[427] He then describes the law covering this kind of oath by declaring, "This oath is disrespectful, invalid and has no atonement in case of perjury in scholars' agreement. However, the same oaths are prohibited".[428] Ibn Taymiyya uses the Ḥadīth that the Prophet says, "Whoever swears saying in his oath 'By *al-Lāt* and *al-ʿUzzā'*, should say, none has the right to be worshipped but Allah".[429] Then, he declares that the same rule would apply when somebody makes an oath by angels, Messengers or others.[430]

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[425] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 73, *MF* 33:47.
[426] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 73, *MF* 33:47.
[427] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 73, *MF* 33:47.
[428] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 73, *MF* 33:48.
[429] al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ*, Kitāb al-aīmān wa al-nudhūr, Bāb: lā yuḥlaf b-al-lāt wa al-ʿuzā walā b-al-ṭwāghīt, 4: 219.
[430] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 73, *MF* 33:48.

To focus on his important point and clarify a particular type of oath, Ibn Taymiyya follows his own method in order to draw the attention of the Followers. So, he devotes a separate title and an independent section in his same treatise *al-Ijtimāᶜ wa al-Iftirāq* to clarify the second type of oaths from the perspective of Islamic law. He does this to make his points about the differences between divorce and using divorce as an oath obvious. Therefore, we notice how he names the section's title as '*al-ḥalif b-al-nadhr aw al-ṭalāq*'[431] (an Oath on Vow or Divorce) to elucidate the second type of oaths in his classification, that is, to make oaths for God. Then, he directly explains these kind of oaths and asserts that they have two main purposes, as described below.

Firstly, oaths made for God are used with the intention of being closer to God, not to just exhort or prevent something, and therefore are like a vow.[432] To reinforce his assertions about this particular type of oath, and to make an analogy between vows and oaths, Ibn Taymiyya offers two ḥadiths as evidence:

1-The Prophet has said, "The expiation of the (breach of) a vow is the same as that of the (breach of an oath)".[433]

2-The Prophet has said, "Whoever vows that he will be obedient to Allah, should remain obedient to Him; and whoever made a vow that he will disobey Allah, should not disobey Him".[434]

Relying on these two ḥadiths, Ibn Taymiyya asserts:

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[431]See Ibn Taymiyya, *al-Ijtimāᶜ wa al-Iftirāq*, 76.

[432] Ibn Taymiyya, *al-Ijtimāᶜ wa al-Iftirāq*, 76, *MF* 33:48.

[433] Muslim, *Ṣaḥiḥ Muslim*, Kitāb al-nuzūr, bāb: naz al-mashī ailā Makka, 4:364.

[434] al-Bukhārī, *al-Jāmiᶜ al-ṣaḥīḥ*, Kitāb al-aīmān wa al-nudhūr, Bāb: al-nadhr fīmā lā yamlik wa fī maᶜṣiyya, 4: 229.

> If humans intend to obediently make vows for God, they should fulfil them. However, if they make vows that are not from obedience, then they should not fulfil them, and a prohibited vow is not permissible to fulfil. But if they do not fulfil a vow made for God they should pay oath's violation atonement instead.[435]

Secondly, this type of oath could also be used with the intention of exhorting, preventing, ratifying or denying something. This is an oath that involves a vow, divorce, manumission, *al-ẓihār* (another kind of religious separation between a husband and a wife due to a husband using a prohibited pronouncement against his wife) and *al-ḥarām*.[436] Then Ibn Taymiyya offers an example to clarify how this particular type of oath is similar to using divorce as an oath. Therefore, he says, "This is like once saying 'If I did that, I should perform pilgrimage (*ḥajj*), fasting a year, donate my capital, my slaves manumitted or my wives divorced'".[437]

An interesting point here is that Ibn Taymiyya, well-known for his explicit views, is using an analogy as proof in an implicit way. He does not declare, as is his usual practice, that he is making an analogy between divorce oaths and vows, but he is doing it in practice. He might believe it is more important to focus on explaining the issue to society rather than focusing on and elucidating the use of the technical term in Islamic law. Ibn Taymiyya views this second division of an oath as being very important, and it might have motivated him to write his treatise, *Al-Ijtimāᶜ wa al-iftirāq fī al-ḥalif b-al-ṭalāq (The Meeting and Parting of Ways Concerning Divorce Oaths).* Therefore, we notice how he focuses on this particular type among his classification of oaths. This is evidenced by his

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[435] Ibn Taymiyya, *al-Ijtimāᶜ wa al-Iftirāq*, 76, *MF* 33:49.
[436] Ibn Taymiyya, *al-Ijtimāᶜ wa al-Iftirāq*, 77, *MF* 33:49.
[437] Ibn Taymiyya, *al-Ijtimāᶜ wa al-Iftirāq*, 77, *MF* 33:49.

comment "This type is entered on oath matters and on divorce, manumission, vow and *al- ẓihār* issues".[438]

4.6 The relationship between divorce and oath's law

In order to show his opinion about the matter in an acceptable way, and to declare to his audience that he has adopted the jurists' views, Ibn Taymiyya then declares that jurists have three different opinions regarding using divorce as an oath. The first view is that whoever made this oath is obligated to do what they said they would do; violating the oath would necessitate a penalty when the condition is realised. The second view is that this is an invalid oath and that there is nothing obligated if it is violated –neither atonement nor validity of divorce or anything else – because it is an oath made in the name of something other than God. The third view is that this is an expiatory oath if violated, like other oaths.[439] In regard to the third view, Ibn Taymiyya mentions that:

> Some jurists differentiate between an oath made for God on obligation like an oath made on vow, and an oath made for God on prohibition like divorce and manumission oaths. They said to the first: it needs oath's expiation if violated, and they said to the second: it obligates a suspended condition that they made their oaths on if violated.[440]

Ibn Taymiyya supports the third view and argues that it is considered a valid opinion according to the Qurʾān, the Sunna and rational proof[441] (*al-iʿtibār or al-ʿaqlī*), as we have mentioned some of them in Ibn Taymiyya's view on types of divorce. He, however, admits that some jurists thought this type displayed similarities between the laws that govern vows or divorce manumission and those that govern oaths. Therefore, he himself objects to this claim by way of his

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[438] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 77, *MF* 33:49.
[439] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 77-78, *MF* 33:49-50.
[440] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 78, *MF* 33:50.
[441] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 78, *MF* 33:50.

comment “it does not so, but it is a pure oath and not a vow, a divorce, and manumission”.[442]

It is clear from the aforementioned that Ibn Taymiyya simply sees every oath that is made in the name of God as a type that can be fulfilled by expiation. This is evidenced when he announces explicitly, “There are only two [types] of oaths from the law of God and His Messenger; an oath from Muslim oaths which has atonement if violated, or an oath that is not from Muslim oaths and this one has no atonement if violated”.[443] To sum up Ibn Taymiyya’s claim for combining oaths and divorce law, which motivated him to write a separate treatise, it can be said that Ibn Taymiyya places oaths used for divorce, divorce oaths, under the law of oaths. In addition, he also puts some of the second type of divorce, which is the suspended divorce, under the same laws. In this case, the person’s intention is to use the oath to exhort or prevent himself or others from doing something. At the same time, the user does not want his divorce to be valid if a condition of suspended divorce is realised.

To this point, we have concentrated on showing Ibn Taymiyya’s major views of divorce oath law from his perspective, relying heavily on his interpretation of both oaths and divorce types. He finds a similarity between them in terms of users’ intentions, relying on his view about intervention between society and law. Therefore, we found him to support an easy solution to new matters of the law that appear in society, from the perspective of the Qurʾān, the Sunna and rational proof or *Maṣlaḥa* (benefit).

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[442] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 85, *MF* 33:54.
[443] Ibn Taymiyya, *al-Ijtimāʿ wa al-Iftirāq*, 78, *MF* 33:62.

Next, it is worth mentioning that Ibn Taymiyya transmits jurists' different opinions in all his writings concerning divorce oath law and asserts that it is a controversial subject among Islamic jurists. In addition, he devotes many pieces of his writing to objecting to his opponents, who accused him of untruth in his transmitting and claiming a consensus among jurists about the validity of divorce oaths if violated (saying they are as valid and normal as direct divorces). Given this, it is critical to investigate and discover the majority of jurists' views directly from their sources. In this way we can identify the main differences between Ibn Taymiyya and the majority of jurists from their arguments and discussions about the subject.

4.7 The majority of jurists' views concerning divorce oaths

Now, we consider the majority of jurists' views concerning divorce oaths. It is clear that the majority of jurists, unlike Ibn Taymiyya, consider this subject as two separate issues: suspended divorce on a condition and divorce oaths. Whereas Ibn Taymiyya treated these as one major complex issue in the Islamic perspective, other jurists have drawn distinct lines.

4.8 Suspended and accomplished divorces have the same law according to the majority of jurists

The majority of jurists, including Ḥanafī[444], Mālikī[445], Shāfiʿī[446] and Ḥanbalī[447], view a suspended divorce as a case in which, for instance, a husband has sought a divorce from his wife, pending the resolution of an issue in the future, so that his divorce is valid when the condition has been met. They also

[444] al-Sarakhsī, *al-Mabsūṭ*, 6:103.
[445] Ibn Juzay, *al-Qawānīn al-fiqhīyya*, 374.
[446] al-Muṭīʿī, *al-Majmūʿ sharḥ al-muhazab*, 18: 296.
[447] Ibn Qudāma, *al-Mughnī*, 10: 409.

look at the condition as equal, whether it is related to a husband's action, as in "may my wife be divorced if I do not pay a loan to a person tomorrow" or it is related to the wife's action, as in when a husband tells his wife, "I will divorce you if you go to a person's house". It may even be related to an issue outside of human power, as in "I will divorce you if the sun rises or if you give birth to a girl". They also see it as valid, despite whether the husband's intention is to intimidate his wife or exhort her into doing something, leaving something alone, confirming news, or none of these things.

It is clear that the majority of jurists do not differentiate between two different forms of divorce; a direct accomplished divorce and a suspended divorce on a condition, in regard to their validity. Also, they do not put a value on a husband's intention when he uses a divorce as an oath. As a result, they look only at the uttering of the verbal word of divorce, regardless of and under any circumstances.

4.9 The majority of jurists' proofs

Next, the majority of jurists have based their opinions about this issue on much evidence, as outlined below.

4.9.1 The Qurʾān

As seen in the summary of the majority of jurists' arguments, their allegation is that the verses from the Qurʾān and the ḥadīth that proved the legality of divorce and gave the divorce right to a husband have come as an independent and absolute word. This means that the lawgiver (*al-shāriʿ*) did not provide any proof to indicate that divorce is devoted to one type and not another. In addition, when absolute word comes down and there is no evidence

that proves what it adheres to, it is taken as an absolute meaning, and this indicates that divorce is authorised to husbands absolutely. Therefore, husbands are free to use and validate their divorce in the present time or suspend it on a condition, whether as an oath or not.[448]

4.9.2 The era of the Companions and the Followers (*tābiʿīn*)

They also claim that the suspended divorce was valid in the era of the Companions and the Followers (*tābiʿīn*). They were asked about the judgement of this type of divorce and they issued legal opinion (*fatwā*) supporting the validation of suspended divorce, even if it was uttered as an oath. This is the opinion without exception among the great jurists who are relied upon for their opinions. Therefore, this means there is consensus among jurists about the validity of suspended divorce, even if used as an oath. For this claim they have used some proofs from the Companions and their Followers to support their allegation as follows:

1-It is stated that "A man divorced his wife definitely (*al-batta*) if she goes outside. So, Ibn ʿUmar said, 'If she goes outside she becomes unlawful to him, and if she does not go outside, it has no influence'".[449] Here, the majority of jurists claim that this man had the intention of preventing his wife from going outside; therefore, he predicated his divorce on her going outside. When Ibn ʿUmar was asked about a judgement on this issue, he did not say the divorce was not valid if she went outside because it is a suspended divorce used as an oath. On the contrary, he issued the opinion that this divorce would be valid if the condition

[448] Wahba al-Zuḥaylī, *al-Fiqh al-Islāmī wa adillatuhu* (Damascus: Dār al-fikr, 1985), 7:448.
[449] al-Bukhārī, *al-Jāmiʿ al-ṣaḥīḥ*, Kitāb al-ṭalāq, Bāb: al-ṭalāq fī al-ighlāq wa al-ikrāh, 3:405.

was realised, which is going outside in this instance, and would have no influence if she did not go outside.

2-Similarly, ʿAbd Allāh Ibn Masʿūd issued a fatwa about a man who told his wife that if she does this or that, he will divorce her, and then his wife did do what he established as a condition. In response, Ibn Masʿūd said, "This is a revocable valid divorce and he has the right to take her back".[450] Here, the majority of jurists claim that Ibn Masʿūd issued a legal law about the validity of suspended divorce that used an oath and did not determine that it was invalid or needed the oath's atonement instead.[451]

3-ʿĀʾisha has said, "Every oath has atonement except the manumission and divorce oaths".[452] The majority of jurists allege that in this narration, ʿĀʾisha judged for validity of manumission and divorce when a condition was satisfied. Also, she did not consider a divorce oath as necessitating atonement like an oath by God, but rather she excluded it.[453]

4-Furthermore, al-Bayḥaqī narrated from the jurists of Madina, "Whenever a man told his wife: you are divorced if you going outside until night, and then his wife went outside even without his knowledge, his wife is divorced".[454]

These are the primary narrations cited by jurists from the Companions to justify their acceptance of the suspended divorce as valid when a suspended condition was satisfied, whether used as an oath or not. It also claimed that none of them stand against this law which means a consensus among them about it.

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[450] al-Baīḥaqī, *al-Sunan al-kubrā*, Kitāb al-khulʿ wa al-ṭalāq, Bāb: al-ṭalāq b-al-waqt wa al-fiʿl, 7:583.
[451] Muḥammad ibn Ismāʿīl abū al-Rīsh, *Arkān al-ṭalāq* (Beirut: Dār al-kutub al-ʿilmiyya, 1980), 289.
[452] ʿAbd al-bir, *al-Tamhīd*, 15:88.
[453] ʿAbd al-bir, *al-Tamhīd*, 15:88-89.
[454] al-Baīḥaqī, *al-Sunan al-kubrā*, Kitāb al-khulʿ wa al-ṭalāq, Bāb: al-ṭalāq b-al-waqt wa al-fiʿl, 7:583.

4.9.3 The rational proof

The majority of jurists attempt to apply rational proof in addition to the narration from the Companions. This is claims that the divorce is legal when needed. Therefore, sometimes it would be necessary to suspend a divorce as well as seeing it as an accomplished divorce. For instance, a wife may have some habits that her husband does not like, and so he commands her to abandon them, but she continues her behaviour. In such a case, a man does not want to divorce her and hopes that she will change; therefore, he needs to predicate the decision to divorce her on her doing something he dislikes or on abandoning whatever it is that he does not want her to do. In such a case, the wife has two choices: either she refrains from doing what he hates and does what he likes, which would cause improved relations between them, or she continues disobeying his command, which essentially means choosing divorce.[455]

Above, we saw how the majority of jurists derive their evidence to support the idea that the suspended divorce based on a condition or used as an oath is equal to the accomplished form of divorce in terms of validity. It was also observed that their evidence is very general, with no specific focus on the issue solely, except their narration cited from the Companions. However, it can be said that these narrations, in spite of comments from ḥadīth scholars about their authenticity, might mean that the suspended divorce, in which a husband's intention is the validity of his divorce when a suspended condition has been satisfied, is not a suspended divorce in general. In fact, we found Ibn Taymiyya's objections about these proofs by the majority of jurists to be more in number than we can explore here. Nonetheless, our aim is to show his major objections

[455] al-Zuḥaylī, *al-Fiqh al-Islāmī*, 7:449.

and discussions against the majority of jurists when we examine his very important collection, *Al-fatāwā al-kubrā* (*The Greatest Fatwas)*. This is a very broad work about many important issues on major matters in Islamic law, including general worship law, marriage and transactions law. His legal opinions are well organised according to issue matters and legal opinions answered by Ibn Taymiyya. Here, we explicitly see Ibn Taymiyya's clear and ardent objection to his opponents who attacked him on this issue very firmly and accused him of being a liar and heretic. In *The Greatest Fatwas*, Ibn Taymiyya seems to overreact to al-Subkī, a great Shāfiʿī jurist who was a contemporary of his and wrote some treatises that object to and refute Ibn Taymiyya's views about divorce oaths in Islamic law.

4.10 Al-Subkī as a representative on behalf of the majority of jurists

Concerning the rapid reaction to Ibn Taymiyya's view on divorce oath law in regard to the majority of jurists, it seems that al-Subkī acted as the representative of the majority of jurists. Therefore, we find that al-Subkī takes on this responsibility very carefully and actively. Thence, he writes more than one treatise in regard to refuting Ibn Taymiyya's view about the law that governs divorce oaths. Al-Subkī's major works against Ibn Taymiyya are: 1- *al-Ṭaḥqīq fī masʾalat al-ṭaʿlīq* (*Investigating the suspension [divorce] issue*),2- *al-Durra al-muḍiyya fi al-radd ʿalā Ibn Taymiyya* (*The shining jewel on the refutation of Ibn Taymiyya*), 3- *Naqd al-ijtimāʿ wa al-iftirāq fī masāʾil al-aymān wa al-ṭalāq* (*Criticism of the meeting and parting of ways concerning oaths and divorce issues*) and 4- *al-Naẓar al-muḥaqqaq fi al-ḥalif bi- al-ṭalāq al-muʿallaq* (*Actualised consideration concerning oaths on suspended divorce).*

Al-Subkī's first mentioned treatise is still a manuscript and has not yet been edited. Al-Subkī wrote his other treatise over about eight years, between 717/1317 and 725/1325, and over about thirty-five, ten and three pages respectively. It seems that al-Subkī was unprofessional when writing his refutations against Ibn Taymiyya. We claim this because al-Subkī's refutation treatises were not all about one issue in Ibn Taymiyya's view. Al-Subkī could not make his objection in one entire refutation and his written portions are not clearly organised. It is also likely that al-Subkī, because of his position and his strong relationship with the authorities, chose or was asked to write his refutations to Ibn Taymiyya's opinions in this way.

4.11 Al-Subkī's works and refutations against Ibn Taymiyya's view

Due to his important position among the majority of jurists and because of our supposition about his acting as a representative for the majority of jurists who refute Ibn Taymiyya's view concerning divorce oaths and suspended divorce, we will examine al-Subkī's major argument in his treatises and also show Ibn Taymiyya's objections or explanations. This will shine a light on different points between them, which will help us later to discover and respond to this question: Why did Ibn Taymiyya's view differ from the majority of jurists regarding some divorce issues?

In the introduction of *al-Durra,* al-Subkī attacks Ibn Taymiyya and accuses him of being a heretic and rejecter of the consensus among Islamic jurists.[456] He divides this treatise into three parts and devotes each part to refuting Ibn Taymiyya's views and to proving him to be wrong. In the first part, al-Subkī

[456] ʿAlī ibn ʿAbd al-Kāfī al-Subkī, *al-Durra al-muḍiyya fi al-Radd ʿalā Ibn Taymiyya (*Damascus: Maṭmaʿat al-taraqī, 1928*), 6.*

agrees with Ibn Taymiyya that there are two types of divorce, which are accomplished and suspended divorce on a condition. He argues that both types of divorce are valid according to consensus among jurists.[457] Al-Subkī claims that the disagreement among jurists regarding suspended divorce on a condition is not as Ibn Taymiyya describes it. He alleges that their disagreements were about suspended divorce when it depends on a condition like "If the beginning of the month comes, I will divorce you". Al-Subkī claims that the disagreement among the jurists is about whether this divorce was valid at the time it was uttered, or whether it was based on a condition that would happen at the beginning of the month, or whether it was invalid and delayed until the coming condition.[458] In this last claim, al-Subkī instead of objecting to Ibn Taymiyya's view, attempts to discover and show an unimportant point as a controversy among jurists. However, as a result of our research on this issue, we can confirm that the disagreement among jurists was about the validity of suspended divorce in general, which is not what al-Subkī states in his claim.

Al-Subkī insists that both suspended divorce predicated upon a condition and that used as an oath are valid, due to jurists' consensus.[459] At this point, he starts attacking Ibn Taymiyya and accuses him of being a liar and trying to incite doubt among Muslim communities toward the jurists' consensus. In addition, he confirms his claim about the existence of consensus among jurists by imparting it from many great jurists, including those Ibn Taymiyya counts as having the same view as him.[460] Al-Subkī then explicitly accuses Ibn Taymiyya of being an

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[457] al-Subkī, *al-Durra al-muḍiyya, 11.*
[458] al-Subkī, *al-Durra al-muḍiyya, 11-12.*
[459] al-Subkī, *al-Durra al-muḍiyya, 12.*
[460] al-Subkī, *al-Durra al-muḍiyya, 12-13.*

unbeliever because of his rebellion against the consensus among jurists and declares

> If the community assembled on the validity of divorce [oaths], it is not permissible for anyone to violate it, because consensus is stronger than religious evidence. God has protected this community from assembling on the wrong view; therefore, their consensus is correct. The majority of jurists' declare that the violator of a community's consensus is the unbeliever.[461]

We find that Ibn Taymiyya attempts to open a discussion concerning the real fact of the existence of a consensus among jurists on the validity of divorce oaths. This is to minimise his breaking away from the alleged consensus among Muslims, by asserting that his view has come from a preference among views only. Therefore, Ibn Taymiyya argues that some people allege consensus among jurists regarding controversial issues when they do not know about the existence of a conflict. Then, he announces that he has information about a conflicting view and mentions it will be considered the most knowing and prioritised over a denier who does not know about it; this is by Muslim agreement. Ibn Taymiyya alleges that if there are conflicting views among predecessors and successors (*al-salaf wa al-khalaf)* regarding an issue, and if there is no proof from the Qurʾān, the Sunna and consensus to support those who validate divorce oaths, at this time saying that invalidity is agreeable according to agreement among four leaders of Islamic *Sunnī* law and all leaders of Muslim.[462] In addition, al-Subkī applies two further untruths to Ibn Taymiyya's claim that the Companions have not talked about this issue because it has not happened in their era. In contrast to his claim, according to al-Subkī, Ibn Taymiyya asserts that the Companions hold his own

[461] al-Subkī, *al-Durra al-muḍiyya, 14.*

[462] Ibn Taymiyya, *al-Fatāwā al-Kubrā,* ed. Muḥammad ʿAbd al-Qādir ʿAṭā and Muṣṭfā ʿAbd al-Qādir ʿAṭā, Beirut: Dār al-kutub al-ʿilmiyya, 1987), 3:308.

view about this matter.[463] Al-Subkī says that Ibn Taymiyya's first falsehood is his claim that the Companions have not talked about this issue, and this is not true. In fact, it is a fatwa in al-Bukhārī's [narrated authentic ḥadith] book about the validity of suspended divorce from ʿAbd Allah ibn ʿUmar.[464] Then al-Subkī mentions Ibn Taymiyya's second untruth: that he claimed there was no use of divorce as an oath in the time of the Companions. In response, al-Subkī mentions some examples to support his accusation that Ibn Taymiyya is deceitful.[465] Here, we notice in al-*Fatāwā al-kubrā* Ibn Taymiyya's objection to this claim from the majority of jurists by reconfirming and declaring his claim by his statement

> But it is confirmed from the Companions that they have made their law about the manumission oath which is preferrable to God than divorce, but does not mean that it is necessary to make manumission (of his slave), but it is necessary to make atonement of oaths instead. So, what would be their view about a divorce which is most hated *halal* (permitted) by God? And what would the Companions think of those who do oaths of things that God loves such as praying, fasting, donation and pilgrimage? It is not necessary to do these things out of obedience but the atonement of oaths grant him instead, and they say that God does not love it but hates it, and it is necessary to do so.[466]

Ibn Taymiyya then cites another agreement among Muslims to support his view by declaring that "Muslims have agreed that if one made an oath by unbelief and Islam it does not mean that he is not believed or is from Islam. So, if he said 'If I do this, I am a Jew' and then did it, he did not become a Jew by agreement".[467] Al-Subkī continues to explicitly accuse Ibn Taymiyya, but this time it is about Ibn Taymiyya's inability to prove his points and his omission of a part of a ḥadīth to support his view. Al-Subkī, therefore, points out and declares:

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[463] al-Subkī, *al-Durra al-muḍiyya,* 16.
[464] al-Subkī, *al-Durra al-muḍiyya,* 16.
[465] al-Subkī, *al-Durra al-muḍiyya,* 17.
[466] IbnTaymiyya, *al-Fatāwā al-Kubrā*, 3:308-309.
[467] Ibn Taymiyya, *al-Fatāwā al-Kubrā*, 3:309.

> And another lie is his ascribing to the Companions that they said the divorce is invalid and that atonement must be paid. This is despite his admitting that [this type of divorce] did not occur in their era and that this is stubbornness and an outright lie. ʿĀʾisha has said, "Every oath, no matter how great is it, that does not include divorce and manumission, has the atonement of an oath [if violated]". So, she excluded divorce oaths and manumission oaths from atonement. This heretic has transmitted it and omitted that her statement "does not include divorce and manumission" to suggest that ʿAʾisha believed in an atonement of divorce and manumission oaths [if violated].[468]

Eventually, al-Subkī maintains that there are many authentic narrations from the Followers regarding the validity of divorce when used as an oath and violated.

Next, al-Subkī devotes the second part of *al-Durra al-muḍiyya to* prove that Ibn Taymiyya's evidence about the combination of all types of oaths, including divorce and manumission oaths, under one Islamic law is very weak. His proof is that Ibn Taymiyya used general texts from the Qurʾān and the Sunna while neglecting how these texts were interpreted, explained, and specified by other texts. However, al-Subkī points out that Ibn Taymiyya did this not because he was unaware of these details and how they were proven with texts in Islamic law, but rather al-Subkī's opinion is, "This heretic wanted to deceive the ordinary people and those do not know about conditions of evidence and how to extracting a judgement. Also, he dramatises them by saying this is the text [proof] of Qurʾān and that is the saying of God".[469]

Al-Subkī then devotes the third part of *al-Durra al-muḍiyya* to reply to Ibn Taymiyya's two most-used verses of the Qurʾān to reinforce his view about atonement for a violated oath. His major objective in this part is to refute Ibn Taymiyya's means of proving that both divorce and manumission oaths should

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[468] al-Subkī, *al-Durra al-muḍiyya,* 17-18.

[469] al-Subkī, *al-Durra al-muḍiyya,* 25-26.

be considered oaths taken for God. He objects to Ibn Taymiyya's claim by his comment "If desired, these draw closer to God, so a divorce oath is not like this. Otherwise, it is desirable that they necessitate something that they should do for God, like pilgrimage and donating to charity; divorce oath is not like this".[470] Ibn Taymiyya counters this objection by confirming that

> There are just two judgements for the oath in the Qurʾān and Sunna; either it is a one which has atonement, or counted as an invalid oath like [oath] by the Kaʿba, angels and others which have no atonement according to the jurists' agreement. But [when one applies an atonement] to an invalid oath, it is a judgement that is not in the book of God nor from the Sunna of His Messenger.[471]

Al-Subkī's other point in the second part is that there are many narrations from the Companions and Followers about fulfilling a condition of the violated oath. He explicitly indicates that his reason behind including so many details is to refute Ibn Taymiyya's claim, "But I derived these words because this heretic said, 'A view that necessitate fulfilment [a violated oath] has not narrated from the Companions nor from the Followers', however, that was true from whom we mentioned".[472] Al-Subkī's last claims in this part are that: (1) there is consensus among jurists that oaths used with divorce are not included in the oaths that permit atonement when violated and (2) there is disagreement between jurists about labelling this kind of oath as an oath in the Islamic perspective. Here, al-Subkī argues and confirms that the correct view is that this cannot be labelled as an oath in this manner.[473] To reply to this objection, Ibn Taymiyya names seven of the great Companions, including Ibn ʿUmar, Ibn ʿAbbas, Abū Hurayra, ʿĀʾīsha, Umm Salama, Ḥafṣa and Zaynab, claiming that they

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[470] al-Subkī, *al-Durra al-muḍiyya, 29.*
[471] IbnTaymiyya, *al-Fatāwā al-Kubrā*, 312.
[472] al-Subkī, *al-Durra al-muḍiyya, 32-33.*
[473] al-Subkī, *al-Durra al-muḍiyya, 39.*

issued a fatwa about manumission oaths. As one says, "If I do this then my slaves are free", so if he did that, his oath is invalid and it does not necessitate the freeing of his slaves, but instead an oath's atonement fulfils it. So, all examples like this one are subject to the same law, including the one that says "I will divorce my wife if I do this thing" followed by the commission of that act.[474]

Now we turn to examine the second treatise of al-Subkī's refutation of Ibn Taymiyya: *Naqd al-ijtimāᶜ wa al-iftirāq fī masāʾil al-aymān wa al-ṭalāq.* At the beginning of this work, al-Subkī objects to Ibn Taymiyya's claim about a husband saying, "Divorce obligated me to do this". Here, Ibn Taymiyya claimed that Arabic language professionals and jurists agree that these formulations constitute oaths. Therefore, al-Subkī says, "How he alleges an agreement among the people of Arabic language about this when it is not known that this formula came in the language of people's speech. Also, I have not heard this from an Arabic person or from a versification or in prose".[475] Regarding using this formula of oath, al-Subkī, nonetheless, continues his objection and argues that with regards to assessing the validity of Ibn Taymiyya's claim about this formula of oath, it does not necessitate carrying the word of God on the habit of the jurists' use of language, especially if the language was not known to be used during the time of the Prophet.[476] Another major refutation of al-Subkī's in this writing is his rejection of Ibn Tasymiyya's analogy between divorce and vows. Al-Subkī explains the differences between these two in detail. As a result of his explaining, al-Subkī comes to conclude that Ibn Taymiyya's analogy is invalid because a vow has an obligatory element that makes abandoning it a sin, but

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[474] Ibn Taymiyya, *al-Fatāwā al-Kubrā*, 309.

[475] Al-Subkī, *Naqd al-ijtimāᶜ wa al-iftirāq fī masāʾil al-aymān wa al-ṭalāq (*Damascus: Maṭmaᶜat al-taraqī, 1928*), 44.*

[476] Al-Subkī, *Naqd al-ijtimāᶜ wa al-iftirāq,* 44.

necessitating divorce is an issue in which no sin is committed by abandoning it.[477]

Next, we will examine the third treatise of al-Subkī's refutation of Ibn Taymiyya: *al-Naẓar al-muḥaqqaq fi al-ḥalif bi al-ṭalāq al-muʿallaq.* Al-Subkī starts this work by issuing a fatwa against Ibn Taymiyya's view about suspended divorce wherein the husband's intent is to exhort himself or others, or wherein he wants to verify or deny news. So, al-Subkī explicitly declares his fatwa by saying "An issue: if a man suspended his wife divorcing on a condition and intended an oath either to exhort, refrain or ratification and then he found this condition, so his divorce is valid".[478] It means that he views suspended divorce to be as valid and normal as accomplished divorce. Here, Ibn Taymiyya seems to be responding directly to al-Subkī's fatwa and clearly rejects his fatwā when he comments:

> Obligating a Muslim with this saying (fatwa) and refraining them from the saying (meaning one's own fatwa) which supported by the Qurʾān and the Sunna is opposite to command of God, His Messenger and His servants, including four leaders (*Sunnī* school of law leaders) and others. Whoever prevented judging and issuing a fatwa about the invalidity of a divorce has gone against the book of God, the path of His Messenger and the Muslim consensus. Nobody does this except for someone who has no knowledge and should not follow him, and a denier who follows his whim and does not accept a truth when it appears to him and does not listen to what he says to understand what he said; on the contrary, he follows his whim without guidance from God.[479]

After providing some reasons to support his fatwa, al-Subkī, at the end of this writing, rejects Ibn Taymiyya's fatwa concerning paying atonement in cases of suspended divorce in which the husband's intention was not divorce. This is seen by al-Subkī's comment, "However, concerning a saying that atonement should be paid instead of this [the divorce] is not confirmed from anyone before

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[477] Al-Subkī, *Naqd al-ijtimāʿ wa al-iftirāq*, 51.

[478] Al-Subkī: *al-Naẓar al-muḥaqqaq fi al-ḥalif bi al-ṭalāq al-muʿallaq* (Damascus: Maṭmaʿat al-taraqī, 1928), 56.

[479] Ibn Taymiyya: *al-Fatāwā al-Kubrā*, 312.

Ibn Taymiyya".[480] This may be one of the reasons beyond al-Subkī's accusation that Ibn Taymiyya is an innovator (*al-mubtadiʿ*).

In conclusion, in this disagreement over the complex issue of divorce in Islamic law between Ibn Taymiyya and the majority of jurists, it is noted that Ibn Taymiyya, due to his understanding and interpretation to what he has found of evidence from the Qurʾān and the Sunna concerning both divorce and oaths law in Islam, he links divorce oaths to legal issues concerning oaths, not to divorce law. This indicates that both issues are regulated by the same law of oaths. In another words, a divorce oath is just a type of oath and should be treated as such by the law. We have found that due to his discussion to the majority of jurists about the validity of suspended divorce on a condition, it is obvious and explicitly mentioned that Ibn Taymiyya also places significance on the husband's intention in suspended divorce on a condition and divorce oaths; so if the husband's intention is the validity of divorce, then his divorce would be valid, but if his intention is something else, his divorce would be invalid and the oath's atonement would fulfil a violated oath. However, the majority of jurists view the use of the term divorce as sufficient to validate it either as an oath or as a suspended divorce on condition, and in such a case this divorce is valid and no atonement is required.

[480] Al-Subkī: *al-naẓar al-muḥaqaq,* 58.

PART TWO
IBN TAYMIYYA'S DIFFERENT PERSPECTIVE ON USING THE SOURCES OF ISLAMIC JURISPRUDENCE AS REASONS FOR HIS CONTRASTING OPINIONS

CHAPTER FIVE
THE QUR'ĀN

5.1 Introduction

In the previous part, we noticed Ibn Taymiyya's different views regarding the important issues of divorce law and how they contrast with the majority of jurists from the four main Islamic schools of law. The purpose behind that part of the thesis was to not only to show Ibn Taymiyya's contrasting opinions but also to understand his methodology when presenting his views and fatwas (legal opinions) about divorce issues. Furthermore, the previous part explored Ibn Taymiyya's intellectual background and examined his responses and objections to the majority of jurists' opinions. All this information helped to address the second main research question: Why has Ibn Taymiyya had different opinions to the majority of jurists in Islamic divorce law? To further answer this question, we will analyse and evaluate Ibn Taymiyya's jurisprudential ideas presented in the previous chapters.

We will start with Ibn Taymiyya's practical methodology related to the Qur'ān as it is the first and main source of the Islamic jurisprudence. We will address and examine Ibn Taymiyya's different perspective regarding the Qur'ān due to the conclusion of our analysis and evaluation to his different views, interpretations, understandings and perspectives concerning his different opinions about the issues of divorce examined in chapters two, three and four. This is in contrast to the views of the majority of jurists in Islamic law.

5.2 of unambiguous texts in Ibn Taymiyya's jurisprudential reasoning

Ibn Taymiyya seeks to rely primarily on the Qurʾān and the Sunna to form his views, ideas, thoughts and fatwas, and when confronted with the majority of jurists' views, he dismisses their views and instead bases his opinion on the verses of the Qurʾān and the texts of the ḥadīth. He also gives his views on their requirement without hesitation or fear, even if the majority of people prefer other interpretations or disagree with his ruling. From this perspective, Ibn Taymiyya emphasises that the religious texts of the Qurʾān and the Sunna are essential for all human behaviour and judgements. Furthermore, Ibn Taymiyya believes that the Qurʾān and the Sunna can provide the solution to any dispute between Muslims.[481]

Ibn Taymiyya's exegesis of the Qurʾān relies on the exegesis of the Qurʾān by the Qurʾān itself. Therefore, he emphasises "What is summarised in one place has been interpreted in another location, and what is shortened in one place has been extended in another location".[482]

Ibn Taymiyya's unique method of jurisprudence related to the Quran impacted several factors of his understanding of its message, as we will explain next.

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[481] *MF*, 19:285.

[482] *MF*, 13:363.

5.2.1 Attention to the language of the Qurʾān

Ibn Taymiyya's methodology for making the correct Islamic ruling pays particular attention to the language of the Qurʾān. In this regard, ʿUqaylī[483] says:

> Ibn Taymiyya's interest in language is not a purpose in itself, but it is an instrument to help understand the saying of the lawgiver and to achieve His objectives. It has been difficult for Ibn Taymiyya, who became angry with the religious words in the book of Allah and His Messenger's Sunna and became fluid in order to be interpreted according to the individual's passions and purposes or to carry out impossible meanings, so that it no longer shows the intended meaning of the lawgiver and His purposes. This is similar to what philosophers and many mystic groups have alleged. For this reason, Ibn Taymiyya devoted himself to clarify the intended meaning of the lawgiver and His purposes by noting, meditating, and inducting various legitimate uses and by making a comparison between it and the speech of the Arab people, which has been contemporised over time. This is to exact the legitimate concepts in order to distinguish right from wrong.[484]

Furthermore, we find that Ibn Taymiyya defends this approach in the interpretation of the Qurʾān and its deduction. In addition, he shows the importance of looking at the meanings of the Qurʾān and deriving rules from it. Ibn Taymiyya even criticises those who weaken the Qurʾānic words for non-Arabs and other languages, changing the Arabic meaning into a generalised meaning. In this regard, Ibn Taymiyya declared:

> The inference by the Qurʾān is that it is written in the language of the Arabs who created it. Rather, it has revealed in the language of the Quraysh that He said "We have never sent a Messenger who did not use his own people's language" (Q. 14:4) and He said "In a clear Arabic tongue" (Q. 26:195). It is not permitted for anyone to interpret the words of the Qurʾān other than that of both general custom and special idioms. However [if it is interpreted], on most particular [meanings] from the linguistic meaning, or more general or contrasting it, it is not permissible for them to interpret the Qurʾān on what they have interpreted by

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[483] ʿUqaylī has conducted a study about Ibn Taymiyya's knowledge to receive the Graduate Diploma degree in Islamic studies at the University of Moḥammad al-Khāmis in al-Ribāṭ-Morocco. His study is published as a book and we have quoted some important paragraphs from it.

[484] Ibrāhīm ʿUqaylī, *Takāmul al-manhaj al-maʿrifī ʿind Ibn Taymiyya* (U.S.A, Virginia, Herndon: al-Maʿhad al-ʿālamī lil-fikr al-islāmī, 1994), 116-117.

> themselves. But they should interpret the Qurʾān on its subjects that Allah has explained to them to whom He has addressed them in the Qurʾān by their language, and when he did another thing than this, so this was a distortion of the words from its themes.[485]

After this declaration about how to take the Qurʾānic words in order to get the proper meaning and a correct ruling, Ibn Taymiyya clearly emphasises a methodology that lawgivers should follow in interpreting the Qurʾān:

> Meanings are divided into both right and wrong, and it is not permissible to interpret the words of Allah by the wrong one for the right one if it is a meaning which the Qurʾān depends on and can then interpret. However, not every meaning is correct for interpretation just because of a relation between vision and expression.[486]

There were two important and relevant instances, in the previous chapters, of Ibn Taymiyya's dissidence with the majority of jurists in which their differences were due to how they inferred and interpreted the meanings of the Qurʾān linguistically. First, there was an issue with a word meaning "return back" (*al-murājaʿa*) in Ibn ʿUmar's story when the Prophet commanded him to return his wife after he had divorced her during a menstruation period. A major aspect of this dispute between Ibn Taymiyya and the majority of jurists was about using the word *al-murājaʿa*; is it interpreted according to a pure linguistic sense, as Ibn Taymiyya did, or is it construed according to a legal sense, as the majority of jurists did? Secondly, both Ibn Taymiyya and the majority of jurists inferred their allegations on the same verse in the chapter in the Qurʾānin which He stated that "divorce can happen twice" (Q. 2:229). Therefore, Ibn Taymiyya believes that triple divorce on one occasion or in a single word together is invalid, and he treats it as just one valid divorce. This relies on using the pure

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[485] Ibn Taymiyya, *Naqḍ taʾsīs al-jahmiyya*, ed. Muhammad b. ʿAbd al-Raḥmān b. Qāsim (Mecca: Maṭbaʿat al-ḥkumah, 1971), 1:492-493.
[486] Ibn Taymiyya, *MF*, 2:27.

Arabic language that came directly from the verse. He also reinforced his view of this issue by giving examples of using language from everyday life and then from the Sunna. However, the majority of jurists used the same verse to support their view that the triple divorce is valid, and the opinion depended on interpreting the verse from a legal meaning instead of a linguistic meaning.

It is worth mentioning that Ibn Taymiyya's method of interpreting and carrying the words of the lawgiver based on the pure and original language used in Arabic societies is an issue that jurists disagreed with from the principles of jurisprudence. This question is at the root of the issue: is it supposed that God used Arabic words in their new legitimate meanings far from their original Arabic meanings? Therefore, Ibn Taymiyya completely rejects this idea and confirms that it is not permissible to transfer words from their linguistic meanings into new legal meanings.[487] Contrary to Ibn Taymiyya, the majority of jurists believe that the lawgiver uses the Arabic language in its new linguistic meanings instead of its original meanings.[488]

Relying on the aforementioned information, we notice that Ibn Taymiyya engages an original use of the Arabic language as an instrument to acknowledge the intended meanings of the lawgiver. He explicitly declares this by stating:

> It is necessary to know that the existence of words in both the Qurʾān and Sunna, in their interpretations and what is wanted by them from the side of the Prophet, did not need to be inferred by opinions of the people of language and others. Therefore, jurists said there are three types of nouns: a type that it is limited to religion, like *al-ṣalāh* and *al-zakāh*; a type that is known by language, like *al-shams* and *al-qamar*; and a type it is

[487] Ibn Taymiyya, *Al-Muswada fī ʾuṣūl al-fiqh*, ed. Muḥammad Muḥī al-Dīn ʿAbd al-Ḥamīd (Cairo: Maṭbaʿat al-madanī, 1964), 177-178.
[488] Muḥammad Muṣṭafā Shalabī, *Iṣūl al-fiqh al-ʾIslāmī* (Beirut: al-Dār al-jāmiʿīyya, 1974), 1:378-381.

> known by custom, like *al-qabiḍ* and *al-maʿrūf* in His statement "Live with them in accordance with what is fair and kind" (Q. 4:19).[489]

From the above discussion and from the issues raised in the previous chapters, we can confirm that a disagreement based on interpreting the Arabic language used in the Qurʾān is a reason for Ibn Taymiyya's contrasting opinions to the majority of jurists regarding divorce law, specifically, and Islamic jurisprudence, in general.

5.2.2 The unambiguous declarations of texts

Ibn Taymiyya firmly believes that the texts in the Qurʾān have clearly declared to understand the lawgivers' intentions and enable deriving the correct ruling. From this perspective, he believes that the texts mostly have declarations for many types of purposes and interests that are highly considered in religion. Therefore, he states, "Knowledge is either an approved transmission from someone impeccable (*maʿṣūm)* or it is a saying that has well-known evidence for its correctness. Other sayings are either rejected as fake, or judgement is suspended because it is not known whether they are confused or criticised".[490]

From this view of Qurʾānic verses and their declarations on issuing correct Islamic law and intended meanings, Ibn Taymiyya considers the declarations of the texts as an important source in Islamic law to discover and issue the correct ruling. Therefore, we found Ibn Taymiyya using the well-known principle which says "Preventing a thing shows its corruption".[491] He frequently refers to his view about what the declarations of the texts show in establishing

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[489] *MF*, 13:28.

[490] Ibn Taymiyya, *MF*, 13:329-330.

[491] Muḥammad b. Ṣāliḥ al-ʿUthaymīn, *al-Qawāʿid al-fiqhiyya*, (Alexandria: Dār al-baṣīra, n.d), 28.

correct law. In this regard, it was one of his strongest arguments in divorce matters, which were mentioned in the previous chapters. For instance, we can show some examples of Ibn Taymiyya's references to these declarations as a guide to discover the correct rulings.

This is seen in his view that forbidden divorce is invalid because there are texts distinguishing between valid and invalid divorce in Islamic law, and divorce is sometimes permitted by God and sometimes forbidden. If it is an act that is forbidden by Allah and His Messenger, it is not correct and not effective and his view is that God is wise and never forbids anything unless it is corrupt. His prohibitions are intended to prevent or eliminate corruption. However, the majority of jurists do not agree with Ibn Taymiyya about the texts' declarations about correct rulings, and they claim that prevention is not the same as corruption. We see how Ibn Taymiyya disagrees with the majority of jurists that there is no condition or prevention in speaking of God and His Messenger. However, what it is known from God and His Messenger are commands, prevention, and what is permissible or forbidden. Therefore, it becomes clear that Ibn Taymiyya's accurate examination of the texts gives him the ability to derive correct rulings in Islamic law, as he claims, and this is another important reasoning behind his differences with the majority of jurists.

5.2.3 The silence of the texts

Ibn Taymiyya also infers that the silence of the texts make a correct ruling. He claims that the Islamic religion's texts provide knowledge of purpose by both its commands and its prohibitions. He also believes that the text gives knowledge of purpose by its silence, and that it gives its exemption to many

things in Muslims' everyday lives. Therefore, it seems that Ibn Taymiyya's views on many issues in Islamic jurisprudence are based on the silence of the texts regarding those issues. We found that Ibn Taymiyya reinforces his views on divorce issues accordingly. For example, he supports his arguments about the invalidity of prohibited divorce by noting that everything not commanded by the Qurʾān and the Sunna texts is rejected and invalid. Therefore, it seems that another reason behind Ibn Taymiyya's different opinions from the majority of jurists is his view regarding the silence of the texts to make things lawful or unlawful.

5.2.4 Abrogation (*al-naskh*) of Qurʾānic Verses

According to Ibn Taymiyya, the *salafs'* (early Muslims) definition of abrogation includes any type of the elimination of a text (*rafᶜ al-naṣṣ*), whether that elimination is based on legal judgement in a text or due to its connotation (*dalālat al-naṣṣ al-ẓāhira*). When the connotation [apparent meaning] of every single statement has been abandoned due to the existence of a text that contradicts the original meaning of the statement, this is similar to the particularisation of a general text (*takhṣīṣ al-ᶜāmm*) and the restriction of an absolute text (*taqīd al-muṭlaq*). Ibn Taymiyya claims that particularisation and restriction both fall within the definition of abrogation according to the predecessors, which is an offset to a precise text.[492]

However, Ibn Taymiyya does not believe that his own definition of abrogation applies to all Islamic texts. Instead, he believes that abrogation should only be used in very specific cases – that is, he believes that abrogation

[492] Ibn Taymiyya, *Al-Iklīl fi-al-mutashābih wa-altaʾūil* (Alexandria: Dār al-imān, 2002), 9.

should only be used to remove the judgement described by the text.[493] In this way, Ibn Taymiyya's belief of abrogation is similar to those held by the majority of those working with the principles of jurisprudence in Islam. Generally speaking, abrogation has been defined as an alteration of the established meaning of a prior text [*naṣṣ mutaqaddam*] of a verse from the Qurʾān based on information given in a posterior text [*naṣṣ mutaʾakhkhar*] – that is, a text that was written after the original advanced text. Also, they believe that abrogation happens in the judgements, which are described by the texts, which include commands and prohibitions. In addition, abrogation cannot happen in the reports and stories in the Qurʾān because they are fixed and can neither change nor switch. This is like a belief's contents, which do not change or switch in the different religion.[494]

Let's consider the issue of divorce to illustrate the distinctive nature of Ibn Taymiyya's views. In this case, Ibn Taymiyya's view is completely different from the majority of jurists. We can simply emphasise that another main reason behind this difference is a noted dissimilarity between Ibn Taymiyya and the majority of jurists regarding the abrogation of some judgements in the Qurʾānic verses by reference to other judgements. So, Ibn Taymiyya's view for abrogation to function as a means of replacing one religious judgement by another one is accepted in principle within the context of Islamic legal thought.[495] However, Ibn Taymiyya and the majority of jurists disagree about the issue of abrogation.

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[493] Ibn Taymiyya, *MF*, 17:184.

[494] Shaʿbān Muḥammad Ismāʿīl, *Naẓariyyat al-naskh fi al-sharāʾiʿ al-samāwiyya* (n,p: Dār al-salām, 1998), 11-15.

[495] Ibn Taymiyya, *Al-Muswadda*, 201-202.

Namely, the disagreement turns to the following question: what kind of a text can be an abrogating text for an abrogated one?

Previously in this thesis, we found that Ibn Taymiyya's belief about applying both the Qurʾān and the Sunna to all legislative judgements related to human actions and deeds. This means that he gives the verses found in the Qurʾān itself a prestigious and special position, stating that it is not possible to change or replace Qurʾānic verses apart from with similar texts found in the Qurʾān. This view of the Qurʾānic texts produces another difference between Ibn Taymiyya and the majority of jurists, especially with regard to texts related to or included in Islamic legislative judgements. Due to this high regard for the authority of the Qurʾān, Ibn Taymiyya is considered to be careful in his account of the abrogation issue and does not use abrogation unless there is difficulty when combining two texts. Furthermore, this only occurs after a significant effort is made to attempt to reconcile the texts and considering both texts as determinate (*al-muḥkam*).[496]

To summarise, Ibn Taymiyya's general belief about abrogation is that he accepts the abrogation of Qurʾānic texts by other texts from the Qurʾān, and he also accepts the abrogation of texts from the Sunna by other texts of the Sunna. He rejects the abrogation of Qurʾānic texts by texts of the Sunna, whether done by the recurrence of the Sunna [*al-mutawatir*] ḥadīth or solitary Sunna [*al-āḥād*] ḥadīth that have been reported by only one or two persons in every transmission chain. Ibn Taymiyya states that "from our perspective, the Sunna does not abrogate the Qurʾān, but it particularises and clarifies [meanings of the Qurʾānic

[496] al-ʿUṭayshān, *Manhaj Ibn Taymiyya fī al-fiqh*, 78.

verses]".[497] Ibn Taymiyya also uses the opinions of other jurists to support his own views about the acceptable type of abrogation. He does this to explicitly assert that his view is the most correct. Ibn Taymiyya declares: "Nothing can abrogate the Qurʾān except the Qurʾān itself, as this is the doctrine of al-Shāfiʿī and a well-known narration from two of Aḥmad's doctrines. It is explicitly noted by Aḥmad that nothing can abrogate the Qurʾān except a Qurʾānic verse that comes after the verse has been abrogated; all of Aḥmad's Followers follow this [doctrine] as well".[498]

As mentioned before, Ibn Taymiyya does not believe in the abrogation of Qurʾānic texts by Sunna texts, regardless of the type of Sunna text in question. While the majority of jurists disagree with Ibn Taymiyya about this, most of them agree that the Sunna cannot abrogate the Qurʾān when a solitary ḥadīth [*āḥād]* is being used to do the abrogating. The difference between Ibn Taymiyya and other jurists, therefore, lies in their beliefs regarding abrogating Qurʾānic texts using the recurrence of ḥadīth (*mutawātīr)*, a practice that Ibn Taymiyya rejects and the majority of jurists support. Support for this notion can be found in al-Shawkānī's claim that "abrogation of [the texts] of the Qurʾān by the recurrence [*mutawātīr*] Sunna texts is permissible according to the majority of jurists".[499]

Ibn Taymiyya provides support for his own views regarding the abrogation of Islamic texts. Some of this support includes the following.

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[497] Ibn Taymiyya, *Al-Muswadda*, 202.

[498] Ibn Taymiyya, *MF*, 17:195.

[499] Muḥammad b. ʿAlī al-Shawkānī, *Irshād al-fuḥūl ilā taḥqīq al-ḥaqq min ʿilm al-uṣūl*, ed. Sāmī b. al-ʿAzīy al-Atharī (Riyadh: Dār al-faḍīla, 2000), 2:811.

1-Ibn Taymiyya uses this verse to support his view: "Any revelation We cause to be superseded or forgotten, We replace with something better or similar" (Q. 2:106). He claims that Allāh has promised that an abrogating verse should be a similar or better replacement for the text being abrogated. Also, Allāh has promised that whatever Muslims have forgotten is likewise, and whatever He has delayed and its time of revelation has not come yet, is likewise. All of these promises made by Allāh mean that Muslims still have the Qurʾān as it was before it was abrogated or delayed by something similar or something better. So, if the Sunna, which is neither similar to nor better than the Qurʾān abrogates the Qurʾān the promise made by Allāh is not being upheld. However, if it is said that the Sunna does come after it has been abrogated, this means that a free period exists between the abrogation of the Qurʾān and its replacement. So, according to Ibn Taymiyya, this interpretation also opposes the intention of the verse, which obviously states that the abrogating text should be something similar to or better than the abrogated text.[500]

2-Ibn Taymiyya claims that the Companions and Followers of the Prophet, who were well-known throughout the community for their skill in the science of abrogation, do not suggest that it is acceptable to abrogate the Qurʾān by appealing to the Sunna. However, they do say that abrogation of the Qurʾān can only occur by appealing to passages in the Qurʾān itself. There is clear evidence for this claim when ʿAlī speaks to a judge: Do you know about Qurʾānic abrogation? If it was permissible to abrogate the Qurʾān by appeal to something other than the Qurʾān, then ʿAlī would have mentioned it.[501]

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[500] Ibn Taymiyya, *MF*, 17:196.

[501] *MF*, 17:197.

3-Ibn Taymiyya says that those who permit the abrogation of the Qurʾānic texts without appealing to another text from the Qurʾān, such as theologians, argue that such an abrogation is possible because it is intelligible. So according to these theologians, given that this sort of abrogation is intelligible (i.e. accessible to the intellect), then it is possible, and therefore it should be allowed. Ibn Taymiyya objects to this argument by explaining that the lack of an intelligible deterrent is not equivalent to permission. Whatever is known about the lawgiver's wisdom, which must be gleaned from a religious rule, cannot be known by the intellect alone. Therefore, those who have agreed to permit the abrogation of Qurʾānic texts based on passages from the Sunna, based only on rational evidence, differ amongst themselves about its religious permissibility.[502]

4-Ibn Taymiyya also claims that the abrogation of the text is controlled by the abrogating text, and this is important. This is why the text cannot be abrogated except by a text that is similar to or better than itself. As the Qurʾān has dominance over the original holy books, it acknowledges from them only what it will. Therefore, if the Sunna were to abrogate material from the Qurʾān, this would mean that the Sunna is similar to or better than the Qurʾān, just as the Qurʾān is better than the other books.[503]

5-Ibn Taymiyya's other assertion is that there are no known instances of a Qurʾānic verse being abrogated by anything other than the Qurʾān itself.[504] Here, Ibn Taymiyya is rejecting the assertions made by the majority of jurists, who claim that there is a verse in the Qurʾān about inheritance law that was abrogated by a ḥadīth from the Sunna. Ibn Taymiyya directly addresses this issue

[502] *MF*, 17:197.
[503] *MF*, 17:197.
[504] *MF*, 17:198.

by explaining that a verse about a commandment for parents and relatives has been abrogated by a verse about inheritances and the predecessors in agreement regarding this.

Ibn Taymiyya then uses these two verses to support his argument: (1) "These are the bounds set by God: God will admit those who obey Him and His Messenger to Gardens graced with flowing streams, and there they will stay – that is the supreme triumph!" (Q. 4:13); (2) "But those who disobey God and His Messenger and overstep His limits will be consigned by God to the Fire, and there they will stay—a humiliating torment awaits them!" (Q. 4:14) Ibn Taymiyya then explains that the share in inheritance law (*al-farāʾiḍ*), which is described in a verse that comes before these two verses, is within Allāh's boundaries. In this way, God mentions that verse after mentioning the share in inheritance law (*al-farāʾiḍ)*. So, who gives an owner of the share more than their right? By shortening one's right and increasing another's right, His limits have been overstepped. So, the Qurʾān indicates a prohibition of that and this is [an example] of one Qurānic text abrogating another Qurānic text.[505]

Thus, Ibn Taymiyya defends his view regarding the limits of abrogation in Islamic law within a narrow range, as indicated in the Qurʾān. Furthermore, Ibn Taymiyya's view is contrary to the views on abrogation held by the majority of jurists. For instance, on the issue of divorce, the majority of jurists in reality abrogate the verse: "Divorce can happen twice". Also, they use an abrogation even though they proved that there is a narration that describes a triple divorce in the era of the Prophet, the Caliph Abū Bakr, and for the first two years during the Caliph ʿUmar, which confirms that a triple divorce was treated as just one

[505] *MF*, 17:198.

revocable divorce in that time. The majority of jurists used ʿUmar's independent reasoning (*ijtihād*) or legal opinion (*al-fatwā*) to reduce the instances of triple divorce in society to justify their account of abrogation. This means that ʿUmar might have used an abrogated text. Therefore, the majority of jurists consider ʿUmar's legal opinion to be a statement of consensus between themselves as the four Sunnī schools of law. In turn, this supports their position on abrogation because they consider all texts from the Qurʾān and the Sunna that came before Umar's fatwa to be abrogated texts which indicate that a triple divorce is treated as a single divorce.

Therefore, we find that Ibn Taymiyya stands against the majority of jurists. He attacks the positions of the jurists concerning the principles of jurisprudence science (*usul al-fiqh*) on abrogation in Islamic law by arguing that they do not have any clear evidence for their view about what constitutes an abrogating text. In connection with this issue, Ibn Taymiyya claims that abrogation is not acceptable without proof; otherwise this would constitute a refusal of the Prophet's *ḥādith*. So, he explicitly points out: "We find many people who opposed the authentic *ḥadīth* from the Followers of Abū Ḥanīfa or others say: this is abrogated, and have taken this [speech] as affliction; every ḥadīth does not agree with their doctrine, they say it is abrogated. How can they say this without any knowledge of whether it is actually abrogated or not, and without confirming what text has abrogated it?'[506].

This misuse of abrogation is another reason for Ibn Taymiyya's different opinion about the abrogation of the Qurʾānic text by the Sunna. However, in the case of the triple divorce issue, the majority of jurists have decided that not only

[506] *MF*, 21:150.

the Sunna can abrogate texts. They also decided that, so long as consensus is reached among themselves it could also abrogate texts. Not surprisingly, Ibn Taymiyya resolutely refutes this view. He has his own view concerning the practicality of consensus in Islam. He states that consensus itself can occur only with the support of holy texts,[507] and as such, he says that consensus itself cannot, by definition, abrogate a text.

Concerning the possibility of texts being abrogated based solely on consensus among jurists, Ibn Taymiyya reproaches the later jurists (*al-mutaʾakhkhirūn*) who claim that independent reasoning in religious law (*ijtihād*) must begin by determining the consensus among the jurists regarding any matter so that he may rely on this consensus when forming his own legal opinions (*al-fatwā*). In this process, however, if he finds a text that is contrary to the consensus, then he should assume that this text was previously abrogated by another text that he has not yet read. Or, perhaps he should think that some of them claim that consensus itself has abrogated this text and that they have considered the predecessors' approach in this regard. This is because, in their independent reasoning (*ijtihād*), they would first have sought a supporting text in the Qurʾān, and then in the Sunna, and if they still had not found anything in either of these texts, they would have pursued a consensus, as their predecessors have done.[508] Ibn Taymiyya rejects this view and believes that consensus on its own cannot abrogate texts, and when a text contradicts the Qurʾān, consensus should be justified by a well-known text alongside an abrogated text. However, no one has ever alleged that the community has lost the determinate text and

[507] *MF*, 19:167, 195.
[508] *MF*, 19:201.

protected the abrogated text. This has never happened, as this would be contrary to common sense. Also, this allegation necessitates corruption, which would not befit an infallible community (*al-umma*). This is because this allegation necessitates accusing the community by protecting what they have been prohibited to follow and necessitates wasting what they have been commanded to follow.[509]

Ibn Taymiyya attempts to show the difference between the existence of a text and the establishment of a consensus in contrast to that text. He does this by claiming that it does not mean that the text has been abrogated by the consensus. On the contrary, it means that the consensus leans on a holy text or on His Messenger's speech; these sources must act as the abrogating text, not the consensus itself. As discussed in previous chapters, the majority of jurists supported the validity of triple divorce based on the use of consensus among themselves. Ibn Taymiyya then rejected the validity of this consensus as a basis for abrogation:

> It is impermissible to allege abrogation of something legislated by the Prophet based on a consensus from anyone. This type of thinking is mistaken. However, all issues that Muslims agree upon must be in agreement with that which has been stated by the Prophet; their thoughts cannot be contrary to His. Also, every abrogated text (verses) created by a Muslim community's consensus already has an abrogating text, and the community protects both the abrogating and abrogated texts. Additionally, protecting the abrogating text is more important and obligatory for the community than protecting the abrogated one.[510]

In another text, Ibn Taymiyya attempts to use a strong method to show how it is unreasonable to claim that consensus alone can be used to abrogate texts. He does this by commenting on translated reports regarding the

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[509] *MF*, 19:200.

[510] *MF*, 33:32.

abrogation of Qurʾānic and Sunna texts by theologians and other jurists, including the Followers of Mālīk and Abū Ḥanīfa. He refutes their claims by stating: "We interpreted the intended meaning of these people as saying that consensus is enough to justify the abrogation of a text".[511] Then, to show that these jurists are incorrect, he emphasises that their views about consensus are unusual, pointing out, "However, we have found from those who they mentioned that they really deem consensus itself as an abrogation".[512] Then, based on these two premises, Ibn Taymiyya rejects the views of the majority of jurists by accusing them of trying to replace the rules of Islam after the death of the Prophet:

> If they mean that [consensus can abrogate texts] this saying allows Muslims the permission to replace their religion after their Prophet [death]. This is like when Christianity says that Jesus warranted their jurists to prohibit what they view as a benefit by prohibiting things, and to permit what they view as a benefit in its permission. However, this is not the religion of the Muslims, nor have the Companions of the Prophet warranted this for themselves and whoever believes that the Companions have permitted that, should repent [given a time limit to repentance] like the repenting of others [for other issues]. However, it is permissible for a ruler and a judge to seek what is right [correct law]. In this case, they will have two rewards [if they are right] and if they have made mistakes [in their view], then they will have one reward.[513]

Based on this evidence, it can be confirmed that Ibn Taymiyya's previous attempts were made to refute the view on the permissibility of abrogating texts by consensus among jurists. This is done by following his method of expressing doubt, emphasising that doubt, then objecting the issue outright and attacking it from another side.

Ibn Taymiyya tries to illustrate the difference between independent reasoning and abrogation using Caliph ʿUmar's decision to discontinue giving

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[511] *MF*, 33:94.

[512] *MF*, 33:94.

[513] *MF*, 33:94.

alms to people who were new to Islam (*al-muʾallafat qulūbuhum*). Ibn Taymiyya selects this specific example because his antagonists believed that Umar's decision constituted an abrogation of a verse from the Qurʾān, which states that those people must be given a portion of alms. In response to this, Ibn Taymiyya says that what the Prophet legislated depends on the cause of the ruling, and the cause is allowed when there is an existence of an action like giving [a proportion of alms] to those people who are new to Islam; this is confirmed by both the Qurʾān and the Sunna. Some people believed that this verse was abrogated because Umar mentioned that God is the wealthiest and that He does not need anyone to be with Him: whoever wanted [to believe in Islam], let him believe, and whoever wanted [not to believe in Islam], let him not believe. However, ʿUmar did not stop giving alms based on the previously mentioned verse about belief; instead, he dispensed with giving [alms] to people who were new to Islam because there was not a need to give alms – and this was unrelated to abrogation.[514]

To conclude, it is important to mention our concern about Ibn Taymiyya's view of the abrogation of Qurʾānic texts. Ibn Taymiyya believes that there is no difference between the Qurʾān and the Sunna, so it would not be expected that he would differentiate between the two texts. Thus, he should not find it difficult to allow the Sunna texts to abrogate Qurʾānic texts, because according to him, these texts are on the same level. However, Ibn Taymiyya's beliefs about the different types of the Sunna reports may be the reason behind his view that it is impossible for texts from the Sunna to abrogate texts from the Qurʾān.

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[514] *MF*, 33:94.

Thus, the difference between Ibn Taymiyya and the majority of jurists regarding the issue of abrogating the Qurʾān using the Sunna is one of many reasons for Ibn Taymiyya's contrasting opinions about Islamic jurisprudence in general and divorce issues in particular.

CHAPTER SIX
THE SUNNA

6.1 Introduction

Previously in this research, we considered the issues regarding divorce law. Namely, we discussed the different views held by Ibn Taymiyya and the majority of jurists, especially their opposing opinions about one solitary ḥadīth which has been narrated regarding Rukānna's divorce story in chapter two. This ḥadīth is narrated by two different *isnāds*. Ibn Taymiyya considers one of these *isnāds* as the correct one, while the majority of jurists consider the other *isnād* as the correct narration. Both Ibn Taymiyya and the majority of jurists attempt to prove that their chosen *isnād* is the right one. This debate helped us understand the different views held by Ibn Taymiyya and the majority of jurists, which are based on their different perspectives regarding their justification of how ḥadīth should be taken into account in terms of religious knowledge.

One difference between Ibn Taymiyya and the majority of jurists is how they view the Sunna. It is essential to acknowledge the power and the fact of this difference between them. In that respect, we can then consider this difference as another main reason behind Ibn Taymiyya's different opinions in contrast to the majority of jurists in issues of Islamic law in general and the laws of divorce in particular. To explain this clearly, the following section will explore Ibn Taymiyya's view of the Sunna, including what he believes makes the Sunna adequate as proof for supporting matters of Islamic law. The differences between Ibn Taymiyya and the majority of jurists will also be discussed at length.

6.2 Definition of the Sunna and ḥadīth

The terms Sunna and ḥadīth are sometimes used interchangeably in Islamic law. It would be helpful to mention a brief definition of both the Sunna and the ḥadīth according to Ibn Taymiyya. This will help prevent any confusion that may occur when one word is used in place of the other. We found that Ibn Taymiyya briefly defines the Sunna as containing everything legislated by the Prophet. This includes the Prophet's legislation concerning issues of belief, as well as his legislation regarding deeds done by human beings. Issues of both beliefs and deeds are intended by this definition.[515] This definition has been taken from Ibn Taymiyya's speech about what can be considered as religious knowledge, as well as from his definition of *sharīʿa* (religious law). Regarding the definition of ḥadīth, Ibn Taymiyya says: "The word "Prophetic ḥadīth" applies to what it is said by the Prophet after becoming a Prophet. This includes his speaking, acting, and his consent. Also, his religious legislation (*sunnatuhu*) has been affirmed in these three aspects".[516] This definition of ḥadīth was Ibn Taymiyya's reply to the following questions: What are the limits of the Prophetic ḥadīth? Is the ḥadīth what the Prophet said during his life, what he said after the completion of his mission, or what he legislated in his speech?[517]

There are no major differences between Ibn Taymiyya and the majority of jurists in terms of their definitions of both the Sunna and ḥadīth. However, differences between the two begin to arise in terms of the division of the Sunna into different sections. These sections are determined according to the Sunna's

[515] Ibn Taymiyya, *MF*, 19:307.
[516] Ibn Taymiyya, *MF*, 18:7.
[517] Ibn Taymiyya, *MF*, 18:6.

standards for providing religious knowledge, taking this knowledge, and acting in accordance with it.

6.3 Ibn Taymiyya's division of the Sunna

Ibn Taymiyya's view regarding the division of the Sunna is stated explicitly in his treatise entitled *Qāʿida fī al-muʿjizāt wa al-karāmāt* (*A Basis of the Miracles and Unseen Knowledge)*. This treatise aims to resolve some issues related to theology, belief and the principles of *Islamic* jurisprudence. In a section devoted to some issues from the Sunna, Ibn Taymiyya begins by classifying the Sunna into three main types:

First: The recurrence of the Sunna (*al*-Sunna *al-mutawātira*) that does not disagree with the apparent meaning of the Qurʾān, but further interprets this meaning.[518]

Second: The recurrence of the Sunna (*al*-Sunna *al-mutawātira*) that does not further interpret the apparent meaning of the Qurʾān, or it is said it does not agree with the apparent meaning of the Qurʾān. An example of this type of Sunna would be the Sunna that explains that stealing (*taqdīr niṣāb al-sariqa*) is a punishable crime. Other examples include the Sunna that mentions the use of the stoning penalty (*al-rajm*) for married adulterers and adulteresses. The doctrine of all *salaf* must to act in accordance with this kind of Sunna, except for the *Kharijites.*[519] It seems that the reason to name this type of the Sunna is so that it does not interpret the apparent meaning of the Quran because in the first instance the Sunna determines the conditions of the punishment for stealing and

[518] Ibn Taymiyya, *Qāʿidat fī al-muʿjizāt wa al-karāmāt*, ed. Ḥammād Salama (Jordan: Makatabat al-mannār, 1989), 40.
[519] Ibn Taymiyya, *Qāʿidat fī al-muʿjizāt,* 40.

this is not conditional. By contrast, in the second instance, the Sunna provides a punishment that the Quran does not indicate.

Third: The recurrence of the Sunna (*al*-Sunna*n al-mutawātira*) from the Messenger of Allah that are received and accepted among the people who have knowledge about them. These Sunna may also be accepted because trustworthy people have narrated them. The people of knowledge, such as those who study jurisprudence, ḥadīth, mysticism (*taṣawwuf*) and more, tend to agree that these types of the Sunna should be followed by Muslims. However, some theologians deny the credibility of this type of Sunna. Most of these individuals deny having ever gained religious knowledge from these texts, and they do not distinguish between the Sunna that have been accepted among the people who know about them and those that have not. In addition, many people deny most of these kinds of Sunna due to objections they have about these types of the Sunna. Some of these Sunna texts object to others because they contradict the apparent meaning of the Quran as it is alleged, while others contain information that is contrary to the principles or analogy of principles or the act of later scholars of Madina is opposite to it. Additionally, some Sunna contradicts others because of some other well-known issues found in the books of ḥadīth, jurisprudence and the principles of jurisprudence.[520] It is worth mentioning that this type of recurrent recurring Sunna from Ibn Taymiyya's division is similar to that of the solitary type of Sunna from the majority of jurists' division.

As mentioned above, the difference between Ibn Taymiyya and the majority of jurists begins with Ibn Taymiyya's division of the Sunna. The

[520] Ibn Taymiyya, *Qāʿida fī al-muʿjizāt,* 42.

majority of jurists classify the Sunna into two types: recurrence recurring (*mutawātir*) Sunna and solitary Sunna (*āḥād*).[521] Ibn Taymiyya divides the Sunna into many different types, all under the same name (*tawātur*); however, he gives every single type a different meaning. He does not indicate that there is another type of the Sunna under the *āḥād* title, as the majority of jurists have done.

To identify the main difference between Ibn Taymiyya and the majority of jurists, it is important to understand what the majority of jurists mean when they use the terms *tawātur* and *āḥād* to classify the Sunna into two parts. The word *tawātur* is used idiomatically. In this context, it is "a report which has been narrated by a group of people which in itself conveys [religious] knowledge because of its reporter".[522] The term *āḥād* is defined as "reports that have not met the condition of the *tawātur* report [according to the number of reports]".[523] According to these definitions, the only difference between the *tawātur* and *āḥād* types of the Sunna is the number of reporters who have transmitted the Sunna. However, these definitions do not include the exact number of reporters required for a Sunna to be categorised as *tawātur*, nor do they state the lowest number of reporters required for a Sunna to be categorised as *āḥād*. The definitions do make it clear; however, that ascribing *mutawātir* to any ḥadīth indicates that the ḥadīth has been transmitted from a group of people. These definitions also indicate that when a ḥadīth is *āḥād*, this ḥadīth has been transmitted either by one person or by a group of people, the size of which is below the limit required for the ḥadīth to be categorised as *tawātur*. A key point

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[521] Muḥammad b. Muḥammad Abu Shahba, *al-Wasīṭ fī ʿulūm wa muṣṭalaḥ al-*ḥadīth (n.p: ʿĀlam al-maʿrrifa, n.d), 189.

[522] ʿAlī b. Muḥammad al-Āmidī, *al-Iḥkām fī ʾuṣūl al-aḥkām*, ed. ʿAbd al-razāq ʿafīfī (al-Rīyādh: Dār al-ṣamīʿī, 2003), 2:21.

[523] al-Āmidī, *al-Iḥkām*, 2:43.

that helps distinguish between the two types of Sunna is that any *mutawātir* report contains absolute knowledge (*'ilm al-yaqīn'*), as it is highly unlikely for a group of people to consent to giving false information. However, an *āḥād* report, which is narrated by one person, two people, or more, but that has not reached the minimum required to be considered a *tawātur*, cannot give absolute knowledge.

Ibn Taymiyya's division of the Sunna does not involve the rejection of any kind of ḥādīth; rather, his classifications explain the different types of Sunna. Based on the classifications of the Sunna made by the majority of jurists', whereby the Sunna are divided into both *mutawātir* and *āḥād*, we can determine that *mutawātir* ḥadīth contain religious knowledge, while *āḥād* ḥadīth do not give the same meaning to religious knowledge. This distinction may be the reason behind Ibn Taymiyya's refusal to recognise the Sunna divisions acknowledged by the majority of jurists. Though Ibn Taymiyya does not divide the Sunna in the same way that the majority of jurists do, he does attempt to deal with the Sunna more closely than the majority of jurists. More specifically, Ibn Taymiyya attempts to discover the original reasons behind the Sunna's classifications in order to classify the Sunna appropriately as either *tawātur* or *āḥād*. In addition, he aims to detect the basis required to identify the type of each Sunna. Thus, the starting point of the contention between Ibn Taymiyya and the majority of jurists regarding the Sunna is the disagreement over this question: Which conditions should exist in a solitary (*āḥād*) ḥadīth in order to use this ḥadīth as evidence of Islamic laws?

6.4 Types of Sunna and standards for giving religious knowledge (*ifādat al-ʿilm*) between Ibn Taymiyya and the majority of jurists

Ibn Taymiyya explicitly attempts to elucidate his own view on the Sunna, including how it gives religious knowledge. He also aims to implicitly explain why he does not divide the Sunna into the *tawātur* and *āḥād* categories. Therefore, Ibn Taymiyya strives to clarify his opinion about the Sunna and to emphasise that the matter does not relate to the naming or dividing of the Sunna. However, does the problem originate from what it does mean when the word *tawātur* is used to describe the Sunna?

According to the majority of jurists, the number of narrators of the Sunna is very important to the classification of each ḥadīth in terms of that text giving certain or uncertain religious knowledge. The number of narrators is what distinguishes different Sunna as belonging to either the *tawātur* or *āḥād* categories. Thus, the number of narrators plays a central role in the treatment of the Sunna by the majority of jurists in Islam. However, Ibn Taymiyya, as is apparent from his classification of the Sunna, does not differentiate between the *mutawātir* and *āḥād* Sunna. Furthermore, he claims that the meaning of the term *tawātur* is unrelated to the number of people who narrate a given ḥadīth. He believes that while this narration, by definition, gives true knowledge, the *tawātur* Sunna are intended to give knowledge without being restricted by the number of narrators. Therefore, he explicitly states that

> The word *mutawātir* has been used to [give] many meanings, since the intended meaning of *mutawātir* is that which gives knowledge. Still, many people do not classify any ḥadīth as *mutawātir* unless it has been narrated by many people; so, knowledge is only considered legitimate if it is supported by a large group. Also, their claim that every such number

> gives knowledge in any specific issue means that the same number is also giving knowledge in every issue, and this is a weak view.[524]

Ibn Taymiyya clearly does not consider there to be any particular limitation on classifying a ḥadīth as *mutawātir*. He also states that using the number of narrators, as a condition for establishing the certainty is invalid, because there is no authentic evidence for this view. He supports his claim by pointing out that this view makes all different kinds of reports equal, as the only type of evidence necessary to validate a report in this view is the number of narrators. Ibn Taymiyya also attacks those who believe that the number of narrators is a just condition for categorising a ḥadīth as *mutawātir*: "Whoever has made a particular number [of people as a condition] for giving religious knowledge have made a great mistake".[525] Thus, Ibn Taymiyya does not reject the notion of categorising a ḥadīth as *mutawātir*; rather, he is against using the number of narrators as the only condition for that categorisation. Thus, according to Ibn Taymiyya, every solitary (*āḥād)* ḥadīth that gives religious knowledge reflects the true meaning of *mutawātir*.

Ibn Taymiyya explicitly states that the majority of jurists have made a mistake by giving so much importance to the number of narrators for categorising a Sunna as *mutawātir*, and then subsequently declaring that this is the only type of Sunna that can give absolute religious knowledge. Ibn Taymiyya gives his own view concerning the meaning of *mutawātir* and the conditions that a ḥadīth must meet to be categorised as *mutawātir*:

> The correct view is what the majority believes in – that [religious] knowledge can be attained by many reporters at a time, and that it can be attained by their religious attributes [e.g., piousness] and their rightness.

[524] Ibn Taymiyya, *MF*, 18:48.

[525] Ibn Taymiyya, *MF*, 18:51.

> [Knowledge] can also be attained depending on the circumstances related to the report itself. In addition, it can be attained by combining all of these things together. Furthermore, [religious] knowledge can be attained depending on one group, but not another. Also, a report that has been accepted by leaders [*al-a'imma*], whether by ratifying or acting in accordance with it, is giving [*religious*] knowledge, according to the majority of the predecessors and successors (*al-khalaf wa al-salaf*). These types of ḥadīth thus fall into the meaning of *tawātur*, though some people call them well-known [ḥadīth] (*al-mashhūr*) or exhaustive [*al-mustafīḍ*].[526]

Ibn Taymiyya does not set any limitations or minimum numbers required for a *mutawātir* ḥadīth to be considered as giving religious knowledge, nor does he state that religious knowledge cannot be given if a ḥadīth is not categorised as *mutawātir*. According to Ibn Taymiyya, the only requirement for categorising a ḥadīth as *mutawātir* is that it must give religious knowledge and that this is known by the existence of knowledge in a person's self (*al-nafs*) compellingly. So, the standards for this categorisation is that a person must be certain about the content of the report and that they must gain religious knowledge from that report accordingly; their acquirement of knowledge should not be dependent on other conditions, such as the number of narrators. [527]

Ibn Taymiyya in another place attempts to improve and completely elucidate a problem, which the majority of jurists fall in throughout the division and naming of the Sunna. As well as demonstrating their problem in accordance with the meaning of the word *tawātur*, Ibn Taymiyya states that according to the number that attains *tawātur* with it, some people have limited the number of narrators required for a ḥadīth to attain *tawātur*, while many people have different opinions about the number of narrators necessary. Some say that more than four narrators are required, while some say forty. Yet others say that the

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[526] Ibn Taymiyya, *MF*, 18:48-49.

[527] Fārūq Ḥammāda, *al-Manhaj al-islāmī fī al-jarḥ wa al-taʿdīl* (al-Ribāṭ: makatabat al-maʿārif, 1982), 359.

correct number is seventy or three hundred and thirteen. These are all invalid. In the end, it should be concluded that the *tawātur* does not have a minimum number of narrators.

Knowledge attained from a report should be attained by the heart, as the stomach is satiated after eating and the mouth quenched after drinking. Knowledge that is attained when a report is heard may be related to the reporters, their religious attributes, or their rightness. Therefore, knowledge can be attained from reporters based on more than just the number of reporters given. So, whoever has stated that a particular number of reporters is required has made a great mistake.[528] Thus, according to Ibn Taymiyya, the limitation that the majority of jurists have set on attaining knowledge from the *mutawātir* ḥadīth only if a particular number of narrators is present is incorrect. As we have seen in Ibn Taymiyya's explaination of his understanding regarding the Sunna, we can confirm that Ibn Taymiyya gives two main reasons to support his view: first, he says that there is not an agreement about the exact number of narrators, and second, he states that it would be invalid to make all ḥādīth equivalent based only on this number.

Next, Ibn Taymiyya attempts to defend his opinion about the meaning of *tawātur* using some ḥādīth favoured by Muslim communities and scholars to support his own view. He quotes: '"[This ḥādīth] the reward of deeds depends upon the intentions'; has been received by the people of knowledge as accepted and approved. However, it was not originally among *mutawātir* ḥādīth, but it was

[528] Ibn Taymiyya, *MF*, 18:51.

taken from a strange (*gharīb*) [ḥadīth]'".[529] Ibn Taymiyya uses this example to show how the community has accepted and approved of a specific ḥadīth in the past not because it had many transmitters, as well as it was originally an *āḥād* ḥadīth. However, the community accepting or acting on a ḥadīth gives it a moral *tawātur* that is worth no less than a resultant *mutawātir* that is given due to a large number of transmitters. Furthermore, a significant attribute of every ḥadīth is its ability to give religious knowledge without putting any limitations on its ability to do so.

Ibn Taymiyya's view on *mutawātir* ḥadīth and its conditions and meanings involves dividing the *mutawātir* into two types: general and special. This is evidenced by Ibn Taymiyya's statement: "Therefore, the *tawātur* is divided into general and special types. The *tawātur* Sunna have been narrated from the people with knowledge about reports (ḥadīth) and jurisprudence (*fiqh*); have not been narrated as *tawātur* by ordinary people".[530] The general Sunna includes those that have been narrated as *tawātur* by ordinary people and there are few general Sunna. The special Sunna are those that have been narrated by the special *tawātur*, such as people with knowledge about reports and jurisprudence and there are many special Sunna. Ibn Taymiyya mentions many ḥādīth as examples of special *tawātur*, including the ḥadīth about inattention prostration, the stoning penalty for married adulterers and adulteresses, the vision of God, and torment in the grave.[531] To support his division of the *tawātur* ḥadīth into two types, Ibn Taymiyya, states a principle to be used to recognise which ḥadīth leads to the giving of religious knowledge. He declares:

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[529] Ibn Taymiyya, *MF*, 18:49.
[530] Ibn Taymiyya, *MF*, 18:51.
[531] Ibn Taymiyya, *MF*, 18:51.

> If a report has become *mutawātir* to one group of people but not another group, and provides knowledge by its acceptance by one group of people but not another group, then for whomever the knowledge is obtained, it is obligatory for them to approve that report and to act according to it as it is for them the obligation with regard to its counterpart [reports]. However, for whomever knowledge has not been obtained in this [report], it is their duty to pass on this [issue] to the people who defer consensus and have agreed [among themselves] about its authenticity.[532]

Ibn Taymiyya does not attempt to state to what extent an argument can be made by an *āḥād* report. He also does not go into detail about the discussions on making evidence by using this kind of report. However, Ibn Taymiyya does have a new vision for the reports by putting a rule to be followed in order to better recognise the authenticity of the report and distinguish it from an unauthentic report. Ibn Taymiyya seems to be reminding the majority of jurists about how the Companions of the Prophet and the Followers really dealt with the Sunna. He attempts to use a realistic method rather than following a theoretical principle, as the Companions did during their dealings with the Sunna. Thus, Ibn Taymiyya believes that dividing the Sunna into *mutawātir* and *āḥād* cannot be done based on the number of narrators of the report. However, acting in accordance with the report and accepting and approving the report occurs more and more as the number of narrators increases. It seems that Ibn Taymiyya wants to claim that the Companions accepted the ḥadīth, "The reward of deeds depends upon the intentions" which has been narrated only by ʿUmar ibn Khaṭṭāb.[533] This means that another method (different from that used by the majority of jurists) was previously used for dealing with any ḥadīth. There is therefore no need for a group of Companions to narrate a specific ḥadīth in

[532] Ibn Taymiyya, *MF*, 18:51.

[533] al-Bukhārī, *al-Jāmiʿ al-ṣaḥiḥ,* Kitāb badʾ al-waḥī, Bāb:kaīfa kāna badʾ al-waḥī ilā rasūl allah ṣalā allah ʿalaīh wa salam, 1:13.

order for that ḥadīth to be approved; rather, the non-violation of the ḥadīth is a realistic and practical way to evaluate its authenticity.

The intention behind Ibn Taymiyya's division of the Sunna is to determine when a particular report is dependent on its reporter and that reporter's status. Thus, according to Ibn Taymiyya, an *āḥād* report gives religious knowledge if it is accompanied by something to approve it. Ibn Taymiyya can be interpreted as attacking those who reject the notion that an *āḥād* report can give a religious knowledge that contains a certain knowledge (*yaqīn*) which is opposed to a probable knowledge (*ẓann*). This is obvious when he states that the theologians and jurists who say that knowledge provided by a report depends on the availability of a particular number [of reporters] are definitely incorrect in their statements.

Ibn Taymiyya finally emphasises that his view that *tawātur* and *āḥād* reports are both capable of giving religious knowledge is the most correct view. This is affords his justification to those who refute the ability of *āḥād* reports to give knowledge in the form of finding ten reasons for every ḥadīth. Ibn Taymiyya wrote a special treatise concerning this issue and named it *Rafʿ al-Malām ʿan al-Aʾimat al-Aʿlām* (*The Removal of Blame from the Great Imāms*).[534] This treatise is devoted to explaining the reasons why jurists have chosen to abandon certain reports. These reasons are: 1. The jurist has not come across the ḥadīth. 2. The ḥadīth has not been confirmed by the jurist. 3. The jurist believes in the weakness of the ḥadīth. 4. The jurist necessitates special conditions for dealing with the specific ḥadīth. 5. The jurist forgets the ḥadīth. 6. The jurist has a lack of

[534] I have chosen al-Matroudi's translation of this treatise.

knowledge concerning the significance of the ḥadīth. 7. The jurist believes that the ḥadīth is insignificant. 8. The jurist believes that opposition to the ḥadīth exists. 9. The jurist believes that the ḥadīth contradicts others. 10. The jurist believes that the opposition of the ḥadīth indicates its inferiority or abrogation.[535]

In conclusion, Ibn Taymiyya uses a different method for dealing with both *mutawātir* and *āḥād* reports from the Sunna. This supports him distinguishing between these types of the Sunna in his jurisprudence thought. Studying some more of Ibn Taymiyya's legal views can help establish to what extent he deals with both types of the Sunna, as previously mentioned in relation to divorce issues.

[535] Ibn Taymiyya, *rafʿ al-malām ʿan al-aʾima al-aʿlām* (Riyadh: al-Riʾāsa al-ʿāma li-ʾidārāt al-buḥūth al-ʿilmiyya wa al-iftāʾ wa al-daʿwa wa al-irshād, 1993), 9-33. Al-Matroudi, "The Removal of Blame from the Great Imam 317-380.

CHAPTER SEVEN
CONSENSUS AMONG ISLAMIC JURISTS

7.1 Introduction

Opponents of Ibn Taymiyya accuse him of violating consensus (ijmāᶜ) among Islamic Sunni jurists and taking no account of this consensus in his fatwas. Ibn Taymiyya does not admit to or surrender to every allegation of consensus, even though this consensus has been narrated from many narrators, without his own investigation. However, Ibn Taymiyya also does not explicitly deny considering consensus as evidence during his deliberations. The previous chapters find that Ibn Taymiyya actively discusses the majority of jurists and considers their proofs for consensus. This chapter will analyse Ibn Taymiyya's refutation and invalidation of the majority of jurists' positions on consensus, which one reason behind his different views to those of the majority of jurists in his legal thought in the examined issues of divorce in Islamic law as discussed in part one of this thesis.

Thorough consideration of the divorce issues discussed in the previous chapters makes it clear that the majority of jurists support and deduce their opinions by appealing to the existence of consensus among Islamic jurists about the religious law of a particular issue. As a reminder, we have seen this regarding three different issues in the laws of the divorce, namely regarding divorce when a woman is menstruating, triple divorce, and suspended divorce on a condition or divorce oaths.

This chapter aims to explore the idea that consensus functions as the primary evidence for the majority of jurists on the aforementioned issues. It will

also consider the allegations against Ibn Taymiyya and his view that there is no true consensus regarding those issues. This analysis helps elucidate the two different views concerning consensus, by Ibn Taymiyya on the one hand and by the majority of jurists on the other, allowing us to examine consensus as another main reason behind Ibn Taymiyya's different opinions that contrast with the majority of jurists concerning issues of divorce as well as regarding broader issues in Islamic law.

In order to understand and discover the reasons of this dispute between Ibn Taymiyya and the majority of jurists regarding consensus, this chapter attempts to address the historical reality of legal consensus among Ibn Taymiyya's contemporaries. It sets out to accomplish this aim by presenting both Ibn Taymiyya's definition of consensus and a selected definition from a jurist among the majority of jurists as a representative definition from them, recognising that the definition of the term often differs among jurists. The chapter will also discuss the requisite conditions for consensus to occur. In addition, a modality of deducing consensus in Islamic law will be elucidated. This task will open a wide range of possible discussions and objections between both sides regarding their views on consensus in detail.

7.2 Ibn Taymiyya's steps to identify a real consensus

Before discussing any definition of consensus as it relates to Ibn Taymiyya's view and the majority of jurists' opinions, it is worth recapitulating the findings from the previous chapters in order to determine Ibn Taymiyya's method of Islamic law. It is clear from the issues discussed that Ibn Taymiyya first tries to show that he is investigating in the issue in order to discover a point

of among the jurists regarding it. He takes this step early on in order to prevent confusion among issues and to help readers and listeners understand his fatwa as it relates to the specific issue.

Ibn Taymiyya's next step is to discover whether there is a consensus among Muslim jurists about the issue. This step is central to Ibn Taymiyya's jurisprudential methodology because most of his opponents lean on disrupting the consensus to argue that Ibn Taymiyya's views are invalid. This can be evidenced when a famous Ḥanafī jurist, Ibn Najīm, attempts to invalidate Ibn Taymiyya's views by alleging an existence of consensus among jurists by his statement, "It is not necessary to establish proof [of the validity of triple divorce] in order to reply to whomever has denied the validity of triple divorce [in a single word] all together, because [such a denial] violates the consensus."[536]

This statement shows how the majority of jurists treat an issue when there is a transmission of consensus about that issue. This means that they would close any issue for further investigation if there was a confirmed (i.e. transmitted) consensus regarding it. It seems that Ibn Taymiyya is obligated to take care to address consensus very carefully given that his antagonists used it in order to make their allegations of him to close the issue without any discussion. Remarkably, while Ibn Taymiyya starts by questioning whether there is consensus among jurists, even if he discovers that there is indeed a transmitted consensus, he does not stop his investigation simply due to this transmitted consensus. In contrast, he continues his investigation by discussing the

[536] Zayn al-Dīn b. Ibrāhīm b. Muḥammad Ibn Najīm, *al-Baḥr al-Rāʾiq Sharḥ Kanz al-Daqāʾiq* ed. Zakariyā ʿUmayrāt (Beirūt: Dār al-kutub al-ʿilmiyya, 1997), 3:418.

transmission itself and asking some crucial questions in order to determine its validity.

Ibn Taymiyya uses divorce issues to present his independent view about the reality and the role of consensus in Islamic law. This becomes clear when he issues a fatwa about consensus in Islam by linking it with divorce issues to further elucidate it.[537] When he has been asked about some issues of divorce, he starts talking about consensus in his discussion of each point related to the question.[538] This is obvious in Ibn Taymiyya's refutation of al-Subki's important objection to his own views regarding suspended divorce on a condition.

Al-Radd ʿalā al-Subkī fī masʾalat taʿlīq al-ṭalāq (The refutation of al-Subkī concerning the issue of suspending divorce) is Ibn Taymiyya's recently discovered book, which was edited and published in 2014.[539] The editor of this treatise considers it as the longest written work among Ibn Taymiyya's treatises about the same issue. He also mentions that Ibn Taymiyya presents his own views and arguments in this book at the same time as refuting the majority of jurists' evidence, which are explained in more detail than what we can find in his other fatwas and treatises.[540] We will use many of Ibn Taymiyya's replies and refutations in this book along with our discussion concerning different views between Ibn Taymiyya and the majority of jurists to the present insight that Ibn Taymiyya's different perspective regarding consensus is one reason for his different views in the Islamic divorce law found in this treatise.

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[537] Ibn Taymiyya, *MF*, 20:10-14.

[538] Ibn Taymiyya, *MF*, 33:91, 136.

[539] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī fī masʾalat taʿlīq al-ṭalāq*, ed. ʿAbd Allāh b. Muḥammad al-Mazrūʿ (Mecca: Dār ʿĀlam al-fawāʾid, 2014).

[540] ʿAbd Allāh b. Muḥammad al-Mazrūʿ, An introduction to Ibn Taymiyya's treatise: *al-Raddd ʿalā al-Subkī fī masʾalat taʿlīq al-ṭalāq* (Mecca: Dār ʿālam al-fawāʾid, 2014), 7.

7.3 Ibn Taymiyya's and the majority of jurists' definition of consensus

It is essential to present both Ibn Taymiyya's and the majority of jurists' definition of consensus. Al-Shawkānī's definition of consensus is representative of a comprehensive definition for the slightly differing definitions of the concept among the majority of jurists. Al-Shawakānī defines consensus when he states that "consensus is an agreement among all *mujtahids* from Muḥammad's community after his death in any era and on any issue".[541] Close to this definition, Ibn Taymiyya asserts, "The meaning of consensus is that Muslim scholars assemble [agree] on a particular law".[542] So, Ibn Taymiyya's definition already makes it likely that he does not reject consensus as a concept, although his opponents accuse him of this. This can be supported by another statement from Ibn Taymiyya when he explicitly says, "when the community's consensus has been affirmed by law, it is not permissible for anyone to be out of their consensus because the community has not been misguided".[543]

From the aforementioned definitions of consensus, there are points of agreement and dispute between the views held by Ibn Taymiyya and the majority of regarding consensus. Both sides agree that consensus must occur among those who achieved independent reasoning ranks (i.e. became *mujtahid*) from Muḥammad's community (*umma*). This is because the views of scholars are taken into consideration instead of those of laypeople. The point of dispute between Ibn Taymiyya and the majority of jurists is that Ibn Taymiyya believes that consensus occurs only in issues related to Islamic law. However, the

[541] Al-Shawkānī, *Irshād al-fuḥul ilā taḥqīq al-ḥaqq min ʿilm al-uṣūl*, ed. Sāmī b. alʿarabī (Riyadh: Dār al-faḍīla, 2000), 1:348.
[542] Ibn Taymiyya, *MF*, 20:10.
[543] Ibn Taymiyya, *MF*, 20:10.

majority of jurists' definition shows that consensus can occur on all issues related to Islam as a religion, whether from Islamic law, belief, faith, or theology. Aside from these two points of contention between Ibn Taymiyya and the majority of jurists, there is another important point that will be detailed in a later discussion in this chapter. Namely, there is also disagreement regarding the added condition, from the majority of jurists' definition, which is that consensus can be established not only in law, but in any era among Muslim scholars.

7.4 The era of consensus as a disputed point between Ibn Taymiyya and the majority of jurists

Concerning the idea that consensus can happen among all Muslim scholars in reality and not only by allegation, Ibn Taymiyya has a unique view, saying, "The known form of it [i.e. consensus] is [like] what the Companions agreed about among themselves. However, after that (era) it is mostly impossible to acknowledge it (not known)".[544] By adding this explanation to his definition of consensus, Ibn Taymiyya starts his first and most important effort to narrow down the space of time and area within which it is possible for consensus to occur and be known. Therefore, as mentioned above, Ibn Taymiyya views that true consensus among all Muslim scholars has been transmitted from the time of the Companions.

It seems that Ibn Taymiyya in his claim relies on the impossibility of knowing an agreement among all scholars on an issue after the Companions' time. This is what Ibn Taymiyya emphasises in his question, "Knowing that consensus is often impossible, who encompassed [all] sayings of *mujtahids*?"[545]

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[544] Ibn Taymiyya, *MF*, 11:341.

[545] Ibn Taymiyya, *MF*, 19:202.

Therefore, after his instructive question about the limitations of knowing consensus, Ibn Taymiyya accuses those who have alleged that they know the consensus even on obscure issues as being imitators. This is found in his statement, "Whoever alleged that consensus is about obscure issues, has no knowledge about it".[546] Here, Ibn Taymiyya uses Aḥmad ibn Ḥanbal's statement about consensus to reinforce his claim, "Whoever alleged Consensus verily has lied and did not know about people's disagreements".[547] Ibn Taymiyya comments on Aḥmad's statement and says, "His [Aḥmad] intention by that [statement] is to reply to what was narrated to him about the consensuses [transmitted] from Abū Thawr. [This is when] Some of his followers and disciples were asking him about things that Abū Thawr was saying to them".[548] Next, Ibn Taymiyya transmits other great scholars' comments about denying consensus claims because of the impossibility of knowing an agreement among all scholars on an issue.[549] Nonetheless, Ibn Taymiyya shows his support to Aḥmad's own comments regarding some issues instead of alleging consensus regarding them. Also, he attempts to use Aḥmad's comment in favour of his general viewpoints about real consensus in Islam. This is what we have found in Ibn Taymiyya's comment "But he [Aḥmad] says 'I do not know about any disputer [on the issue]' and his not knowing about a disputer cannot remove what God and His Messenger have elucidated, [namely] the significant declaration in His book and His Messenger's Sunna by wording and meaning".[550]

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[546] Ibn Taymiya, *Naqd marātib al-ijmāʿ*, ed. Ḥasan Aḥmad Isbar (Beirut: Dār ibn Ḥazm, 1998), 302.
[547] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 14, *MF*, 19:271.
[548] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 14.
[549] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 14-15.
[550] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 15.

7.5 Agreement regarding consensus as a source among Islamic legitimacy sources

It is clear that both Ibn Taymiyya and the majority of jurists view consensus as a source among Islamic legitimacy sources. This claim can be proven and found in Āmidī's statement when he declares that consensus is happening inevitably by the evidence from all Muslims' agreements [about it], including the people of *ijtihād*, on duties of performing prayer five times [each day], alms giving, pilgrimage to Mecca [to perform the *Ḥajj*], fasting [during the month of *Rammaḍān*] and other laws of which their obligations are peremptory proofs.[551] Ibn Taymiyya admits the originality of consensus as an important one among the sources of legitimate evidence. He explicitly declares, "Consensus is agreed among the vast majority of Muslims; including jurists, mystics (*al-ṣūfiyya*), both the people of the report (*ahl al*-ḥadīth) and of theology (*ahl al-kalām*) and others in general. But some of the people of innovation from both [the] Muʿtazilite and from the *Shīʿite* [group] have denied it".[552] So, it has been confirmed by Ibn Taymiyya and the majority of jurists as well that consensus is counted as a source of reasoning in Islamic law.

Concerning the above confirmation, it is worth mentioning that both Ibn Taymiyya and the majority of jurists quote the same verses of the Qurʾān and report from the Prophet as evidence of the authority of consensus as a source among legitimacy sources in Islamic law. Here, we will not mention their same evidence in order to maintain the importance of the issue between Ibn Taymiyya

[551] al-Āmidī, *al-Iḥkām*, 1:264.
[552] Ibn Taymiyya, *Qāʿidat fī al-muʿjizāt*, 42.

and the majority of jurists as we see that mentioning their evidence is redundant.

7.6 Ibn Taymiyya's reliance on the Qurʾān and the Sunna to minimise the search for consensus

The point of dispute between Ibn Taymiyya and the majority of jurists about consensus starts to become apparent when Ibn Taymiyya attempts to generalise his special methodology in Islamic law on consensus. As already explained in the previous chapters, Ibn Taymiyya's methodology relies on considering both the Qurʾān and the Sunna as suitable for establishing the law on every issue. This vision certainly aims to minimise the search for consensus because the intended meaning of Ibn Taymiyya's method is to declare that the Prophet has already clarified every issue related to religion in the Qurʾān and in the Sunna.[553] Ibn Taymiyya emphasises this by stating that "There is never a consensus issue [among the jurists]; indeed, it includes a clarification from the Messenger".[554] This means that the argument of consensus comes first from its *isnād* [chain of support], a text that exists but might be hidden from some people.[555]

Ibn Taymiyya asserts that not all people can be informed and know a text that has been the *isnād* of consensus. However, through a consensus agreement, it became a proof in itself without the detection of a text of Sunna, which is used and relied upon to make the consensus. In this circumstance, consensus would be known and used as evidence as an unambiguous text is used as evidence by

[553] Ibn Taymiyya, *MF*, 19:192.
[554] Ibn Taymiyya, *MF*, 19:195.
[555] Ibn Taymiyya, *MF*, 19:195.

those who did not even know the significance of the text.[556] Therefore, an unambiguous text is evidence in itself and its significance is another proof that became an additional example of evidence in the text. This is similar to illustrated instances in the Qurʾān as the text itself is evidence and these instances also count as evidence. Likewise, consensus is another example of evidence in its original text.[557] As is said, this is evidenced by the Qurʾān, the Sunna and consensus, and all of these three principles indicate the inseparability of truth. So, what is proved by consensus is also evidenced by the Qurʾān and the Sunna. Moreover, what is evidenced by the Qurʾān is given from the Prophet and both the Qurʾān and the Sunna are taken from him. Therefore, there cannot be an issue that is agreed by consensus without citing a text from either the Qurʾān or the Sunna.[558] Ibn Taymiyya realises that it is not necessary for everyone to know a text that is the *isnād* of consensus*:* "We do not make it a condition that all of them know a text and transmit it by meaning, as reports are transmitted. However, we investigated the sources of consensus and found that all of them [consensuses] are provided in texts, and many scholars have not known the text but agreed with the majority of scholars".[559] This means that, according to Ibn Taymiyya, the problem of consensus emerged in the history of Islamic law when scholars did not do their own individual investigation to find the available alleged consensus, which was claimed by some other scholars. On the contrary, the scholars just followed those alleged consensuses and repeated them as correct consensuses.

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[556] Ibn Taymiyya, *MF*, 19:195.

[557] Ibn Taymiyya, *MF*, 19:195.

[558] Ibn Taymiyya, his treatise 'Maʿārij al-ūṣūl' within '*Majmūʿat al-rasāʾil al-kubrā* (Beirut: Dār iḥyāʾ al-turāth al-ʿarabī, n,d), 1: 205.

[559] Ibn Taymiyya, *MF*, 19:196-197.

Ibn Taymiyya concludes that there is no consensus unless there is a text for it to rely on. He mentions many alleged issues that are established by consensus. In fact, they have come from the Sunna [text], which is relied upon by the agreed consensus, like *al-muḍāraba* agreements (in which one party contributes the money necessary for trade and the other party contributes an effort).[560] Ibn Taymiyya refutes this allegation.

> Some people mention issues in which there is a consensus without a text, like *muḍāraba,* but that is not true. Yet, *muḍāraba* was well-known among them [pre-Islamic Arab people] in the era of ignorance, especially between the Quraīsh. Most of this [*muḍāraba]* among them was in trade, and the rich people gave [their money] to the workers [to do a trade]. In addition, the Messenger himself travelled with the capital of others before his prophecy, and he also travelled with the capital of Khadija. Furthermore, the caravan in which Abū Sufiyān was included was a muḍāraba with Abū Sufiyān and others. Then, when they arrived in Islam, the Messenger made the caravan continue into Islam and his Companions travelled with the capital of others according to the *muḍāraba* contract. He did not prohibit them about that [such contracts]. The Sunna is his saying, his doing and his accepting. So, when he accepted it, this means that Sunna established it.[561]

Ibn Taymiyya presents this explanation in order to tell his opponents that if you make some efforts to discover the reality of alleged consensus regarding many issues in Islamic law, you could gain knowledge that is provided in texts from either the Qurʾān or the Sunna as the Sunna includes the Prophet's practice, including his tacit agreement.

7.7 Three types of consensus according to Ibn Taymiyya

Ibn Taymiyya continues to establish his different views and opposition to the majority of jurists concerning consensus. In this regard, Ibn Taymiyya indicates that there is not only one type of consensus, according to the ways of its occurrence. Ibn Taymiyya mentions three types of consensus in his refutation

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[560] Abū Zahra, *Ibn Taymiyya*, 388.

[561] Ibn Taymiyya, *Maʿārij al-ūṣūl*, 1:205-206.

of al-Subkī's objections to his opinions on the law of divorce oaths in Islam. Regarding this issue, Ibn Taymiyya makes an independent term about the types of consensus and declares that "Types of Consensus that can be inferred are: an encompassing consensus (*ijmāʿ iḥāṭī*), a consensus by endorsement (*ijmāʿ iqrārī*), and an inductive consensus (*ijmāʿ istiqrāʾī*)".[562] Ibn Taymiyya explains each of these three types of consensus, saying "The first [type] is what has been encompassed by the knowledge that the Companions or the Followers had. [This is] like what we have known to be apparent and recognised [things that] are from the Prophet's religion, which cannot be denied except by those who disbelieve in him [the Prophet]".[563] Ibn Taymiyya attempts to consider the religious knowledge in Islam when defining this kind of consensus. He then elucidates the second type of consensus.

> And the second is a word or act that becomes well-known from the predecessors, and a denier does not deny it; this is an endorsement consensus. The community does not agree on an endorsement of something invalid, but just as the Prophet was impeccable in his saying, his acting, and his endorsement, the community is also impeccable in its saying, its acting, and its endorsement. This is like ʿUmar ibn al-Khaṭṭāb's [rejection][564] of dividing liberated lands among Muslims and there are other examples.[565]

It is noted that in this second type of consensus, Ibn Taymiyya makes an analogy between the Prophet and community's agreement on an issue because both are impeccable in their saying, acting and endorsement.

Next, Ibn Taymiyya moves to elucidate the third type of consensus, stating:

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[562] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 611, *MF*, 19: 267.

[563] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 611-612.

[564] Here the editor has not made a negation but has confirmed it instead.

[565] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 612.

> The third is an inductive consensus (*ijmāᶜ istiqrāʾī*), when a scholar traces as many scholars' opinions as possible and does not find anyone who disputed [against a particular view]. It is clear that his knowledge about the scholars' opinions, which he has reached, is more complete than his knowledge regarding a denial, in which the third party has disputed the scholars.[566]

Ibn Taymiyya, in this type of consensus, attempts to critique the trend of the mainstream by investigating the reality of alleged consensus. He does this by tracing scholars' views in order to identify their real views and achieve his own independent reasoning (*al-mujtahid*) instead of just repeating what has been said before without investigation. As a result of this repetition, scholars became imitators (*muqallid*) instead of independent reasoners (*mujtahids*).

Ibn Taymiyya is especially interested in the second and third types of consensus because most of the existing consensuses in jurisprudence belong to these two types. There is no disagreement between Ibn Taymiyya and the majority of jurists concerning the first type of consensus. Given that every Muslim knows to pray five times each day and to fast during the month of Ramaḍān, it is clear that consensus is at least present in God's religious law.

7.8 Certain (*qaṭᶜī*) and probable (*ẓannī*) knowledge in the consensus

It seems that Ibn Taymiyya classifies three types of consensus to show the status of each of them by dividing them into "certain knowledge" (*qaṭᶜī*) and "probable knowledge" (*ẓannī*). Ibn Taymiyya finds the significant point of religious knowledge provided in both inductive consensus (*ijmāᶜ istiqrāʾī*) and endorsement consensus (*ijmāᶜ iqrārī*), as they provide probable knowledge as opposed to certain knowledge.

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[566] Ibn Taymiyya, *al-Raddd ᶜalā al-Subkī*, 613.

> There are two kinds of consensus: [the first is] certain. There is no way that a certain consensus is known to oppose an [unambiguous] text. But it is probable that are both inductive and endorsement consensuses, which are established by examining scholars' views and confirming that there is no dispute among them. Also, when a view from the Qurʾān [an interpretation of one text of the Qurʾān] becomes well-known and it is not known that anybody denied it.[567]

By placing the last two types of consensus into the category of probable (*ẓannī)* knowledge, Ibn Taymiyya takes his first important step in his argument against his opponents. This step thus opens a door for criticism of transmitted jurisprudence because Ibn Taymiyya lessens the religious power of alleged consensus from providing certain knowledge to providing probable knowledge. The majority of jurists' alleged consensus issues become suitable for critical review, and treated as other uncertain evidence. So, as a result, Ibn Taymiyya views both inductive and endorsement consensuses simply as arguments that, of limited strength, simply establish probability.

Yet, this probable argument could be used as evidence when there is nothing stronger than it from the other religious texts. He proves this last claim by pointing to Aḥmad ibn Ḥanbal's expression, when he used this kind of consensus as proof, by his saying 'I do not know any dispute about it', and interpreting Aḥmad's master al Shāfiʿī's claim to that kind of consensus.[568] In another expression, Ibn Taymiyya emphasises the allegations of famous jurists regarding consensus by confirming, "Those who mention consensus, like al-Shāfiʿī and Abū Thawr and others, they interpret their intention that 'we do not know any dispute about it'. [Also] they claim 'this is the consensus which we

[567] Ibn Taymiyya, *MF*, 19: 267.
[568] Ibn Taymiyya, *MF*, 19: 271.

allege'."[569] It appears then that Ibn Taymiyya wants to establish and confirm his unique view about consensus, even by quoting from those whose consensus concerning the three aforementioned issues in divorce law that Ibn Taymiyya seeks to refute. So, after his quote from Aḥmad, al-Shafiʿī and Abū Thawr, Ibn Taymiyya returns to his established and confirmed view about the consensus regarding giving certain and probable knowledge. He thus declares that it is not permissible to reject the known texts by probable consensus because it is a probable argument that human beings cannot assert its truth. Human beings cannot assert the nonexistence of a disputer.[570] Here, he attempts to confirm that the truth in a probable consensus is not certain due to the unavailability of knowledge regarding a disputer against this consensus. So, in such a case, it is impossible to favour this kind of consensus over the certain religious texts.

7.9 Consensus between transmission and allegation

After elaborating his message through the aforementioned discussion, Ibn Taymiyya attempts his next step, which is discussing the reality of alleged consensuses in order to refute them. According to his last discussion, Ibn Taymiyya establishes a notion about transmitted consensus by probable knowledge instead of alleged consensus by certain knowledge as per the history of Islamic law. Due to the fact that this transmitted consensus involved one or two persons, it is not in adherence to Islamic religious law to use one or two scholars' transmission as a legal argument that people must adhere to. This is because this type of transmission is just independent reasoning (*ijtihād)*, which

[569] Ibn Taymiyya, *MF*, 19: 271.
[570] Ibn Taymiyya, *MF*, 19: 272.

may be true or false like any other transmission. Ibn Taymiyya thus emphasises that and says:

> If one, two or three [persons] said: "We do not know any dispute about this or we think there is not a dispute about that" this does not mean that all of of Muḥammad's community from their first to their last [generations] have to imitate this thinker with what he thought. It is not an obligation on them to imitate him with what he is certain about. So, why would they have to imitate him in what he deems probable?[571]

Ibn Taymiyya then attacks those who have this allegation and counts it as an unreasonable person's thinking: "It is permissible to some people to imitate him or it is only the obligation of some people. However, a reasonable person does not say: 'all the community have to imitate him'".[572]

7.10 Ibn Taymiyya's refutation of consensuses among the majority of jurists

Ibn Taymiyya then attempts to refute the majority of jurists in general and al-Subkī's reliance on Abū Thawr's consensus allegations about divorce law in particular. This is evident in his critical comment, "But a transmission of a consensus by a person after three centuries in which there was not anyone else who transmitted it before him and also this person does not have exact knowledge about its reality except of his believe about the nonexistence of dispute. So, if this is a case, why should the community follow him just because of that?"[573]

Ibn Taymiyya confirms his view on the consensus by considering himself as a disputer to the majority of jurists' allegations of the consensus. He does so in order to obtain a logical result from the available facts regarding the views

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[571] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 617.
[572] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 617.
[573] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 619.

among Islamic jurists toward consensus. In this case, when a scholar transmits a consensus, and another scholar transmits a dispute about the same issue, in this circumstance, the view of the consensus alleger is not accepted.[574] Ibn Taymiyya supports this result by adding some considerations to the discussion. He first asserts that a transmitter of consensus denies the dispute. If a transmitter of dispute confirms it, then in this situation the confirmer of dispute takes precedence over the denier.[575] Another consideration is that if it is said it is possible for the transmitter of the dispute to make an incorrect confirmation of the dispute because of a weak *isnād* or the lack of knowledge. So, regarding this situation, the possibility of making a mistake in the transmission of the consensus is more likely to happen.[576] Ibn Taymiyya adds that the consensus's transmitter does not know about the dispute and this does not mean their knowing about the non-existence of the dispute.[577]

Ibn Taymiyya in his refutation of consensuses, which is narrated by al-Subkī regarding the issue of divorce oaths from Abū Thawr, relies on the notion that the transmission of consensus is not real consensus, but is simply the independent reasoning [*ijtihād*] process. He explains this concept.

> His [al-Subkī's] saying that Abū Thawr himself transmitted consensus, we have known that. However, his intention is 'I do not know of any dispute' or 'I think [there is] not a dispute', and like this, he said about himself regarding what he is narrating about the consensus. His transmission of the consensus is not like his transmission of what he has heard about scholars' opinions from themselves or from whoever transmitted them because this [consensus transmission] is a matter of independent reasoning, which at its base is induction and keeping track of scholars' words. So, when he did not find what he had reached among scholars'

[574] Ibn Taymiyya, *MF*, 19:271.
[575] Ibn Taymiyya, *MF*, 19:271.
[576] Ibn Taymiyya, *MF*, 19:271.
[577] Ibn Taymiyya, *MF*, 19:271.

> words of atonement [giving oaths as atonement instead of occuring divorce] so, he [Abū Thawr] thought that nobody was saying it.[578]

According to this quotation from Ibn Taymiyya, he seems to make a point in favour of his view concerning consensus. Therefore, he is making an argument from a possibility of an existence of a silent dispute against the transmitted consensuses.

Despite Ibn Taymiyya's refutations of the majority of jurists' allegations about consensus, they establish a notion that the transmission of consensus is a certain issue in and of itself that cannot be linked to independent reasoning (*ijtihād*). This is what al-Subkī confirms in his refutation to Ibn Taymiyya's view about divorce oath law in his declaration, "Refuting the transmission of consensus cannot be done by inference and analogy, but by a clear transmission [from the Qurʾān and the Sunna]".[579] Ibn Taymiyya objects to this allegation by al-Subkī, showing that even the transmission of ḥadīth can be invalid. So, what about the transmitting of consensus that is less favourable than the ḥadīth? This is Ibn Taymiyya's complete statement about al-Subkī's allegation:

> This allegation is prohibited; but transmitting the ḥadīth of the Prophet, which is more informative than transmitting the consensus, could infer its invalidity by providing evidence about it. So, how is it impermissible to infer about the mistake of a consensus transmitter, by providing evidence of their mistake in transmission? And it is well-known that transmitting a particular ḥadīth from the Prophet and then from the Companion and then from the Follower is truer than the transmission of consensus. Because this transmission [ḥadīth transmission], is known by hearing it, and it is a connected transmission (*mutaṣil*), it is not an interrupted transmission (*munqaṭiʿ*) in its chains. However, a transmitter of consensus transmits from many people who cannot form their sayings, and if they could that, they would not transmit their sayings but would transmit what they thought of as their beliefs. So, they do make a mistake in understanding their intention, but if it is supposed that they did not make a mistake; [it means] they did not transmit from them, and they do not have a predicable transmission from every single person of them but their purpose [is to show] is a transmitted consensus.[580]

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[578] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 825.

[579] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 649, al-Subkī, *al-Durra al-muḍiyya*, 39.

[580] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 655-656.

After this discussion, Ibn Taymiyya confirms that the mistake in consensus is a common consequence among all scholars who transmit consensus. This can be shown by his explicit declaration, "The mistakes in it are too many. Even I do not know one [among] whoever transmits consensuses but a dispute has been found about his transmitting consensuses, yet he had not known it".[581] Here, Ibn Taymiyya mentions many instances of mistakes for which disputes have been found that are transmitted and alleged as consensuses among jurists by some scholars.[582] Ibn Taymiyya attempts to claim that all of the authentic transmitted consensuses are confirmed by the Qurʾān and the Sunna, and they are in agreement with texts from both sources. This is in contrast to other unauthentic transmitted consensuses, which are just allegations that carry disputes about them unbeknownst to many scholars.

Ibn Taymiyya continues with his important task in order to prepare himself for the last step in his refutation. His intended final task is to identify a real consensus in order to refute consensuses that occurred among the four Sunni schools of law, which were later considered as original consensus in the Muslim Community. To carry out this task, Ibn Taymiyya starts from his critique and explores the method of some jurists who make their own special investigation of jurists' opinions and obtain personal consensus as an argument against others to take it and act in accordance with it. Therefore, Ibn Taymiyya uses al-Subkī's objection that addressed himself (Ibn Taymiyya] in his claim about the divorce oath when al-Subkī said, "I have said 'this saying [Ibn Taymiyya's view regarding divorce oath]' I do not know one; neither a

[581] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 693.
[582] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 693-695.

predecessor nor a follower who declared it".[583] So, Ibn Taymiyya himself transmits al-Subkī's another objection to him "I told you [readers] that I have tracked the sayings of the Companions, the Followers and leaders who came later after them and did not know any one who said this saying, which Ibn Taymiyya invented without the predecessors or the successors".[584] Then Ibn Taymiyya starts to do his task and replies to him.

> The saying of this objector [al-Subkī] that he has tracked the sayings of the Companions and the Followers and he has not known anyone who said such as this [Ibn Taymiyya's] saying is correct. He is correct in his saying in which he reported regarding his not knowing. In this case, he is like Ibn ʿAbd al-barr, Ibn Ḥazm and others like them. Yet, Abū Thawr, Muḥammad b. Jarīr, Muḥammad b. Naṣr and others like them have said something about many issues that include a dispute, which they did not know.[585]

Ibn Taymiyya thus attempts to show al-Subkī that consensus means an agreement among all jurists about an issue, not only among some jurists. He thus addresses al-Subkī by saying:

> It is [the validity of a divorce oath] confirmed from nearly ten persons; is it permissible to claim that ten or fifteen or twenty [persons] from the Followers is an impeccable consensus, and also is it the duty of the community to follow it, even though there is an existence of a dispute from others? In addition, [is it permissible] to abandon the significance of the Book [Qurʾān], the Sunna and a clear analogy as this alleged consensus has done?[586]

In connection to the same issue, Ibn Taymiyya states, "It is known that Muḥammad's community [*umma*] for whom their consensus is a certain argument are not four, five, ten, nor twelve [persons]".[587] By this end, Ibn

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[583] Al-Subkī, *al-Durra al-muḍiyya,* 44.
[584] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 168.
[585] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 170.
[586] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 654.
[587] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 763.

Taymiyya confirms his claim that consensus in Islam is for all jurists a reality not just an allegation with an existence of dispute.

Ibn Taymiyya next confirms that neither agreements among the leaders of the four Sunni schools of law or great scholars can count as an authentic consensus. He thus declares, "Also, the scholars have agreed that the consensus among the four jurists, five, six, seven, eight, nine or ten like Mālik, al-Thawrī, Abū Hanīfa, ibn Abī Laylā, al-Awzāʿī, al-Shāfiʿī, Aḥmad, Isḥāq, Dāwd b. ʿAlī and Muḥammad b. Jarīr is not an impeccable consensus which all Muslims must follow".[588] In connection to his rejection of treating the consensuses among four Islamic Sunni schools of law as an original consensus, he states:

> However, some people think there is consensus in many issues, and this is not necessarily the case, as even another view would be significant in the Book [Qurʾān] and the Sunna. But views of some of community like the four jurists [leaders of four Islamic Sunni schools of law] and others are neither an obligatory argument nor a consensus according to Muslims' agreement. Yet, it is confirmed from them [four leaders and others] that they prohibit people to imitate them, and they command that if [people] see a view in the Qurʾān and the Sunna that is stronger than their views, to take what is provided in the Book and the Sunna, and to abandon their views. Therefore, if an indication [evidence] in the Qurʾān and the Sunna became apparent to the great [scholars] Followers of the four leaders, they followed it in the opposite view of whom they followed.[589]

In conclusion, it is worth mentioning that these different views between Ibn Taymiyya and the majority of jurists constitute an important and complicated issue with repercussions for the entirety of Islamic jurisprudence. Ibn Taymiyya presented a different definition of consensus that entailed the time of consensus to only be in the Companions' era and any alleged consensus after this time as simply an allegation of consensus opposed to a real consensus. To differentiate between the ranks of existing consensus, Ibn Taymiyya classifies

[588] Ibn Taymiyya, *al-Raddd ʿalā al-Subkī*, 763.

[589] Ibn Taymiyya, *MF*, 20:10-11.

consensus into three types: *qaṭʿī*, *iqrārī*, and *istiqrāʾī*. In addition, to elucidate the power of these types of consensus in relation to Islamic legislation, Ibn Taymiyya divides these three types into two kinds of law in terms of given knowledge. Thus, *qaṭʿī* consensus is a certain consensus in Islamic law that cannot be denied by any Muslim. However, the other two types; *iqrārī* and *istiqrāʾī* are probable consensuses.

Ibn Taymiyya further objected to the majority of jurists' views about consensus and claims regarding Islam. So, it is obvious that he relegated the majority of jurists' consensuses to merely probable and not certain knowledge in order to undermine their views. He did this through a step-by-step process, because of the complicated nature of the case. He also did this to easily explain consensus so that his antagonists can benefit from his opinions on the other side.

A very important point in this discussion is that Ibn Taymiyya proves that there are many mistakes in the transmission of consensuses among all Muslim jurists throughout the history of Islamic legislation. He explicitly rejected many alleged consensuses in Islamic law due to their inherent problems. In addition, Ibn Taymiyya confirmed that agreements among four Islamic schools of law do not count as consensuses in Islam. The final point made is that Ibn Taymiyya could close the open door of consensus on many jurists who could reject any preponderant view by alleging it to be antithetical to consensus without investigating it. So, Ibn Taymiyya narrowed the area that constitutes consensus and elucidated the idea that there are few real consensuses in Islamic law, despite claims made by the majority of jurists.

CHAPTER EIGHT
ANALOGY (*al-qiyās*)

8.1 Introduction

In the previous chapters we addressed some topics related to divorce under Islamic law and compared the views of the majority of jurists and Ibn Taymiyya, whose opinions on those topics contradicted the majority of jurists' views. Those chapters demonstrated how both Ibn Taymiyya and his opponents sought to make inferences to reinforce their legal views. Ibn Taymiyya, like the majority of jurists, relies on arguments from analogy, but he and his detractors also object to each other's analogies and seek to refute them with regard to the legal points at issue.

For example, on the topic of divorce law as it pertains to women during their menstrual periods, Ibn Taymiyya argues that even if forbidden (*muḥarram*) acts of worship and contract were still performed despite being prohibited, these acts of worship were nevertheless inherently invalid. Ibn Taymiyya uses the analogy of invalid marriage to justify the invalidity of divorce during a woman's menstrual period. The majority of jurists argue against him, stating that a comparison that analogises divorce to marriage is invalid. These jurists likewise use analogies to support their own views by noting that the prohibition of menstrual divorce does not prevent its resulting impacts, such as *ẓihār.* In response, Ibn Taymiyya objects making an analogy of *ẓihār* and states that divorce is sometimes permissible from God, but at other times, it is forbidden when contrary to what had been prescribed by the lawgiver. In contrast, *ẓihār* is totally forbidden by God's law and is not permitted.

The reasons underlying Ibn Taymiyya's minority view on this topic seem to derive from his own personal perspectives and views about the use of analogies in Islamic legal interpretation. Thus, it is worthwhile to consider the points of difference between Ibn Taymiyya and his opponents as they relate to the modality of argument from analogy and its significance in Islamic law. It is essential to understand the definitions of analogy used by both Ibn Taymiyya and the majority of jurists before addressing Ibn Taymiyya's arguments regarding analogy in Islamic law and before deciding how his different perspectives compare to the views of the majority of jurists.

8.2 The majority of jurists' definitions of analogy

According to the majority of jurists, there are many definitions of analogy, but two in particular are relevant to this discussion. The first is Al-Bayḍāwī's definition: "It is affirming the similarity of a known judgement to another known judgement due to their implication in the cause of the judgement according to the affirmer".[590] This definition suggests that analogy plays a role in the work of the *mujtahid* when the jurist discovers an implied connection between the origin (the provided judgement) and the branch (the new legal issue now before the jurist). Analogy, under this definition, extends the law's legitimacy to the branch that did not previously exist by connecting it back to the origin.

The second definition for analogy is Ibn al-Ḥājib's, which defines the concept as "Equality of a branch to an origin in the cause of its judgement".[591] This definition suggests that the branch judgement established by the use of the

[590] ʿAbd al-Raḥīm b. al-Ḥassan al-Āsnawī, *Nihāyat al-suwl fī sharḥ minhāj al-uṣūl* (n.p: ʿĀlam al-kutub, n.d), 4:2.

[591] ʿUthmān b. ʿUmar Ibn al-Ḥājib, *Mukhtaṣar muntahā al-suʾl wa al-amal fī ʿlmaī al-uṣūl wa al-jadal,* ed. Nadhīr Ḥamādū (Beirut: Dār ibn ḥazm, 2006), 2:1025-1026.

analogy actually already existed from the time of the origin. However, the apparent judgement of the branch was delayed until the point at which a *mujtahid* elucidated it in support of a shared cause between the origin and the branch. Thus, the *mujtahid's* action is to make the branch's previously unknown judgement apparent, rather than establishing a completely new judgement.

8.3 Ibn Taymiyya's definition of analogy

Ibn Taymiyya has more than one definition of analogy that is applicable to Islamic legislation. This may be necessary because of the occasional difficulty in differentiating between a correctly considered analogy and an invalid one, according to Ibn Taymiyya. He explains analogy in this statement as:

> [There is a] text concerning a [particular] judgement due to one of its meanings, and this meaning exists elsewhere. If it is demonstrated by one of the proofs that this judgement is related to a meaning that is shared between origin and branch, then the two will be equal and the two are the correct analogy.[592]

To Ibn Taymiyya, analogy is a way to achieve equalisation between a branch and an origin by demonstrating the existence of a mutual meaning between them. Elsewhere, Ibn Taymiyya defines analogy as "Transmission of mind from a judgement of a particular [issue] to a judgement of [another] particular [issue] due to their subscription in a general mutual meaning".[593] This definition indirectly indicates a required role and action by a *mujtahid* that identifies a mutual meaning between the origin, which has been provided with a judgement, and the branch, which has not yet been provided with a judgement.

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[592] Ibn Taymiyya, *MF*, 19:286.

[593] Ibn Taymiyya, *MF*, 9:120.

Ibn Taymiyya further defines analogy as "Annexation of a particular thing to another particular thing."[594]

Clearly, the definitions of analogy employed by both Ibn Taymiyya and the majority of jurists who contradicted him are close to one another. Both sides assert a basic rule that analogy is applicable when there is a particular legislative text relevant to the judgement of some issue. The significance of analogy is that it can aid in discovering other judgements for matters upon which Islamic law has not yet been pronounced.

8.4 Valid analogy according to Ibn Taymiyya

Ibn Taymiyya strengthens his own views about analogy. The significance of analogy lies not in its meaning alone but also in its corresponding meaning in Islamic religion. Thereafter, Ibn Taymiyya wages a corrective battle to address the exact and considered meaning of analogy as it applies to Islamic law, and he uses his understanding and interpretation of the word analogy itself as a starting point for his attempts to distinguish between correct and incorrect analogy. This is reflected in the following commentary:

> The word 'analogy' is an ambiguous word which applies to both correct and incorrect analogy. The correct analogy is the one that has been agreed by religious law, which is either a combination of two similar [issues] or distinguishing between two different [issues].[595]

In this explanation of analogy as "an ambiguous word", Ibn Taymiyya shows that every attempt to equalise two things by considering one of them as an origin and the other one as a branch falls under the general definition of

[594] Ibn Taymiyya, *MF*, 14:54, 9:259.

[595] Ibn Taymiyya, *Risāla fī ma'nā al-qiyās,* 2:237, *MF*, 20:505.

analogy, but the correct analogy is the one that is actually accepted by Islamic religious law rather than simply satisfying the definition of analogy.

To further explain the meaning of "correct analogy", Ibn Taymiyya subdivides the term into two types of analogy, or perhaps more accurately, he applies two conditions that an analogy must meet in order to be treated as a correct one. Firstly, there must be no difference between the branch and the origin beyond an ineffective influence of religious law. Secondly, there must be evidence that the judgement is related to a shared meaning between the origin and the branch.[596] After describing these two types of correct analogy, he says:

> These two types [of correct analogies] have been used by the Companions and their Followers in beneficence, and they are meant to aid in understanding the intention of the lawgiver. Since the inference of the lawgiver's words stops upon [both] confirming the word from Him and understanding His intention by the word, we can understand His intentions, provided that we [realise] that it is a judgement based on a mutual meaning and not a special meaning with regard to the original. We would establish [the same] judgement when the mutual meaning is found. [But] if we learned that He had intended to make the judgement specific within a meaning found in the text itself, then the analogy is prohibited [in such a case]. [For example,] we know that the pilgrimage [to Mecca] is made specific to Kaʿba, that obligatory fasting is made specific to Ramaḍān month, facing the proper direction [during prayers] is made specific to a side of Kaʿba, the obligation of prayers is made specific to the five [daily prayers], and [many other judgements] like these. Therefore, it is prohibited to use analogy for making judgements to other things [made specific issues] in the provided texts for specific issues.[597]

As a result of his specific notions concerning analogy, Ibn Taymiyya argues that only correct analogies should be considered as avenues for properly deducing religious laws. Thus, analogy is another way to identify Islamic laws outside of the Qurʾān, the Sunna and consensus.[598] Despite Ibn Taymiyya's

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[596] Ibn Taymiyya, *MF*, 19:286.

[597] Ibn Taymiyya, *MF*, 19:286-287.

[598] Ibn Taymiyya, *MF*, 11:341.

distinguishing of correct and incorrect analogy, he acknowledges that knowing the difference between them is not an easy task, pointing out that "There is from analogy what is known as correctness and there is analogy that is known as incorrectness and there is analogy of what its condition is not clear."[599] Ibn Taymiyya further confirms his views on the difficulty of differentiating between correct and incorrect analogies by remarking that "It is not a condition of a correct and reasonable analogy that everyone [must] know its correctness".[600] In this way, Ibn Taymiyya seeks to refute the opinions of the majority of jurists regarding the claim that some issues in Islamic law contradicted analogy. He declares that "If anyone saw an issue [with a judgement based] in Islamic law that opposed an analogy, this [judgement] is only opposed to the analogy that he has made in himself".[601] Ibn Taymiyya reinforces this view through his investigations into how the Companions agreed and disagreed concerning legal issues.

> In my life until now, I have not known of any view held by the Companions in which they did not differ amongst themselves over it. Verily this was appropriate with analogy. However, knowing about correct and incorrect analogies is a most respected science which is known only [to one] who is an expert in the secrets and intentions of religious law.[602]

Ibn Taymiyya's tendency to probe the exact meaning of an analogy and to differentiate between correctness and incorrectness led to the writing of his treatise *Risālat fī al-qiyās* (*A Treatise on Analogy*), which he devotes to refuting various legal issues raised by the majority of jurists who claimed that their judgements were contrary to analogy. Due to its important contributions to the

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[599] Ibn Taymiyya, *MF*, 19:288.

[600] Ibn Taymiyya, *MF*, 20:505.

[601] Ibn Taymiyya, *Risāla fī maʿnā al-qiyās,* 2:238, *MF*, 20:505.

[602] Ibn Taymiyya, *MF*, 20:583.

issues related to analogy, Abu Zahra says the following about Ibn Taymiyya's treatise:

> Ibn Taymiyya has a valuable [written] treatise on analogy in which he sought to elucidate [the difference between] correct and incorrect analogies. He expanded [the meaning of] analogy and linked [his definition] with the interests of the people and the purposes of Islamic law and its texts in a close-fitting manner and an accurate connection. It is not only a theoretical jurisprudential research, but on the contrary, one in which he struggled to treat the problems of other people's transactions and externalise them to fit in with the Islamic laws in a manner which neither makes people tired nor removes the core purposes of Islamic law. Also, he has identified many contracts in this treatise that jurists have decided are not analogical contracts but rather have been established as being supported through deduction of legal preference *(istiḥsān)*. This has been resorted to because of a need or necessity in areas like rental agreements, *muḍāraba*, sharecropping, and other contracts. Ibn Taymiyya has proven that these are all analogical contracts relying on the rules which he elicited from the texts and meanings of Islamic law.[603]

As explained previously, Ibn Taymiyya's methodology relies on considering both the Qurʾān and the Sunna as they include and are suitable for the law on every issue. Ibn Taymiyya's method is to declare that the Prophet has clarified every issue related to religion through the Qurʾān and the Sunna.[604] As according to Ibn Taymiyya's views regarding consensus, it is unacceptable for it to contradict the actual text. Ibn Taymiyya also states that it is impossible for analogy to be opposed to the Qurʾān or the Sunna.[605] Thus, the texts include judgements of all newly-discovered issues by means of including principles of these issues, and rendering a judgement on a new issue requires the use of rational proofs in order to find a link between a provided judgement issue and non-provided judgement issue. This analysis led to Ibn Taymiyya's treatise *Darʾ taʿāruḍ al-ʿaql wa al-naql* (*Prevention of Conflict between Reason and Revelation*) in

[603] Abū Zahra, *Ibn Taymiyya*, 394.
[604] Ibn Taymiyya, *MF*, 19:192,285.
[605] Ibn Taymiyya, *MF*, 19:288.

which, according to Rapoport, Ibn Taymiyya concludes that "It is only false reasoning and invalid analogies that led to apparent contradictions between revealed and rational proofs".[606] In pursuit of the goal of non-contradiction between correct analogy and revealed proof, Ibn Taymiyya says:

> In general, I have not known about an authentic Ḥadīth (report) except that it can be in agreement with the established principles [of Islamic religion]. Also, I have meditated on religious law's evidence as much as I could, and I did not find any analogy that contradicts an authentic ḥadīth. In addition, any explicitly reasonable [evidence] does not contradict any authentic revealed [evidence].[607]

As discussed previously, rendering a new issue's judgement through the analogic process is a form of rational or independent reasoning action. Rapoport, in his analysis of Ibn Taymiyya's ideas, claims, "The central premise of Ibn Taymiyya's legal theory, like that of his theology, is the impossibility of contradiction between revealed and rational knowledge".[608] Many declarations by Ibn Taymiyya clearly strengthen Rapoport's analysis. For example, Ibn Taymiyya interprets similitudes given (*al-amthāl al-maḍrūba*) in the Qurʾān as examples of reasonable analogies that combine similarities and differentiate between differences. The instance as a word in itself means to resemble originally, and providing an instance of a thing is making an estimate to it. Originally, analogy was seen as a way of estimating one thing by comparing it to another thing.[609] However, Ibn Taymiyya stands against using analogy extravagantly by justifying that judgements of many legal questions were not directly answered in the texts.

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[606] Rapoport, "Ibn Taymiyya's Radical Legal Thought." 194.

[607] Ibn Taymiyya, Majmuʿat al-Rasāʾil al-Kubrā: *Risāla fī maʿnā al-qiyās* (Beirut: Dār iḥyāʾ al-turāth al-ʿarabī, n.d), 2:280-281.

[608] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 193.

[609] Ibn Taymiyya, *MF*, 14:55.

According to Ibn Taymiyya, a group of the people of opinion (*ahl al-raʾī*) undervalued both the Qurʾān and the Sunna and they were limited in acknowledging and understanding both the Qurʾān and the Sunna as well. The people of opinion relied on combination analogies (*aqīsa ṭardiyya*) and so made mistakes when attempting to divine the truth. As a result, descriptions, which are judgements that have been suspended on them [descriptions], became suspicious to them [the people of opinion]. So, they followed the principles of juristic preference (*al-istiḥsān*) and opinion in order to designate a suitable description to judgement. Consequently, they often relied on weak and even fabricated narrations. They also relied on what was apparent to them from the words of the lawgiver (God), but that provided no guarantee that their understanding of those words was correct.[610]

As Rapoport confirms, there is no contradiction between revealed and rational knowledge in Ibn Taymiyya's legal thought. So, to illustrate and identify an incorrect analogy, Ibn Taymiyya says:

> Every single analogy that a text indicates as being incorrect is incorrect, and whoever attaches a text that provided [a judgement] to another one which its judgement opposes, then their analogy is also incorrect. Also, whoever equalises two things or distinguishes between two things without considering their descriptions in Allah's and His Messenger's judgement, then their analogy is incorrect. However, it is the analogy that is known as correct and from it what is known its incorrectness, and from it what its matter has not been discerned. In addition, whoever invalidates analogy absolutely, their saying is invalid. Furthermore, whoever inferred with an analogy opposed to religious law, their saying is invalid. Furthermore, whoever inferred with an analogy using evidence whose correctness is uncertain, [this means that] they inferred what is not known [for] its correctness which like [one] who inferred upon the narration of an unknown man of unknown justice.[611]

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[610] Ibn Taymiyya, *Darʾ taʿāruḍ al-ʿaql wa al-naql*, ed. Muḥammad Rashād Sālim (Saudi Arabia: Jāmiʿa al-imām muḥammad bin saʿud al-islāmiyya, 1991), 7:335,336.

[611] Ibn Taymiyya, *MF*, 19:288.

Therefore, Abū Zahra identifies Ibn Taymiyya's other definition as an incorrect analogy and he points out that those who would make this kind of analogy are mistaken. So, he states that "Incorrect analogy is one in which similarity in cause cannot be achieved in it, or separation in judgement's cause cannot be achieved, or cause exists but an opposition exists as well that prevents continuance of the judgement as in the original".[612]

Ibn Taymiyya in his treatise *Minhāj al-sunna al-nabawiyya* (*The approach of the Prophetic Sunna*), which is one of Ibn Taymiyya's important treatises that devotes most of its contents in reply to Twelver Shīʿism, explains some of the reasons that might make an analogy incorrect and disreputable:

> A disreputable analogy is an analogy opposed to the text ... and also an analogy whose branch is not connected with the original in the cause of judgement. So, an analogy becomes disreputable because either it misses its condition which results in dissimilarity in the cause of judgement, or because of the existence of its prevention: a text that must be relied upon before analogy. So, if they are correlative in the same matter, then the condition does not exclude this except for when prevention exists, and the prevention does not exist except for when the condition is missing.[613]

8.5 Ibn Taymiyya's view on laws opposite to analogy according to the majority of jurists

Ibn Taymiyya does not surrender to the claim of the majority of jurists that there are judgements that are not based on analogy and are even opposite to it. In his treatise about analogy, Ibn Taymiyya shows that these jurists were mistaken on this matter and affirmed that proper judgements were in fact based

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[612] Abu Zahra, *Ibn Taymiyya*, 395.

[613] Ibn Taymiyya, *Minhāj al-sunna al-nabaūiyya,* ed. Muḥammad Rashād Sālim (Saudi Arabia: Jāmiʿa al-imām muḥammad bin saʿud al-islāmiyya, 1986), 3:413.

on analogy. However, he also makes many comments regarding incorrect analogies which contradict the text:

> When we know that a text is in opposition to an analogy, we certainly know that it is an incorrect analogy. [This is] in the sense that a feature of the text has a characteristic that is distinctive from other features that are thought to be like it [the text's feature], by a description which necessitates that the lawgiver should particularise it [the text] with that judgement. There is nothing in religious law opposed to a correct analogy, but it [religious law] contains what is in opposition to an incorrect analogy, even if some people do not know of its incorrectness.[614]

Here, Ibn Taymiyya attacks the majority of jurists for using incorrect analogies to promote illegal laws in Muslim communities that led to confusion and disruption in the people's faith because of the law's unacceptable irrationality. He also gives examples to reinforce his attack:

> *Al-Sharʿ* [Islamic religion] always invalidates incorrect analogies, like the analogy of Satan and polytheists who said that a buying contract is like a usury contract, and who made analogies between dead and slaughtered [animal meat for eating], and said: Do you eat what you have killed, and do not eat what Allah has killed? They consider the cause in the original as if the animal has been killed by the actions of human beings.[615]

After refuting several incorrect analogies, Ibn Taymiyya notes his appreciation for anyone who rejects such flawed analogies in Islamic law, saying that "Whoever said that religious law is in opposition to these incorrect analogies, they verily reached [the right view]".[616] He also accuses those who failed to differentiate between correct and incorrect analogy of asserting a similarity between God and some of His creatures:

> He who does not reject these incorrect analogies equalises two things on the basis of their implication in a similar matter. [This] requires him to equalise between every two existing things on

[614] Ibn Taymiyya, *Risāla fī maʿnā al-qiyās,* 2:238.
[615] Ibn Taymiyya, *Risāla fī maʿnā al-qiyās,* 2:262.
[616] Ibn Taymiyya, *Risāla fī maʿnā al-qiyās,* 2:263.

> the base of their implications in the [same] meaning of existence. Then [because of this], he equalises between God and some of His creatures, and he becomes like those who makes partners to their Lord. [Verily] this is the greatest incorrect analogy.[617]

In conclusion, it is clear that Ibn Taymiyya's efforts and struggles on analogy matter greatly to Islamic legal interpretation. His opposition to the views of the majority of jurists regarding Islamic law leads him to differentiate between correct and incorrect analogies, and he seeks to confirm that all established Islamic laws ultimately rely only on the texts. This claim defined Islamic laws as rules derived from the texts and from those correct analogies that properly flow from them. Ibn Taymiyya also declares that all the revealed rules in Islamic law are in agreement with correct jurisprudential analogies. Consequently, there are no contradictions between revealed and rational knowledge so long as one recognises and disregards any incorrect analogies that contradict established judgements in Islamic law.

[617] Ibn Taymiyya, *Risāla fī ma'nā al-qiyās,* 2:263.

CHAPTER NINE

BENEFIT (*maṣlaḥa*)

9.1 Introduction

In evaluating the competing views of Ibn Taymiyya and the majority of jurists from the four main schools of Islamic law concerning the issues discussed previously, one reason for Ibn Taymiyya's differing views is clearly connected to a principle of Islamic jurisprudence called *maṣlaḥa* (benefit). Ibn Taymiyya's reasons for disagreement with the majority of jurists on the topic of *maṣlaḥa* are many and are worthy of discussion.

For example, on the topic of divorce during the menstrual period, Ibn Taymiyya argued that validating divorce under such circumstances brings about the very corruption that God intended to prevent. He reasoned that God intended to prevent corruption as harm and thus wished to bring about benefit to human beings. The majority disagree, saying that such a divorce is valid despite its prohibition.

Regarding the validity of divorce pronounced by an intoxicated person, Ibn Taymiyya's view was that validating such a divorce caused harm to the drunken man's innocent wife and that no one should be punished for another person's sin. Similarly, with regard to a father's divorce on behalf of his young or mentally incapacitated son, Ibn Taymiyya based his opinion on what would be most beneficial (i.e. *maṣlaḥa*) to all parties. Ibn Taymiyya would have invalidated both an angry person's divorce and divorce oaths because both lack proper intent but also in order to protect each human being's entitlement to benefits that agree with God's intentions.

9.2 Required conditions for valid benefit in Islamic law

It is important to present a clear definition of *maṣlaḥa* in order to show how both Ibn Taymiyya and the majority address this concept in different ways, thus leading to differing interpretations of divorce law. The most basic definition of *maṣlaḥa* according to the majority of jurists is that it refers to those benefits that are included in an issue which is not supported by a particular text from the lawgiver. However, consideration of *maṣlaḥa* in judicial rulings brings benefits to the parties and prevents harm to human beings. Jurists often refer to this principle as *maṣlaḥa mursala* instead of just *maṣlaḥa*. The reason behind this restricted name may demonstrate an intention to avoid using *maṣlaḥa* in an absolute manner (*muṭlaq*). Rather, jurists wish to show that the proper *maṣāliḥ* are those which derive from the suitable interpretation of religious texts that are in accord and thus can be used to create religious laws. The theory explaining the majority jurists' interpretations of *maṣāliḥ* is supported by an analysis of the three main conditions required in every single *maṣlaḥa* they considered, as explained below:

First: The case must arise from only issues pertaining to transactions between humans (*muʿāmalāt*) since all worship cases have been confirmed by clear texts from the Qurʾān and the Sunna and should be conducted without any addition or diminution. However, the fixed law of transactions is permitted if the general standards have been considered.

Second: The use of *maṣāliḥ* must not contradict either an intention (*maqṣad*) of any *sharīʿa* intentions or any of its well-known proofs.

Third: The *maṣlaḥa* must be reliable and necessary to the community or else provide a benefit or prevent a real harm.[618]

Clearly, the majority of jurists and Ibn Taymiyya alike look at *maṣlaḥa* as an independent principle within Islamic jurisprudence. Thus, it is important to detail their competing definitions of *maṣlaḥa* prior to analysing them in order to identify any specific differences in their perspectives that lead to differing views on the topic of divorce, particularly those interpretations which provide *maṣlaha* to human beings but which are not considered appropriate by those jurists opposed to the views of Ibn Taymiyya.

9.3 The majority of jurists' definition of *maṣlaḥa*

The majority of jurists have differing definitions of *maṣlaḥa.* Al-Ghazālī defines *maṣlaḥa* as "bringing a benefit and preventing harm".[619] This is a general definition of *maṣlaḥa* which includes all kinds of benefits and all types of needs for both individuals and societies regardless of whether they agree or disagree with the intentions of God. Al-Ghazālī strongly favours a general definition of *maṣlaḥa* for use in the domain of legislation and in deducing laws, and al-Ghazālī himself seeks to particularise his definition in an explicit manner:

> We do not mean it [bringing benefit and preventing harm] by this [definition] because bringing benefit and preventing harm are intentions of the creation. Also, the *maṣlaḥa* of creation lies in the collection of their intentions. However, we mean that *maṣlaḥa* is meant to protect the intention of religion, and the intention of religion for Creation has five [purposes]. It exists to preserve religion, life, progeny, intellect and property. Additionally, everything that includes protecting these principles is *maṣlaḥa* as

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[618] Ibrāhīm ibn Mūsā al-Shāṭibī, *al-Iʿtiṣām*, ed.Abū ʿUbaīda Mashhur ibn Ḥassan (n.p: Maktaba al-tawḥīd, n.d), 3:46-58, Muḥammad al-Ṭāhir ibn ʿĀshūur, Maqāṣid al-sharīʿa al-islāmiyya, ed. Muḥammad al-Ṭāhir al-Mīsāwī (Jordan: Dār al-nafāʾis, 2001), 2:252.

[619] Muḥammad ibn Muḥammad al-Ghazālī, *al-Mustaṣfā min ʿilm al-iuṣūl*, ed. Ḥamza ibn Zuhaīr (Saudi Arabia: Sharika al-madīna al-munawara lil-ṭibāʿa, n.d), 2:481.

> well, and those things which fail to include these principles are corruptions that prevent *maṣlaḥa*.[620]

This clarifies al-Ghazālī's views regarding *maṣlaḥa* as encompassing every single benefit that takes place in accordance with God's intention. It also shows that al-Ghazālī rejects the idea of an absolute *maṣlaḥa* from his definition.

Al-Ṭūfī, another member of the majority of jurists, agrees with al-Ghazālī's definition of *maṣlaḥa* but notes two customary and legitimate considerations which must both be kept in mind. Firstly, al-Ṭūfī would consider whether *maslaha* leads to profit and benefit like a business that leads to earnings. Secondly, he would consider whether *maslaha* leads to the intentions of the lawgiver [God] either by worship or a habit.[621]

It is well-known among the majority of jurists who study the sources of the principles of jurisprudence that protecting the intention of religion can be accomplished both by bringing benefit and by preventing harm. However, the general perspective of the majority of jurists concerning the practical effects of *maṣlaḥa* can be seen in the Ḥanafī jurist Muḥammad ibn Mūsā al-Khawārizmī's (d. 236/851) definition of the term: "To do protection of the intention of the religion by preventing harms from being created".[622] This definition's emphasis on merely preventing harm to Muslims dominated the views of the majority of jurists with the result that they largely ignored the other aspect of *maṣlaḥa* – bringing benefits to Muslims. Thus, this specific issue resulted in a significant difference between the two sides, both in the specific issue of divorce and in other general issues of Islamic law.

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[620] Al-Ghazālī, *al-Mustaṣfā*, 2:481-482.

[621] Sulaīmān ibn ʿAbd al-Qawī al-Ṭūufī, *al-Taʿyīn fī sharḥ al-arbaʿīyn*, ed. Aḥmad Ḥājj Muḥammad (Beirut: Muʾasasat al-rayān, 1998), 239.

[622] Al-Shawkānī has translated this definition in *Irshād al-fuḥūl*, 2:990.

Al-Shāṭibī's definition of *maṣlaḥa* is also worth mentioning, as it represents a clear statement from a great figure among the majority of jurists regarding their comprehensive view about the theoretical basis of *maṣlaḥa*:

> My intended meaning of *maṣāliḥ* is relevant to [all things] related to the settlement of a human being's life, his high quality existence, and his ability to satisfy his needs according to absolute sensual and rational descriptions in order to be completely well-heeled.[623]

According to al-Shāṭibī's definition, *maṣlaḥa* is a combination of all necessities (*ḍarūriyyāt*), needs (*ḥājiyyāt*), and perfections (*taḥsīniyyāt*), benefits which have been discussed by the majority of jurists in detail as being the essential elements of *maṣlaḥa*. His expression includes both the corporeal and incorporeal aspects (*māddī* and *maʿnawaī*) of *maṣlaḥa*.

Ibn Taymiyya also deems *maṣlaḥa* to be another important source of jurisprudence in Islamic law and describes *maṣāliḥ mursala* as the seventh path (after other sources) of the way of making legal jurisprudence.[624] The primary difference between Ibn Taymiyya and the majority of jurists on the topic of divorce is clearly demonstrated in his definition of *maṣlaḥa*: "A *mujtahid* can see that this action (any action) brings a preponderant benefit and that there is nothing in the religious law [al-sharʿ] that prohibits it [that benefit]".[625] Ibn Taymiyya is interested in the positive side of *maṣlaḥa,* while the majority of jurists are interested in only preventing the harmful side of *maṣlaḥa*. This distinction between the views of Ibn Taymiyya and those of the majority of jurists led to significantly different views about the issues of divorce as is discussed in previous chapters. The majority of jurists are interested mainly in

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[623] al-Shāṭibī, *al-Muwāfaqāt fi uṣūl al-sharīʿa* (Cairo: al-Maktaba al-tawfiqiyya, 2003), 2:20.
[624] Ibn Taymiyya, *MF*, 11:343.
[625] Ibn Taymiyya, *MF*, 11:343.

preventing harm even though they agreed that *maṣlaḥa* encompasses both bringing benefit and preventing harm. Ibn Taymiyya's definition requires consideration of any potential benefit to be included in every single deliberation before it can be counted as a correct or valid *maṣlaḥa* under Islamic law. This requirement allows a jurist to differentiate between absolute *maṣlaḥa* (*muṭlaq*) that is not allowed in Islamic religious teachings, and restricted *maṣlaḥa* (*muqqayad*) that is allowed and contains many important benefits to humans.

It seems then that *maṣāliḥ*, as understood by human beings, represents the intentions of God which He makes manifest through legislation. The Islamic jurists, including Ibn Taymiyya, attempt to translate *maṣlaḥa* into the context of ordinary Muslim life as something that brings benefits and prevents harms. *Maṣāliḥ* and *maqāṣid* are two issues united in their essence but with different considerations. For God, *maqāṣid* cannot be *maṣāliḥ* because God is absolutely beneficial. He desires wellness and benefits for humanity, and nothing can benefit or harm Him. To human beings, however, *maqāṣid* is *maṣāliḥ* in its legislative meaning because *maṣlaḥa* in its general or customary meaning is wider than *maqāṣid*. Therefore, *maṣlaḥa*, in its general meaning includes things that contradict the *maqāṣid* of God, like absolute freedom for human beings without any restrictions, which is from absolute *maṣlaḥa* (*muṭlaq).*

It is important to elucidate the differences between Ibn Taymiyya and the majority of jurists regarding *maṣlaḥa* in its details. Al-Ghazālī explicitly describes *maṣlaḥa* as protecting the intentions of religion as manifested in its five purposes: to preserve religion, life, progeny, intellect and property. This notion can be generalised to the majority of jurists in all four Islamic Sunni schools of law.

When the majority of jurists discuss *maṣāliḥ* in their writings, they clearly envision *maṣāliḥ* within the above-mentioned purposes. We can distinguish between their theoretical view of *maṣlaḥa* according to its simple definition and their practical view of *maṣlaḥa* as encompassing just the five purposes.

9.4 Ibn Taymiyya's two main criticisms about the majority of jurists' perspectives on *maṣlaḥa*

Ibn Taymiyya objects to the majority's view of *maṣāliḥ* as being limited to those five purposes. To him, the majority's limited view of *maṣāliḥ* derived from the fact that they viewed *maṣāliḥ* through the lens of *ḥudūd* (legal case) punishments, and so they believed that punishments used to prevent harms can bring benefits as well. Ibn Taymiyya finds this perspective to be short-sighted and incompatible with the ampleness and completeness of *sharīʿa*. In his view, *maṣlaḥa* means both bringing benefits and preventing harms while those other jurists focus solely on preventing harms without consideration of benefits, which are fundamental.[626] He criticises the majority of jurists directly, declaring "Whoever limits *maṣāliḥ* to punishments which include preventing harms from those [five] purposes in order to protect the body only, verily, they have limited [*maṣāliḥ*]".[627] Elsewhere, Ibn Taymiyya states that the majority of jurists' pronouncements represent just one side of *maṣlaḥa*:

> However, some people particularise *maṣāliḥ mursala* as protecting only life, property, progeny, intellect and religion .... However, *maṣāliḥ mursala* include both bringing benefits and preventing harms, and what they have mentioned concerning the prevention of harms from these five issues is only one part out of two.[628]

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[626] Ibn Taymiyya, *MF*, 11:344.
[627] Ibn Taymiyya, *MF*, 11:344.
[628] Ibn Taymiyya, *MF*, 11:344.

Under Ibn Taymiyya's analysis, the majority of jurists have reduced the prevalence of *maṣāliḥ* in Islamic law. It seems that the majority of jurists rely on a specific method of interpretation of the word of God to derive laws. This method is only one among several methods for interpreting Qurānic verses, one referred to as an elucidating interpretation (*al-tafsīr al-bayānī*). This procedure trusts in the rules of Arabic language and its styles of expression to support the ability of expert jurists to derive laws properly.[629] As discussed, this method is not free of concerns about bringing *maṣāliḥ*, but these concerns are secondary among the majority of jurists according to their schools of law. Also, their concerns are much extended and cannot be combined all together. Ibn Taymiyya criticises this method and argues that extreme interest in the formalities and expressions of language in the Qurānic verses is the primary reason for the questions of divorce validity increasingly confronted by the majority of jurists.[630] Ibn Taymiyya seeks to lessen the weight of literality within the four Sunni schools of law in order to bring about a return to focusing on the intentions of God for human beings by bringing an increased focus on benefits.

Ibn Taymiyya argues that there are two main functions of the Islamic religion which relate to *maṣlaḥa*: (1) obtaining and completing *maṣāliḥ*, and (2) obstructing and lessening harms. To bring about these two functions, Muslims must accept and bring about most beneficial choice between any two options. This can be achieved by rejecting the least beneficial or most harmful option, as chosen by probability if the lesser option is unclear.[631]

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[629] Ibn Taymiyya mentions this method in his treatise: *Bayān al-dalīl ʿalā buṭlān al-taḥlīl* in details.
[630] This is also discussed in "*Byān al-dalīl ʿalā buṭlān al-taḥlīl*" in details.
[631] Ibn Taymiyya, *MF*, 20:48.

Ibn Taymiyya's interest in *maṣlaḥa* encourages him to identify justice as an important intention of God and *maṣlaḥa*. In his treatise, *al-Siyāsa al-sharʿiyya fī iṣlāḥ al-rāʿī wa al-raʿiyya* (*The legitimate politics on the reform of state and* Community), Ibn Taymiyya even links the functions of state to the intentions of religion by stating that the aim of government is providing benefits for the community and preventing harms upon it. He uses these two verses of the Qurʾān to support his argument

> God commands you [people] to return things entrusted to you to their rightful owners, and, if you judge between people, to do so with justice: God's instructions to you are excellent, for He hears and sees everything. You, who believe, obey God and the Messenger, and those in authority among you. If you are in dispute over any matter, refer it to God and the Messenger, if you truly believe in God and the Last Day: that is better and fairer in the end (Q. 4:58-59)

He mentions that the first verse generally sets the functions of state which are returning things to their owners and judging justly. Therefore, performing these two important functions is equivalent to the consequent obedience of the community as is clear in the second verse.[632] Ibn Taymiyya clearly shows that viewing justice as an intention of religion and a function of state surely brings benefits to the community and state.

As such, Ibn Taymiyya is among those who support the notion of causality for the actions and commands of God. He views the denial of causality as an accusation that the Islamic religion is an absurd religion and therefore unacceptable to predominant intellects. He also confirms that God is free from any kinds of absurdity in His works.[633] Ibn Taymiyya also says that "The leaders of jurists are in agreement regarding the confirmation of wisdom and benefits in

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[632] Ibn Taymiyya, *al-Siyāsa al-sharʿiyya fī iṣlāḥ al-rāʿī wa al-raʿiyya*, ed. ʿAlī b. Muḥammad (Saudi Arabia: Dār ʿālam al-fawāʾid, n.d), 5.

[633] Ibn Taymiyya, *Minhāj al-sunna*, 1:141.

the laws of God".[634] Ibn Taymiyya's body of works includes many intentional applications (*taṭbīqāt maqāṣidiyya*) on diverse issues which are supported by the consideration of *maṣlaḥa*, the principle of facilitation, and the removal of difficulty as we have seen some instances of divorce issues in this thesis.

Ibn Taymiyya also has a second important criticism of the majority of jurists regarding the topic of *maṣlaḥa*, one which heavily influenced his views on Islamic laws in general and especially on the subject of divorce. Ibn Taymiyya views *maṣlaḥa* as a broad concept that could cover an equally broad segment of the Islamic legal system, and he discusses how *maṣlaḥa* is linked to both religious and worldly issues. This view on *maṣlaḥa* differed greatly from that of the majority of jurists. Ibn Taymiyya argues that bringing benefits in *maṣlaḥa* is not related only to religious or worldly issues. Instead, *maslaha* has a strong relationship with many issues falling under both religious and worldly concerns. He claims that:

> The bringing of benefits can exist in both ordinary worldly [issues] and in religious [issues] as well. In the world, like transactions and actions, that it is said include a benefit for human beings without any religious restrictions. Also, in religious [matters] like much knowledge, circumstances, worship, and asceticism that it is said they provide a benefit for human beings without any religious prohibitions.[635]

Here, Ibn Taymiyya seems to accuse the majority of jurists not only of preventing harms without bringing benefits but also looking solely at the worldly *maṣāliḥ* and neglecting the religious *maṣāliḥ*. Ibn Taymiyya acknowledges that there are some individual jurists who agree that there are two kinds of

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[634] Ibn Taymiyya, *Minhāj al-sunna*, 1:141.

[635] Ibn Taymiyya, *MF*, 11:343.

maṣāliḥ: religious and worldly.[636] However, he nevertheless condemns them for ignoring many aspects of religious and worldly *maṣāliḥ*:

> They deny what is included in both secret and public worship, like the many forms of knowledge of exalted Allah, His angels, His books, and His Messengers. Also, [what is included in] the circumstances of hearts and actions like loving Allah, fearing Him, sincere religiousness to Him, relying on Him, hoping for His mercy, asking Him, and many other forms of *maṣāliḥ* in the world and the hereafter [religion]. In addition, [they have denied *maṣāliḥ*] in those [laws] that God has legislated [pertaining to matters] such as fulfilling covenants, protecting kinships, the right of slaves and neighbours, the right among Muslims themselves, and all other matters He has commanded and prohibited in order to protect the circumstances of nobleness and refinement of morality. It becomes clear that this is a part of what Islamic law has brought as *maṣāliḥ*.[637]

This clarification from Ibn Taymiyya shows that he considers the intentions behind issues pertaining to both transactions and worship without distinguishing between them.

Starting from the jurisprudential premise that *al-umūr bi-maqāṣidihā fī al-ʿādāt wa al-muʿāmalāt kamā fī al-ʿibādāt wa al-taqarrubāt* (issues that count on the intentions in customs and transactions in worship and good deeds), Ibn Taymiyya attacks the majority of jurists, accusing them of ignoring the role of intention in contracts and of being interested only in formalities and expressions.[638] Rapoport, in his article in *Ibn Taymiyya and his Times*, wrote about the subject of law and practice and especially about the primacy of intention. He emphasised that Ibn Taymiyya considered intention as a foundational principle of Islamic law in all contracts. This was contrary to the thinking of all

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[636] Ibn Taymiyya, *MF*, 32:234.

[637] Ibn Taymiyya, *MF*, 32:234.

[638] Ibn Taymiyya, *Byān al-dalīl ʿalā buṭlān al-taḥlīl*, ed. Ḥamdī ʿabd al-majeed (n.p: al-Maktab al-islāmī, 1998), 411.

contemporaneous law schools.[639] Rapoport's thoughts about intention provide a greater understanding of Ibn Taymiyya's legal thoughts, noting that "A central principle governing his [Ibn Taymiyya's] approach to most legal questions brought before him is the primacy of intention".[640] While Rapoport asserts that intention is a primary source among the principles of jurisprudence in Ibn Taymiyya's legal thinking, Ibn Taymiyya himself considers *maṣlaḥa* as the primary source of ruling, as noted above, and he views intention as a springboard for obtaining *maṣlaḥa* which he views as the greater purpose.

In addition, Ibn Taymiyya attacks the majority of jurists' interest in the formalities and expressions of text, arguing that by doing so, they could make use of many tricks for obviating rights, for giving permission to engage in prohibited things, for the wrongful prohibition of permissible things, and for other manipulations of Islamic law. This is particularly clear in divorce issues. According to Ibn Taymiyya, the majority of jurists opened a wide door of validity for many cases of divorce. They validated all innovated divorce issues, divorce by an intoxicated person, and divorce by an angry person, divorce oaths, suspended divorce, and even triple divorce. After expanding the validity of divorce in their communities, these jurists attempted to expand the number of fraudulent ways a woman could be compelled to be returned to her husband. To refute this kind of fraud, Ibn Taymiyya writes his well-known treatise, *Bayān al-dalīl ʿalā buṭlān al-taḥlīl* (*The declaration of evidence upon invalidation of the taḥlīl marriage*), to discuss these types of frauds as well as invalidate them.

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[639] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 208.
[640] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 207-208.

9.5 Ibn Taymiyya's combination between God's intentions and the benefits of human beings

Relying on his views about a link between the intentions of God and the benefits offered to human beings in the religion and the world, Ibn Taymiyya in another place says:

> It is enough for the believer to know that the commands of Allāh to him are for an absolute or predominant benefit. Also, what Allāh prohibited him to do is an absolute or predominant harm. In addition, Allāh does not command the servants because of His need of them. He does not prohibit them because of His stinginess to them. On the contrary, He commanded them according to what was beneficial to them, and He prohibited them from doing what was harmful to them.[641]

As usual in Ibn Taymiyya's legal thoughts (and as confirmed in the previous chapters), here he also seeks to confirm that all established Islamic laws ultimately rely only upon the texts. Ibn Taymiyya links all real *maṣlaḥa* for human beings to the known texts of the Qurʾān and the Sunna, stating:

> The last saying is that *sharīʿa* [Islamic law] does not neglect a benefit [*maṣlaḥa*]. But Allāh has accomplished the religion and completed the favour. Verily, the Prophet has explained to us about everything which can bring [Muslims] close to Paradise.[642]

Ibn Taymiyya rejects any benefit discovered by intellect which contradicted Islamic law, and he argues that such benefits are not truly benefits:

> But a thing that the intellect has found to be a benefit, if there is no support in the religion about it, falls into one of two outcomes: either the religion has indicated it in a source of which the observer was unaware, or it is not a benefit but merely thought of as a benefit.[643]

This is also emphasised by Rapoport during his discussion of Ibn Taymiyya and benefit (*maṣlaḥa*), Rapoport points out that Ibn Taymiyya saw

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[641] Ibn Taymiyya, *Ziyārat al-qubūr wa al-istinjād bi al-maqbūr* (Egypt: Dār al-ṣaḥāba lil-turāth, 1992), 37.

[642] Ibn Taymiyya, *MF*, 11:345.

[643] Ibn Taymiyya, *MF*, 11:345.

maṣlaḥa as a way to achieve congruence between revealed and rational knowledge.[644] However, Rapoport finds that Ibn Taymiyya approached *maṣlaḥa* with a keen awareness of how the process would create legally permissible innovations. He summarises Ibn Taymiyya's arguments that many of the benefits received by the people were not truly due to the divine rule of *maṣlaḥa* because the notion or the issue which led to the benefit was not used in reference to the revealed sources.[645] This is emphasised in Ibn Taymiyya's statement:

> This [*maṣlaḥa*] is an important principle that one must be concerned about because as a result of it, a great trouble has happened to the religion. Many princes and pious scholars have seen *maṣāliḥ* and used it based on this principle in ways that include [maṣāliḥ] but which are prohibited in the religion, and they did not know it.[646]

Despite this, Ibn Taymiyya also sees many benefits that have been ignored by the above type of people and points out:

> Also, many of those who have neglected benefits that must be considered in the religion based on that they have not confirmed in the religion. Therefore, they have accordingly missed many duties and desires and committed many prohibitions and abominations. This may mean that the religion has included them [maṣāliḥ], but they [people] did not know it.[647]

In conclusion, using *maṣlaḥa* as a principle of jurisprudence in Islamic law is another explanation for Ibn Taymiyya's differing legal views in comparison to the majority of jurists on the topic of divorce. Ibn Taymiyya opposes the majority of jurists and argues that *maṣlaḥa* should be used both to prevent harm and to bring benefits. He argues that preventing harm in *maṣlaḥa* should not be limited to only the five purposes discussed previously, as was the view of the

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[644] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 198.
[645] Rapoport, "Ibn Taymiyya's Radical Legal Thought", 198.
[646] Ibn Taymiyya, *MF*, 11:344.
[647] Ibn Taymiyya, *MF*, 11:344.

majority of jurists. He explicitly notes that *maṣlaḥa* should be used for both religious issues and worldly matters in ways that provide benefits and prevent harm to people without any contradictions with the revealed sources.

CHAPTER TEN
THE OPINIONS OF THE COMPANIONS

10.1 Introduction

Through our prior evaluation and analysis of the competing views of Ibn Taymiyya and the majority of jurists with regard to the topic of divorce under Islamic law, we can now identify some of the most likely reasons for their differing views. One such cause relates to an important question of Islamic jurisprudential knowledge about which there is much disagreement between Ibn Taymiyya and the majority of jurists: To what extent can the Companions' opinions on a given topic be considered a definitive source for Islamic legislation sources?

10.2 Considering the Companions' opinions between Ibn Taymiyya and the majority of jurists

Both sides clearly considered the Companions' opinions to be an important basis for Islamic jurisprudence that can be used beneficially to make religious laws to address the many issues affecting Islamic communities and Muslim life in general. However, an examination of how this source is applied by both Ibn Taymiyya and the majority of jurists reveals substantial disputes between the two sides. One significant reason for these disputes arises from their different jurisprudential perspectives regarding the Companions' opinions. These contrary perspectives inevitably led to divergent judgements about the same issue: one for Ibn Taymiyya and another for the majority of jurists.

Ibn Taymiyya describes the Companions' positions and impact on the whole of Islamic thinking as follows:

> [There was] an understanding of the Qurʾān for the Companions that remains hidden from most of those who have come after them [*mutaʾakhkhirūn*]. Also, they had knowledge about Sunna matters and about the Prophet's circumstances which most of those who have come after them lack. They saw the Prophet and his revelations, supported the Prophet, and knew his sayings, actions, and situations which they used to prove their intentions, while most of those who came after them did not. Those who lacked such knowledge sought to discover judgements from what they believed, whether from a consensus or an analogy.[648]

Applying this to the specific example of triple divorce, there was evidence which Ibn Taymiyya considered and which led him to conclude that a triple divorce (that is, a divorce initiated by the husband who utters the phrase "I divorce you" three times as part of a single utterance) is invalid. However, this same evidence had been used by the majority of jurists to confirm that triple divorce was valid; a position which they thought had been properly derived from religious laws. For remembering this evidence, it is better to re-mention it again here. It has come in that proof that:

> The [pronouncement] of three divorces during the lifetime of Allāh's Messenger (may peace be upon him), and that of Abū Bakr, and two years of the caliphate of ʿUmar, it [was treated] as one. However, ʿUmar ibn Khaṭṭāb said, verily the people have begun to hasten in the matter in which they are required to observe respite. So if we had imposed this upon them, then he imposed it upon them.[649]

The disagreement between Ibn Taymiyya and the majority of jurists arises from each side's divergent views about how the Companions' opinions should be considered when seeking to prove or establish a new Islamic law. In the context of triple divorce, for example, Ibn Taymiyya views the Companions' opinions as merely an independent ruling from ʿUmar. He reasons that the related texts from the Qurʾan and the Sunna concerning this issue are obvious and well-known to the majority of Companions. The majority of jurists, on the

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[648] Ibn Taymiyya, *MF*, 19:200.

[649] Muslim, *Ṣaḥiḥ Muslim*, 4:109.

other hand, seize upon the Companions' views as powerful legal evidence on the issue without any practical restrictions on their applicability, and they view this evidence as clear proof of the validity of triple divorce. They also assert without proof that ʿUmar changed the law of triple divorce from a validity of just one divorce to a validity of all three divorces because he perhaps had a proof which abrogated the previous law. Ibn Taymiyya strenuously and with clear evidence objected to this assertion.

In addition, Ibn Taymiyya viewed that divorces resulting from the fulfilment of oaths were invalid as an oath is invalid when it is violated and in this situation expiation is required religiously. In this instance, Ibn Taymiyya relied on an analogy derived from the Companions' views to reinforce his own position. In doing so, he named seven of the great Companions (Ibn ʿUmar, Ibn ʿAbbas, Abū Hurayrra, ʿĀʾīsha, Umm Salama, Ḥafṣa and Zaynab) who he claimed had issued a fatwa concerning manumission oaths. As one said, "If I do this, then my slaves are free". However, such an oath would be invalid because it does not actually necessitate the freeing of the Companions' slaves, which instead only occurs after the oath has been fulfilled. The same principle applies in analogous situations, such as the case in which someone says, "I will divorce my wife if I do this thing", followed by the commission of the act described.[650] Ibn Taymiyya relied on the Companions' opinions to make an analogy that supported his views on the issue, views based on his logical discussion in his statement:

> It was confirmed by the Companions, who are the best of this Community that they have made their legal opinion (they made their fatwa) concerning an oath that includes the manumission of their slaves. This is preferred by God rather than the divorce which is invalid and whoever makes his oath on divorce needs to make expiation for the violated oaths.

[650] Ibn Taymiyya, *al-Fatāwā al-Kubrā*, 3:309.

> So, what would be their view (the Companions) about a divorce which is the most hated permission (*ḥalāl*) for God? And would it be thought that the Companions say concerning whoever swear oaths by asking for obedience of things that God loves them, such as praying, fasting, alms and pilgrimage that it is not necessary for him to do these out of obedience, but the expiation of an oath will grant him instead, and [in contrast] they say concerning what God does not love but hates [he means al-ṭalāq], it is required and valid for someone whoever swears by it.[651]

As the two scenarios described above demonstrate, Ibn Taymiyya's views differ greatly from the opinions of the majority of jurists. The point of dispute rests on either using or rejecting the Companions' views in order to establish an Islamic legal principle. In one instance, Ibn Taymiyya rejects a fixed law regarding the validity of triple divorce which had been derived from an opinion of one of the four great Muslim caliphs. While the majority of jurists agree with the opinion and consider it clear and strong evidence for their position, Ibn Taymiyya takes a contrary view. He asserts that the opinions of the seven Companions reinforce his own opinion regarding the use of analogy when it came to paying atonement in violating divorce oaths and suspended divorce on the atonement law in manumission's oath. It is essential to understand the differing opinions of Ibn Taymiyya and the majority of jurists, as these differences explain Ibn Taymiyya's own conditions and restrictions regarding whether to take the Companions' views into account when attempting to define a law. This demonstrates another factor underlying the opinions of Ibn Taymiyya and the majority of jurists, both in the context of divorce laws in particular and other Islamic laws in general.

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[651] IbnTaymiyya, *al-Fatāwā al-Kubrā*, 3:308-309.

10.3 Ibn Taymiyya's conditions to take the Companions' opinions into account

When considering Ibn Taymiyya's evaluation of the Companions' opinions and their importance to the inferential and legislative process within Islamic law, it seems clear that Ibn Taymiyya assesses their importance intellectually instead of succumbing to a passionate and fanatical trend. He designs a clear methodology for taking the Companions' views into account, and he assigns each of their views a value that determines their importance as a legislative source relative to other sources in Islamic law. He does so by rearticulating the Companions' views and defining conditions under which those views would apply to Islamic law.

Ibn Taymiyya begins by definitively identifying the views of the four earlier caliphates in Islam as legislative arguments because they were the Prophet's Companions.[652] However, Ibn Taymiyya also precedes the opinions of the Companions among themselves into the rank of a consensus by endorsement (*ijmāᶜ iqrārī)*[653] in which Ibn Taymiyya classified this form of consensus as a valid one. In light of the high degree of review afforded to the Companions' legal opinions and the compulsory status they hold within the wider Muslim community, it is unsurprising that Ibn Taymiyya does not restrict the applicability of these opinions, and he agrees that they provide very strong support for the commonality of Islamic principles and Islamic legislative texts.

Instead, Ibn Taymiyya reviews the opinions and classifies them according to how well they agreed with one another and thus served as support for consensus by endorsement. Primarily, he gives the greatest weight to opinions in

[652] Ibn Taymiyya, *MF*, 20:574.
[653] Ibn Taymiyya, *Qāᶜidat fī al-muᶜjizāt, 42.*

which there is no evidence of dissenting views from even one Companion.[654] Therefore, he says "If an opinion of a Companion has circulated [among other Companions] and has not been objected to within his lifetime, it is definitely an argument according to the majority of scholars".[655]

This statement is confirmation that Ibn Taymiyya sees dissenting views from individual Companions as reducing the overall precedential value of that view. That is, divergent or dissenting views from among the Companions do not function as support for consensus by endorsement and are to be viewed merely as an independent legal view that might be correct or incorrect. In such a case, the divergent view is not an obligation that all Muslims must take into account. This can be seen clearly in our discussion of the triple divorce issue, as Ibn Taymiyya expressly notes, "A view of some of them [the Companions] is not a valid argument while there was dissent from some of the other Companions concerning the same issue".[656] So, it is obvious that Ibn Taymiyya believes that jurists cannot simply choose a view held by some Companions and neglect views of other Companions that say the opposite.

Ibn Taymiyya also writes that considering the views of the Companions according to his understanding and conditions would allow jurists to treat disputed issues more correctly in the future:

> I have contemplated in this matter – namely the legal opinions that have been issued by the Companions [about some issues] which became complicated to the jurists [later on] _ and found that the Companions are the most comprehensive and knowledgeable among the Muslim community.[657]

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[654] Ibn Taymiyya, *MF*, 20:14.
[655] Ibn Taymiyya, *MF*, 20:14.
[656] Ibn Taymiyya, *MF*, 20:14.
[657] Ibn Taymiyya, *MF*, 20:582.

Ibn Taymiyya also points to examples that support his claims: "I confirm this [my contemplation] from the issues of oaths on vows, manumission, divorce, and others. Also, the issues of divorce depended on fulfilment conditions like this."[658] Obviously, the instances cited by Ibn Taymiyya are the same issues that were the source of disagreement between him and the majority of jurists as discussed in previous chapters. This might be to warn all sides that his views concerning those issues have been reached after a long search and much contemplation.

When defining his second condition for determining when the Companions' opinions should be cited as an argument in Islamic law, Ibn Taymiyya describes his assessment of the majority of jurists' views and their evidence, stating:

> I have explained regarding what they have written that the transmitted narrations from the Companions are the most correct opinions in judgements and analogy. Also, this has been confirmed by the Qurʾān, Sunna, and the practical analogy. [When] every view contradicts the analogy, [this means] it is opposite to the texts.[659]

With this statement, Ibn Taymiyya emphasises that the Companions' opinions should not be interpreted so as to contradict any text from the Qurʾān or the Prophetic Sunna. Ibn Taymiyya establishes this criterion as his second condition for making a decision to take the opinions of the Companions into account.

In conclusion, Ibn Taymiyya's views clearly differ from those of the majority of jurists when it comes to the applicability of the Companions' opinions, and he presented two conditions that should be applied to every single

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[658] Ibn Taymiyya, *MF*, 20:582.

[659] Ibn Taymiyya, *MF*, 20:582.

opinion under review. The first condition requires that there should be no disputed view among the Companions about the issue. More specifically, this means that even one dissenting opinion pertaining to the issue under review reduces the value of a precedent of the Companions' opinions. The second condition is that no Companion's view can contradict any text from either the Qurʾān or the Sunna. In such a case, the text holds priority over the opinion regardless of which Companion offered it.

CONCLUSION

This thesis investigated Ibn Taymiyya's different opinions on issues of divorce in Islamic law in contrast to the views of the majority of jurists. The primary goal of the current study was to determine the real number of divorce issues for which Ibn Taymiyya had divergent views and how his opinions differed from those of the majority of jurists. The thesis also identified probable reasons behind his different views on divorce issues. Ibn Taymiyya's opinions regarding divorce matters opposed the mainstream views of his contemporaries and even the majority of jurists who came before him about three centuries earlier among the four main Sunnī Islamic schools of law.

This study showed Ibn Taymiyya's opinions on the one side, and, on the other side, the opinions of the majority of jurists regarding divorce issues in Sunnī Islamic law. This controversy emerged from their different understandings, proofs and interpretations of the available texts of the Qur'ān and the Sunna, as well as other sources of Islamic jurisprudence. The study also showed a gap in the field of study of Sunnī Islamic law regarding disputed divorce issues, as there are just three available works, two by Rapoport and one by Al-Matroudi, which studied two disputed issues between Ibn Taymiyya and the majority of jurists: triple divorce and divorce oaths.

The thesis set out to answer four significant questions:

1-Did Ibn Taymiyya's views differ from those of the majority of jurists on triple divorce and divorce oaths only, or several other divorce issues too?

Regarding this question, our attempts were mainly devoted to

discovering the exact number of issues of divorce in Sunnī Islamic law in which Ibn Taymiyya's opinions differed from the majority of jurists. We discovered that there are more controversial issues than those studied by Rapoport and al-Matroudi. These issues included divorce in a menstruation period, triple divorce, intoxicated divorce, divorce pronounced in angry circumstances, a father's divorce on behalf of his young or mentally incapacitated son, the proxy divorce of a client wife, and divorce oaths.

2-How did Ibn Taymiyya's opinions differ from those of the majority of jurists concerning divorce issues in Islamic law?

Concerning this second research question, this study found that Ibn Taymiyya used evidence from the Qurʾān and the Sunna to reinforce his opinions. In contrast to the majority of jurists, Ibn Taymiyya used his interpretations, understandings and knowledge when attempting to use any evidence from the Qurʾān and the Sunna. We have seen this in his different views about the invalidity of bidʿī divorces, including divorce during a menstruation period and triple divorce, which were examined in chapter two.

Regarding the answer to this thesis question, we found that Ibn Taymiyya used evidence from other Islamic jurisprudence sources like consensus, analogy, benefit and the Companions' opinions. He reinforced his views by using these other sources as the majority of jurists used them, but his method and understanding were contrary to the majority of jurists' methods or understanding. This was alongside Ibn Taymiyya's discussions, objections and refutations of the majority of jurists' views and evidence. We have seen this in Ibn Taymiyya's opinions regarding intoxicated divorce, divorce pronounced in

angry circumstances, a father's divorce on behalf of his young or mentally incapacitated son, a proxy divorce of a client wife and divorce oaths, as examined in chapters three and four.

After determining the controversial issues of divorce between Ibn Taymiyya and the majority of jurists as well as examining and investigating these differing opinions, they became our main thesis findings, which are presented in chapters two, three and four.

3-Why did Ibn Taymiyya oppose other jurists on these issues, and what were his religious justifications?

To answer this research question, we analysed and evaluated Ibn Taymiyya's and the majority of jurists' opinions, evidence, discussions, interpretations, understandings and objections regarding the issues of divorce covered in chapters two, three and four. This careful analysis and evaluation led to other main thesis findings, which are organised in chapters six to ten.

Thus, the research in these chapters identified the reasons behind Ibn Taymiyya's opinions in issues of divorce, which were in contrast to the views of the majority of jurists. His opposing opinions were related to his unique perspectives about using, understanding and interpreting sources of Islamic jurisprudence.

In chapter five, we examined Ibn Taymiyya's specific views about the first and main source of Islamic jurisprudence: the Qurʾān. His unique views are as follows:

(1) Attention to the language of the Qurʾān, in which Ibn Taymiyya confirms that

it is not permissible to transfer words from the Qurʾānic verses from their linguistic meanings to new legitimate meanings.

(2) Unambiguous declarations in the texts declarations. Ibn Taymiyya claims that the texts in the Qurʾān have declarations to understand the lawgivers' intentions and to derive correct rulings.

(3) Silence of the texts. Ibn Taymiyya believes that the text gives knowledge of purpose through its silence regarding what makes things lawful or unlawful.

(4) Abrogation of the Qur'ānic verses. Ibn Taymiyya accepts abrogation of Qurʾānic texts by other texts in the Qurʾān; he also accepts the abrogation of texts from the Sunna by other texts of the Sunna, but he rejects the abrogation of Qurʾānic texts by texts of the Sunna.

It is noted that Ibn Taymiyya's specific understandings regarding the Qurʾān arose from our analysis and evaluation of his opinions regarding divorce matters that were not the same as those views of the majority of jurists.

In chapter six, which was devoted to the second primary source of Islamic jurisprudence, the Sunna, we found that Ibn Taymiyya used a different method for dealing with both *mutawātir* and *āḥād* reports from the Sunna. This supported him to distinguish between these types of Sunna in his jurisprudence. This chapter also showed the types of Sunna and standards for providing religious knowledge (*ifādat al-ʿilm*) as understood by both Ibn Taymiyya and the majority of jurists, as this was another reason behind Ibn Taymiyya's divergent opinions.

Chapter seven discussed consensus as another source of Islamic

jurisprudence between Ibn Taymiyya and the majority of jurists. We found from their views about divorce issues that Ibn Taymiyya's understanding of consensus is another reason for his different opinions. In this chapter, we found that Ibn Taymiyya proved that there are many mistakes in the transmission of consensuses among all Muslim jurists throughout Islamic legal history. He also explicitly rejected many alleged consensuses in Islamic law and confirmed that agreements among four Islamic schools of law are not consensuses in Islam. The final point mentioned in this chapter was that Ibn Taymiyya closed the open door of consensus on many jurists who rejected any preponderant view by alleging it to be antithetical to consensus without investigating it. So, Ibn Taymiyya narrowed the era that constitutes consensus to the Companions' time and elucidated the idea that there are few real consensuses in Islamic law, despite claims made by the majority of jurists.

In chapter eight, we found that Ibn Taymiyya, like the majority of jurists, used analogies, but from a different perspective and understanding, which became another reason for his divergent opinions. We found that Ibn Taymiyya's opposition to the views of the majority of jurists regarding Islamic divorce law led him to differentiate between correct and incorrect analogies unlike the majority of jurists who instead claimed that there are many Islamic laws that contradict analogy. We also found that Ibn Taymiyya declared that all the revealed rules in Islamic law agree with correct jurisprudential analogies. Consequently, there are no contradictions between revealed and rational knowledge as long as one recognises and disregards any incorrect analogies that contradict established judgements in Sunnī Islamic law.

Chapter one was devoted to examining Ibn Taymiyya's view regarding benefit as another source of Islamic jurisprudence. We found that benefit is another reason for Ibn Taymiyya's differing legal views. Ibn Taymiyya opposed the majority of jurists and argued that *maṣlaḥa* should be used both to prevent harm and provide benefits. He further argued that preventing harm in *maṣlaḥa* should not be limited to the five purposes discussed in this chapter, as was the view of the majority of jurists. In addition, he explicitly notes that *maṣlaḥa* should be used for both religious issues and worldly matters in ways that provide benefits and prevent harm without any contradictions with the revealed sources.

In chapter ten, we found that Ibn Taymiyya's views on treating the Companions' opinions is one more reason for his dispute with the majority of jurists in the studied divorce issues. Therefore, we found that Ibn Taymiyya's perspective regarding the Companions' opinions needed to be considered. In this regard, Ibn Taymiyya presents two conditions that should be applied to the Companions' views. The first condition was that there is no disputed view among the Companions concerning the issues. The second condition was that no Companion's view could contradict any text from either the Qurʾān or the Sunna. In such a case, the text holds priority over the opinion, regardless which Companion offered it.

4-Should Ibn Taymiyya be viewed as affiliated with one of the four Sunnī schools of law or as a completely independent jurist?

It is worth mentioning that in this fourth research question, we challenged al-Matroudi, who claimed in his study that Ibn Taymiyya was a *mujtahid* affiliated with the Hanbalī School of Law.

So, in answer to this last question, it was necessary to examine and address two essential issues in the history of Islamic law: 1) closing of the gate of *ijtihad*; and 2) imitation (*taqlid*) and doctrinal view (*tamadhhub*) were in Ibn Taymiyya's time at the height of their negative impact on Ibn Taymiyya's contemporary jurists and Islamic communities. So, without indicating and examining these two issues in Islamic history and showing Ibn Taymiyya's position and work on them, our research findings would still leave a gap that could be addressed in the following question. How did Ibn Taymiyya have different opinions in the issues of divorce in his *ijtihads* when his time was known by these two dilemmas? Therefore, we found it necessary to include the study of Ibn Taymiyya's time and position in the first chapter to confirm that he worked on those issues and then developed different views, understandings, interpretations, positions and perspectives regarding Islamic laws in general and divorce law in particular in contrast to the majority of jurists. Thus, examining and investigating these two issues and addressing Ibn Taymiyya's treatment of them led to another thesis finding, which is in chapter one.

In chapter one, we noted that Ibn Taymiyya was a product of the system of collective thinking and that the beliefs of his time are reflected in his earlier years of teaching, issuing fatwas and writing. At first, his treatises added nothing new and simply followed the mainstream views of the Islamic communities. However, Ibn Taymiyya devoted the last years of his life to writing, issuing fatwas and contemplating how to change the reality of his time regarding jurisprudential thought in Islamic law. He took some important steps and reopened the closed door of independent ruling. The chapter showed that Ibn

Taymiyya's first step was to open the closed door within the Ḥanbalī School of Law without overtly writing or arguing against the theoretical basis of these decisions.

Ibn Taymiyya sought to create a new perspective regarding issues in Islamic law, and by reopening the door of independent ruling, he made this possible. He emphasised that there was no consensus concerning certain issues in Islamic law, and he identified clear disputes among jurists regarding those same issues. Through this step, Ibn Taymiyya was also able to reopen the door of *ijtihad* within the four primary Sunnī Islamic schools of law. Regarding Ibn Taymiyya's position about *taqlid* and *tamadhhub*, this chapter confirmed that Ibn Taymiyya emerged from a Ḥanbalī family and started his early jurisprudential journey with that school. Throughout his career, his many treatises and writings showed his interest in the opinions of Aḥmad ibn Ḥanbal, eponym of the Ḥanbalī School. However, in the centuries leading up to Ibn Taymiyya's time, Islamic law changed from an evidence-based analysis of both the Qur'ān and the Sunna to simply imitating the opinions of the eponyms and followers of the four Sunnī schools of law. This perspective regarding the opinions of the eponyms of the four schools was one of the main disputed points between Ibn Taymiyya and his detractors. Therefore, his contemporary detractors, especially those who were close to and had strong relationships with the authorities, disputed Ibn Taymiyya because he did not imitate the opinions of the eponyms of the four main Sunnī schools.

This chapter proved that Ibn Taymiyya took steps to break the notion of *taqlīd* and *tamadhhub*. He began at the Hanbalī School by making some

corrections to some opinions of Aḥmad ibn Ḥanbal. Next, Ibn Taymiyya boldly announced that he would not imitate Aḥmad ibn Ḥanbal. He moved forward and declared that the school doctrinal view (*tamadhhub*) was not a duty for Muslims according to Islam, because knowing about Islamic duties is not limited to school doctrines (*madhāhib*). It is noted that Ibn Taymiyya sought to emphasise that under Islamic religion, opinions or interpretations of the four eponyms of the Sunnī schools of law had no special authority over any Muslim because even their agreed views could not be taken as a consensus among Muslims.

Our conducting research in chapter one showed that this portrayl of Ibn Taymiyya continued until the later years of his life and has been described as an absolute independent ruling (*al-ijtīhād al-muṭlaq*) because of his expanded views of Islamic knowledge. He did not issue any fatwas supported by anyone from the Islamic schools of law but relied instead on his independent ruling. This was also mentioned and confirmed by al-Dhahabī.

The discussions, investigations and findings in chapter one about Ibn Taymiyya's positions and work on both *taqlid* and *tamadhdhhub* and the findings of the whole study prove that Ibn Taymiyya reached the status of an absolute independent jurist. In addition to reaching this status, Ibn Taymiyya could have announced his school of law if he had deemed it necessary. However, because he believed in following views that harmonised with the teaching of the Qurʾān and the Sunna without considering the holder of the view, he did not announce his school of law; he even tried to show that it is essential to look at the views, not at the owner of the views. This was an answer to the study's last question: Should Ibn Taymiyya be viewed as affiliated with one of the four Sunni schools of law or

as a completely independent jurist?

Thus, the present study confirms the previous findings regarding disputed issues of divorce between Ibn Taymiyya and the majority of jurists which both Rapoport and al-Matroudi examined in their research, namely, triple divorce and divorce oaths. However, this work contributes to existing knowledge about Ibn Taymiyya's opinions that were different from the majority of jurists regarding divorce issues by providing evidence that he took different views, not only on the issues studied by Rapoport and al-Matroudi but on several issues of divorce as discussed above. In addition, this study has extended information from these existing studies by enhancing our understanding of the reasons behind Ibn Taymiyya's different opinions in these divorce matters. Based on our findings, it is suggested that in the later years of his life, Ibn Taymiyya became an absolute independent jurist and was not affiliated with any of the four main Sunnī schools of Islamic law, including the Ḥanbalī School. Therefore, the findings of this study make an important contribution to the study of Islamic law in general, and to the study of Ibn Taymiyya's legal thoughts in particular.

It is worth mentioning that Ibn Taymiyya's opinions on the issues of divorce examined in this study have implications for lawmakers in personal status law in many Islamic countries. Therefore, it is noted that Ibn Taymiyya's opinions on some issues of divorce have been used in some articles in the law codes on personal status law in most of these countries. Muslims have taken advantage of his views on divorce when taking their divorce issues into the courtroom, and this has impacted the protection of the separation of spouses.

It is also imperative to note that the current study only examined Ibn

Taymiyya's different opinions on issues of divorce in contrast to the views of the majority of jurists. Therefore, to confirm the findings of this study and demonstrate the consistency of Ibn Taymiyya's legal thoughts, further work needs to be done to compare his views on divorce and the reasons behind those views with his views on other issues of Islamic law.

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