

Ibn al-Mundhir and his Political opinions

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Introduction

Ibn al-Mundhir, Muḥammad b. Ibraḥīm b. Jaʿrūd Abu ʿBakr al-Naysab-uʿrī (242/856-319/931), Imam al-Ḥaram, a jurist of Mecca, a mujtahid, amuḥaddith and a mufassir¹, was one of the leading scholars in ikhtilāf [disagreement] during the third century A.H.² However, in modern scholars-hip he has not gained much attention or recognition, despite the fact that he was highly regarded by his contemporaries and biographers.³ Although we know he

¹ Al-Suyūṭī, cites Ibn al-Mundhir in the margins of his tafsīr, *al-Durr al-Manthūr* (Beirut: Daʿr al Maʿrifa, n.d.). Ibn al-Mundhir is described as mufassir in a number of biographical work such as: al-Suyūṭī, *Ṭabaqāt al-Mufasssiri*, edited by 'Ali Muḥammad 'Umar (Cairo: Maktabat Wahba, 1397): 9; Daʿwūdī Muḥammad b. 'Ali, *Ṭabaqāt al-Mufasssiri*, edited 'Ali Muḥammad 'Umar (Cairo: Maktabat Wahba, 1392): vol. 2: 50-52; al-Dhahabī, *Siyar a'lām al-Nubalā'*, (Beirut: Muassat al-Risāla, 1401) vol. 14: 493. Ibn Qudama, Ibn 'Abd al-Ḥaḍī al-Maqdisī (d. 744H.) in his *Ṭabaqāt 'Ulamā' al-Ḥadīth*, vol. 2: 493-494.

² Please see the biographical literature and the works of: Ibn al-Nadīm (d. 385H.). *Al-Fihrist*, p. 215; al-Shirāzī (d. 476 H.). *Ṭabaqāt al-Fuḥḥā'*, p. 89; al-Nawawī (d. 676H.). *Tahdhīb al-Asmā'*, vol. 2: 196-197 and *al-Majmū'*, vol. 1: 119; Ibn Khallikān (d. 681 H.) *Wafayāt al-A'yān*, vol. 4: 207; al-Dhahabī (d. 748H.) *Siyar A'lām al-Nubalā'*, vol. 14: 490-492; al-Subkī (d. 771 d.) *Ṭabaqāt al-Shāfi'iyya al-Kubrā'*, vol. 3: 102-108; Ibn Hajar (d. 852) *Lisān al-Mizān*, vol. 5: 27-28; C. Brokelmann. *Tārīkh al-Adab al-'Arabī*, vol 3: 300-301 and F. Sezgin. *Tārīkh al-Traṭh al-'rabī*, vol. 2: 184-185.

³ Al-Dhahabī, *Tahdhīb al-Ḥuḥūz*, vol. 3: 782 and *Siyar A'lām al-Nubalā'*, vol. 14: 482; al-Shirāzī, *Ṭabaqāt al-Shāfi'iyya*, p. 89 al-Nawawī, *Tahdhīb al-'Asmā' wa-Lughāt*, vol. 2: 196 and *al-Majmū'*, vol. 1: 57; al-Subkī, *Ṭabaqāt al-Mufasssiri*

wrote abundantly, all that remains available to us are but a few treatises namely: *al-Iqna'*, *al-Ijma' al-Awsat*, and *al-Ishraf*.⁴ This study focuses on these treatises and will attempt to shed light on Ibn al-Mundhir's jurisprudence as well as to assess his contribution to the shaping of Islamic law.

The second and the third centuries saw the unprecedented proliferation of juridical opinions and the emergence of schools [Madhab (pl. Madha'hib) a school of legal doctrine]. There was however no mechanism in place to deal with the varying opinions until the emergence of Ijma' [The consensus of mujtahids.] one who exercises ijtihad on a point of law] as third source of Islamic law. Nevertheless, these schools did not agree on what constituted Ijma'.⁵ Ibn al-Mundhir was at the heart of this debate, and in reading to Ibn

n, vol. 1: 91; Ibn Khallikan, *Wafaya't al A'yan*, vol. 4: 207; Ibn Hajar, *Lisan al q Mizan*, vol. 5: 27.

⁴ Brockelmann. *Ta'rikh al qAdab al-'Arabi'*, vol. 3, 300-301; Sezgin, Fu'a't. *Ta'rikh al-'Arab'* (Cairo: al-Hay'a al-Masriyya al-'A'mma' lil-Kitab, 1977) vol. 2: 184-185; and Ibn al-Nadim. *al-Fihrist*, (Beirut: Matba'at al-Khaya't, n.d.) vol 1: 215; al-Nawawi. *Al-Majmu'*, vol. 1, p. 119 and in *Tahdhib al-Asma' wa-Lughat*, vol. 2: 196; al-Shirazi. *Tabaqa't al-Fuqaha'*, vol. 1, p. 89.

⁵ According to the primary sources, there are many opinions concerning the issue of *ijma'*, some refer to *ijma' al-Shahaba'* others *ijma' ahl-Madina* [people of], *ijma' al-Khulafa'*. For example, al-A'midi. *Al-Al-hkam fi Usul al-Ahkam*, vol. 1, p. 127, and 129, *ijma' al Khulafa'* is obligatory and should be followed by Muslims. al-Shirazi in his *al-al-Luma' fi Usul al-Fiqh*, p. 89, his opinion does not support the opinions of scholars who were in favor of following *ijma' al-Khulafa'* and *Shahaba*, this is due to the changes of time, social and economic condition which defer from one generation to another or might not be suitable to other generations. However, al-Shafi'i. *al-Risala*, edited by Ahmad Shakir (Cairo: 1940): 472 and p. 474. In these two pages al-Shafi'i, elaborated on *ijma'* as *ijma' al-'Umma*,

al-Mundhir's treatises, we can extrapolate his opinion on both Ikhtilāf and Ijma' al-ʿulama'[scholars].⁶ He elaborated on the issue of Ijma' by writing an independent treatise in which he illustrated the opinions of previous jurists concerning cases of varying opinions. When addressing a specific issue, he indicated both opinions, i.e., the one in favor and the one against it, and then concluded with his own summation.

What is unique about Ibn al-Mundhir's treatises is that he used the same methodology and style as that of a narrator of ḥ adīth.⁷ by collecting and examining the ḥ adīths and reflecting on the authority of users and its

which literally means all of the second century. A few centuries later, a Shafi'i jurist, al-Mawardi in his *Adab al-Qaḍī*, edited by Muḥyi Hila al-Sarḥān, (Baghdad: Iḥyā' al-Turaṯ al-Islā'i, 1972): 450. al-Mawardi defines ijma' as the ruling of the scholar where a scholar can derive the rulings according to previous generations similarly applicable to the following generations. In this definitional-Mawardi limited ijma' to the scholars. al-Juwayni, defines ijma' as the consensus of the scholars on a legal case. On the other hand, al-Ghazālī, in his *Mustasfa*, defines ijma' as the consensus of the Muslim community on religious affairs.

⁶According to the available primary sources there are few independent treatises in fiqh on Ija'. Ibn al-Mundhir, Ibn Ḥ azm. *Maraṯib al-Ijma'* and according to *Fihrist* of Ibn al-Nadīm, p 264, that al-Shafi'i treatise on ijma' has to do with the *usu'l* not *Furu'*. Ibn al-Mundhir's elaboration on Ijma' is that to him Ijma' should not penetrate one opinion or other to him ijma' meant is the majority of the scholars where one can recite and learn from them. Ibn al-Mundhir dealt with the *mu'aṣala't* / transaction, and *'ibaḍa't*/worship not *i'tiqaḍa't* /faith

⁷ Ḥ adīth by definition is, the narrative material containing saying of the Prophet Muhammad (or some other authority figure of early Islam) or account of his deeds.

reporters, he performed the tasks of both a muḥaddith and a faqīḥ [(pl.fuqa-ha^{ce}) a scholar versed in fiqh]⁸.

Ibn al-Mundhir is a great scholar and an absolute Mujtahid. This article deals with his life political, social and scientific dimension of his life-time.

He also includes his inducting those from the Qurān, Sunna, Ijmaʿī, Qiyaʿs al-Maṣlaḥah al-Mursalāh, Istiḥṣān and Habra al-Waḥid, we come to conclude that Ibn al-Mundhir considered all these resources, he also had a special opinion in Ijmaʿī and khabar al-waḥid and he went along with Shaʿfīī opinion about refusing Istiḥṣān.

We conclude from this article that Ibn al-Mundhir was not a head of a school of hFiqh Having his agreements and disagreements with other Fuqha who were masters of schools like Abu Ḥanīfa Nuʿmān b. Thaʿbit, Maʿlik b. Anas, Muḥammad b. Idrīs al-Shafīʿī and Aḥmad b. Ḥanbal. And also the Madhāhib which have been abandoned like: Sufyan al-Thawrī, al-Hasan al-Baṣrī, Awzaʿī, Tabarī and Dawūd al-Zahirī.

Though he is unique in some of his arguments in hFiqh and hUṣul. his books h al-Awsat and hIshraf and h Iqnaʿ included thousands of hf-iqh affairs which he studied comparatively mentioning the evidences.

Ibn al-Mundhir was the first scholar to compile a list of questions on which there was consensus with his hKitaḥ al-Ijmaʿ in which he listed 765 questions on worship and social transactions. He left us a doctrine of many legal matters on which there was agreement, although not absolute among

⁸Al-Subkī. *Ṭabaqāt al-Shaʿfiyya al-Kubrā*, vol.3:102.; Ibn Qudama, Ibn 'Abd al Haḍī al-Maqdisī al-Dimashqī (d. 744 H.) in his *Ṭabaqāt 'Ulamā' al-Ḥadīth*, Abu al-Ḥusayn Ibn al-Qaṭṭān defines Ibn al-Mundhir as the Faqīḥ, the Muḥaddith and trustworthy, "Vol.2:494; al-Shirāzī. *Ṭabaqāt al-Fuqahā'*, p.89; al-Nawawī. *Tahdhīb al-Asmā' wa-Lughāt*, vol.2:196.

the majority of scholars, yet it was enough to form a consensus according to the definition of Shāfiʿī and others such as Tabarī (d.310) and Abū-Bakr al-Rāzī (d.370).

We also conclude that each ḥaḥī scholar in his methodology built upon his jurisprudential foundations that his predecessors lay down and tried his best to add or modify to that structure in a way which served the Islamic Law. We also found out that he did not survive in spite the fact that many of the prominent scholars such as al-Khalaf, and Ibn Qudāma quoted him, yet they survived and he did not.

Ibn al-Mundhir left several books that we are beginning to get to know, unfortunately many of them had disappeared, for the lack of supervision on them, and the ḥgnorance of how valuable they are.

Political Views

We can learn about his political views through the book ḥ Fighting the Rebellion ḥ *Qital Ahl al Baghy*⁹, where he supports and agrees with Abū Bakr and ʿAlī in their fight against the rebels: ḥ *Murtaddūn* and *Khawarij* and *Harūraa*.¹⁰

Reportedly, he was a Shāfiʿī. Although, some sources assert that Ibn al-Mundhir would attribute to the Masters, such as al Shāfiʿī and Malik doctrines, which they did not hold¹¹.

In his book; ḥ Fighting the Rebellion ḥ *Qital ahl al baghy*, Ibn al-Mundhir provides a fairly detailed discussion of the law of rebellion. For the most

⁹ Ibn al-Mundhir *al-Iqnāz*, iii:264, *al-Ishraf*, ii 388-405. *Kitāb ḥAhl al-Baghi*¹⁰

¹⁰ Al-Subki, *Tabaqat* III, 102. Ibn Hajar al-Asqalani, *Lisan* 5:37, Ibn Khallikan, *Wafayat* IV, 207. al-Safadi, *kitab* 1:33.

¹¹ Ibn al-Mundhir, *Al-Ishraf*, ii 264-265.

part, his exposition is a review of the determination of the different schools of thought discussed before him, and most of his discussion is a rehashing of al-sha'fii's discourse on rebellion. He does not use the expression 'the Just Juror' nor did he focus on the necessity of obeying those in power, rather, he concentrates on the circumstances under which Muslims should support a ruler against possible rebels.

He states that Muslims gave their *Bay'a*, (oath of allegiance) to a ruler, and this ruler became the legitimate Caliph, Muslims should support the ruler against rebels, however, he states that h this is so only if the rebels are among those who gave the caliph their allegiance freely and without compulsion. The implication is that if the ruler was not firmly established, or if the people gave their allegiance to the ruler under compulsion, then Muslims are not obliged to support the ruler against the rebels.

He goes on to assert that if two equally powerful parties fight, then it is a rebellion *hfitna* and Muslims should refrain from becoming involved.

Ibn al-Mundhir appears to use the words *Khawarij* and *Bughah*, interchangeably throughout his text; when he refers to the views of al-sha'fii, he uses the words *Bughah*, but when he refers to the views of Malik, Abu hanifah, and al-Awza'i, he uses the term *Khawarij*.

Ibn al-Mundhir starts his analysis by invoking the baggy Qura'nic verse, while he notes the ambiguous nature of the verse and the obscure reasons for its revelation. He is able to draw specific conclusions from the verse; he argues that the verse has several clear indications:

1. The rebels are to be considered Muslims and treated as such.
2. Reconciliation and peaceful resolution of the conflict is always preferable to fighting.
3. Fighting the rebels is permissible if they persist in their defiance.

4. If they repent, the rebels may not be fought, and;
5. The fighting parties are not liable for damage incurred.

Ibn al-Mundhir argues that the law of rebellion was clearly founded on the Qurānic text, when he cited and discussed the verse. The connection, between the verse and the law of rebellion, is more ambiguous, and has double meanings, or difficulty in classification.

Ibn al-Mundhir goes on to conclude that the Qurānic, the *Sunna* of the Prophet and the companions, and also the consensus of the Jurists, permit the fighting of rebels. Essentially, he achieves two objectives by this argument:

- i. Theological.
- ii. Legal.

From a theological point of view, °Ali was right in fighting those who rebelled against him, in this context, Ibn al-Mundhir considered Muā-wiya to have been a rebel, and °Ali to have been the legitimate ruler.

In a segment that exhibits a tendency towards over legislation, Ibn al-Mundhir argues that after exhausting the venues of a possible peaceful resolution, these are circumstances under which fighting the rebels became obligatory, permissible, or disagreed upon. The ruler must fight the rebels in one of five conditions:

If the rebels assault loyalists women.

- 1- If they usurp money or property from the public treasury.
- 2- If they refuse to pay taxes,
- 3- If they interfere with the state's war efforts against external enemies, and
- 4- If they attempt to overthrow the ruler by force.¹¹

¹¹ Kitab al-Ishraf II, p338, and III, pp 265-266.

Fighting the rebels is permissible, but not mandatory. If they conspire, organize, and gather in a location, and exhibit an intent to rebel, but have not yet violated any law or abstained from performing any duty, owed to the state, the ruler, nonetheless, may fight them to preempt their rebellion, but it is not obligatory that he does so, in this situation, the rebels have not violated any particular law, but they have renounced the leader, and considered themselves to be in an effective state of rebellion.

Ibn al-Mundhir distinguishes between these situations, where a group of people adopts a specific system of beliefs, live in peaceful isolation from society, and do not exhibit intent to rebel or overthrow the ruler. He argues that this group may not be fought even if they adopt a system of beliefs, which is considered objectionable to the loyalists, and that they may not be forced to abandon their system of beliefs.¹²

Finally, the first category that Ibn al-Mundhir discusses is that of rebels who gather in specific location but otherwise obedient, except for the fact that they refuse to give their alms (*Zakat*) to the ruler. Ibn al-Mundhir agrees with Abu Bakr with his war against the Rebels (*Murtaddun*) *hWalaĩ 'araĩ raĩyan khilafa alldhĩl raĩahu al-Seddiq* I cannot see any other opinion different from Abu Bakr h.¹³

Ibn al-Mundhir pays special attention to the rules of conduct of warfare against rebels, although he repeats many of al-Shafii's points, his treatment

¹² Al-Ishraf, III, p 266.

¹³ Al-Ishraf III, 253-254.

is less exhaustive and systematic than al-Mawardi as well.¹⁴

Like al-Shafīʿī, Ibn al-Mundhir maintains that the wounded and fugitives may not be killed and weapons of mass destruction, may not be used against rebels, manganese and flame-throwers may not be attacked without warning or under the cover of darkness. The rebels' homes may not be burned or flooded, and the rebels themselves may not be surrounded and denied food or water. The cattle, warhorses, trees, or crops may not be destroyed.¹⁵

The loyalists may not seek the assistance of non-believers, scriptures, or those who believe that it is proper to dispatch the wounded and fugitives (as is the case with the Hanafi) against the rebels. If it becomes necessary to use any of the groups against the rebels, the loyalists may do so but only if certain conditions are met:

- i. The loyalists must find no other ally against the rebels,

The loyalists must obtain an assurance from their allies that they will not kill the wounded or fugitives, and must have a good-faith belief that the allies will, in fact, comply with such an assurance.

- ii. The loyalists must be capable of restraining their allies from violating the assurance given or communicating any other abuses, if they do not have the power to do so, then they may seek the assistance of these allies.

¹⁴ Al-Mawardi, Abu al-Hassan ʿAlī. Muhammad, b. Hatib, *Kitab Qital Ahl al-Baghah min al-Hawi al-kabir*. Edited by Ibrahim b. ʿAlī Sandaqji. Cairo; Matbaʿat al-Madani, 1987. p 124.

¹⁵ Al-Iqnaʿa 2:677, Ishraf.

If it becomes necessary to use such allies, it is imperative that the loyalists be able to ensure compliance with the dictates of legality.¹⁶

In conclusion:

Ibn al Mhundir gives very clear directions as to how to deal with rebels, in accordance with the Qura'n, Sunna, and the opinions of other jurists, yet one may argue that he was more of a "dual commentator", than an independent jurist.

One comment, this is not the case in most of his rulings, but it is the case here in regards to rebels.

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¹⁶ Al-Iqna'ī, 2:669-678. al-Ishraf 2: 396-399. Barudi Abdullah °Umar.

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