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OBJECTIVES

Hamdard Islamicus is an academic journal devoted to Islamic research and scholarship.

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It brings out the achievements of Muslims in the fields of Humanities, Social and Natural Sciences.

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MUKHTASAR KHALIL AND THE UNDERSTANDING OF ISLAMIC LAW IN NIGERIA

IS-HAQ OLANREWAJA OLOYEDE

Introduction

Islamic law is the core of Islamic learning. It permeates all aspects of human endeavour. Islamic law regulates virtually all human activities, be it mundane or sacred. It is the barometer with which all activities of a Muslim is gauged and adjudged. It is very comprehensive as it is not restricted to issues that are subject to intervention of the law courts, rather it synchronises religious rites (law of ritual practices) with all other aspects of law which concern socio-economic interactions.

The Qur'ān and the *Hadīth* form the principal sources of Islamic law. Interpretation and adaptation of these texts to human developments also form part of its secondary sources. Variation in local customs and peculiarity of the different circumstances in different Muslim communities led to differences in the interpretation of the basic texts. These peculiarities and the resultant variation in interpretation gave birth to school of law in Islam.

The principal *Sūnni*-Schools of law are the Hanafī, the Mālikī, the Shafī'ī and the Hanbalī schools.¹ Mention should also be made of the existence of the *Shī'ī* School which was formulated and developed by the Shi'ites.²

The leaders of each of these schools interpreted the texts of the Qur'ān and the *Hadīth* and in the light of their interpretations, formulated certain legal policies which followers of their respective schools adopt. During the first, second and first half of the third centuries of Islam, leaders and scholars of Islamic law engaged in the critical study of real and imagined legal issues and made certain pronouncements on them, depending on a number of factors which influenced each of the schools of law to which different scholars belonged. Intra-school disagreements called for consensus of opinions among the scholars of each school. This led to tactical acceptance³ of *Ijmā'* as a source of Islamic law.

The process of adaptation of legal theories to current legal issues necessitated the deduction of new rules from the basic texts. The process involved the extension of the application of a rule to similar situations. This is technically known as *Qiyās* — analogical deduction and it is the fourth source of the *Sharī'a*.⁴

In the North-West and West Africa the dominant school is the Mālikī school of law. The successive constitutions of the Federal Republic of Nigeria affirm that Nigeria belongs to the Mālikī school of the *Sharī'a*.⁵ Thus, courts which apply Islamic law in Nigeria, decide Islamic law cases in accordance with the interpretation of the Mālikī school.

The most authoritative and earliest collections of the classical legal expositions of the Mālikī school were *Muwatta'*⁶ and *al-Mudawwannah al-Kubrā*.⁷ A number of early Mālikī scholars⁸ have written commentaries on each of the two books, particularly during the period of decadence.⁹ Earlier, other scholars¹⁰ had written books to explain opinions of the school on different aspect of the *Sharī'a*.

Presently the most outstanding and most authoritative classical work on the Mālikī school of law is the *Mukhtaṣar* which was written by Khalil b. Ishāq al-Jundī¹¹ (d.1374 C.E.) The work has some advantages over earlier classical books on Islamic law. It is a resume of the early voluminous treatises on Mālikī school of law.¹² Scholars, who found the earliest works too voluminous for easy consultation, found solace in *Mukhtaṣar*. *Mukhtaṣar* is not restricted to the popular or official policy of the Mālikī school on legal issues. Rather, it also provides the minority opinions of scholars within the Mālikī school. More important is the fact that it provides for a comparative analysis of the opinions of Mālikī school and other Sūnnī-schools of law, particularly in the areas where the disagreements are considered vital. Furthermore the book was also written in technical legal language as against literal usage of words in some other Arabic books on Islamic law.¹³ Probably, the most surprising feature of the book is that despite the fact that it is concise, it is also more comprehensive than each of the earlier books, for which it was meant to be a summary. Two statements of Ruxton can be quoted in support of our assertion. He wrote that: "the... work ... covers practically the whole field of Muhammadan Law (sic)..."¹⁴ and that:

The texts most in use (in West Africa) are *Mukhtaṣar* of Sidi Khalīl, the *Risālah* of Ibn Abu Zaid and the *Tuhfat* of Ibn Asim of which the first (*Mukhtaṣar*) is the most important and the most complete.¹⁵

If should, however, be noted that the same quality of brevity, for which the book is appreciated, also renders the book almost incomprehensible and extremely difficult to understand.¹⁶ Despite the difficulty, it is the most often sought authority by Islamic jurists particularly in North and West Africa. Hardly is there any judgment of Area Court or *Sharī'a* Court of Appeal in Northern part of Nigeria (where *Sharī'a* Courts exist) without copious reference to *Mukhtaṣar*.¹⁷

It is the sum total of the different unique features of this book that prompted our desire to carry out a critical study of it.

The Book

Mukhtaṣar was written by Khalīl b. 'Ishāq al-Jundī, a great Egyptain Islamic scholar, during the eighth century of the Islamic calendar. It was first published in Paris in 1905 from a manuscript in Granada (MS 1473).

Importance of the Book

The book is regarded as one of the three most authoritative books on the Mālikī school of the *Sharī'a*. The other two, according to a scholar, are *al-Mudawwanah* which is the great corpus of the doctrine and *al-Muwatta'*.¹⁸

Mukhtaṣar is ranked in certain circles, as one of the best seven¹⁹ standard books on the Mālikī school of law, it is however emphasised by the source (like others which we have cited earlier) that "at a later date the authority (on Mālikī school) was *Mukhtaṣar* of Khalīl".²⁰

The esteem in which *Mukhtaṣar* is held among existing writings on Islamic law of the Mālikī school has also been attested by Tirmingham:

Two of the manuals studied and frequently learnt off by heart need be mentioned. These are the *Mukhtaṣar* b. 'Ishāq and *Risālah* of Ibn Abī Zaid which are authoritative for the whole of the Mālikī Sudan belt. So revered is Khalīl's summary (*al-Mukhtaṣar*) that if one mentions *al-Kitāb* — the book, they think that it is this book that is being referred to. The Qur'ān and *Hadīth* rarely form part of the training, even of the higher clergy since, having the law, they have no need for independent investigation of sources.²¹

Bivar and Hisket saw the *Mukhtaṣar* as:

The principal and much revered text book on law amongst the Mālikīs of the Sudan.²²

Khalīl himself traced the circumstance which made the writing of *Mukhtaṣar* very imperative. He said:

A group of people (May God guide and guard them and me to the beneficial path) asked me for concise sign-posts of truth which is on the school of law of Mālikī b. Anas (May Almighty God have mercy on him) explaining his legal decision. And I responded to their request.....²³

From the fore-going, it is clear that the book is of tremendous value to the study of Mālikī Law. No contemporary scholar, to our knowledge, mentions two books as most important on the Mālikī school of law without including the *Mukhtaṣar*. The variation has always been on which one is the other book of law.

Its Unique Features

The book is very brief as the name suggests. It is too brief to be understood by a large number of Arabic readers. The book renders in a sentence what other books would render in pages. While the brevity aids memory and good grasp of the real kernal of the book, it equally poses to the reader the danger of not understanding any of

the messages which the author aims at conveying to his audience.

The author, in his preface to the book sets out some symbols which he uses to convey specific meanings which the symbols would not have literally conveyed. The symbols are as follows:

Terms	Interpretations
(1) <i>Fīhā</i>	<i>Mudawwanah</i>
(2) <i>Uwila</i>	Differences of opinion in understanding it (<i>Mudawwanah</i>) among commentators.
(3) <i>Ikhtiyār</i>	<i>Lakhmiyyu's</i>
(a) When used in verbal form	Lakhmiyyu's personal opinion
(b) When used in nominal form	Lakhmiyyu's choice among different views
(4) <i>Tarjīh</i>	Ibn Yūnus's
(a) When used in verbal form	Ibn Yunus's personal view
(b) When used in nominal form	His choice among various views of others
(5) <i>Az-zāhīr</i>	'Ibn Rushd's
(a) Verbal form	His personal view
(b) Nominal form	His choice among the views of others
(6) <i>Al-Qawl</i>	<i>Māzaniyyu</i>
(a) Verbal form	His personal view
(b) Nominal form	His choice among others' views
(7) <i>Khilāfun</i>	Difference of opinion as to which view is popular
(8) <i>Qawlayn</i> or <i>'Aqwāl</i>	No opinion is distinctively above other opinions. The understanding of the issue is conditional
(9) <i>Suḥiḥa</i> or <i>Istuḥsina</i>	A scholar beside those mentioned above upholds the view
(10) <i>Taraddud</i>	(a) Later scholars are undecided on what (report) comes to them
	or
	(b) That there is no record of the earlier scholars on the issue
(11) <i>Lao</i>	Differences of opinion within the school of law

We discovered, to our chagrin that a number of scholars who consult *Mukhtaṣar* had not read the preface of the book, wherein the author explains the words which he uses in the book as symbols. Hence, most scholars interviewed by the present writer, particularly the local Mallams, give literal meaning to the technical symbols. This, as expected, is one of the major sources of difficulty which most people have in understanding the *Mukhtaṣar*.

Ajetunmobi²⁴ criticised the application of the symbols by the author in which, according to him (Ajetunmobi), the author is inconsistent and that he uses the symbols in a way that can confuse the reader. Our research so far, does not reveal any justification for the criticism of the said writer. What, in our view, accounts for the views of Ajetunmobi on the issue, is the wrong notion of the critic that any word used as symbol should not be used in the text to convey the literal meaning. The context in which the words are used as symbols is indicative enough as distinct from when they are used to convey the ordinary meanings.

Another noticeable feature of the book is the cautious use of terms which have technical legal implications. The author demonstrates a very high standard of learning in Islamic law. The book, which covers aspects of Islamic law, except land law, reveals the major ingredients of each of the legal topics discussed.

One important feature of the book which is very popular is the fact that it is not easy to understand. As rightly opined by Ajetunmobi,²⁵ it is not a book meant for beginners in Islamic law. Ibn Khaldūn is reported to have stressed the difficulty and apparent numerous disadvantages of abridgements—including that of Khalīl, for what he described as:

obscure and embarrassing expressions with which they are filled, and how much time is lost in trying to understand them.²⁶

Elmasri,²⁷ too, has noted how particularly difficult it is to understand and interpret the *Mukhtaṣar* because of its brevity. Russell and Suhrawardy reacted against scholars such as Ibn Khaldūn who, in their condemnation of abridgements, made no exception of *Mukhtaṣar*. In the view of these two co-authors:

This (difficulty) hardly applied to *Mukhtaṣar*, the words there used being simple and only the meaning sought to be conveyed obscure.²⁸

Similarly, Al-Ghamāriyy dismissed those who complained of the difficulty in the understanding of the expression and style of *Mukhtaṣar* as those who are "chasing the means and abandoning the goal".²⁹

In our candid view, though most of the individual words used in *Mukhtaṣar* are neither difficult nor strange, yet the comprehension of statements contained therein is not easy. Internationally acclaimed scholars of Arabic language whose mother tongue is Arabic, but who do not make sufficient study of medieval Arabic literature,

are likely to agree with an Arabic scholar who says of *Mukhtaṣar*:

The book is a disjointed and chaotic arrangement of (individually meaningful) Arabic words which have no meaning, at least, to native speakers of Arabic.³⁰

In the same vein, Peron, a French translator of *Mukhtaṣar* gave us an insight into what Algerians felt about the competence of European scholars of Arabic in the handling of the *Mukhtaṣar*. He wrote:

It is said that in Algeria, people do not fear to place the *Mukhtaṣar* in our (French colonialists) hands in its original condition, so certain are they that no European, however well-verse in Arabic, will really be able to get at the meaning of single phrase.³¹

In Nigeria, Islamic scholars who understand *Mukhtaṣar* are likely to be few, yet almost every scholar of note, whom the present writer has opportunity to interview, would initially arrogate to himself, a proper understanding of the book. It is, however, noteworthy that we are yet to come across any person who claims that he understands it without any difficulty. The false claim of some learned people to proper understanding of the book, is, most probably, to gain recognition and respect which those who understand the book richly deserve. Peron too confirms the basis of this hypothesis when he says:

By reason of the difficulty of clearly following Khalīl, its sense can only be gathered by a man endowed with penetration, a high degree of intelligence and a thorough grounding in the learning of the Arabs. The scholar who has attained such knowledge has the right to be proud, for he may be accorded a place in the front rank of 'ulamā' (Islamic scholars) of the greatest learning. In a word, Khalīl's work is, today, the most classic obtainable in any country.³²

In spite of the hardship in understanding it, the book seems indispensable as far as the study of Mālikī law is concerned. The uniqueness of the book, among Arabic writings on Islamic Law, underlines the fact that it was the book that both French and British colonialists found very essential to translate for proper administration of justice in their respective satellite African states wherein Mālikī Law was in operation.

*The Advent of the Book in Nigeria*³³

The book was first noticed in the area that is presently known as Nigeria, during the reign of Rumfa (1463-1499 C.E.) in Kano. A report was given to Shaykh 'Abd-Ar-Rahmān Zagaiti, the leader of the Wangarawa, who became blind at a point in his life, about:

a man who came from Egypt with his students and began to teach the people al-Khalil, a book which people heard of, but had never seen before.³⁴

The news spread among the people of Kano that a man from the East had come with a book called Khalil which captivated the people by its (the book's) "branches" and "roots". Zagaiti, according to the report, later visited the man from Egypt and he (Zagaiti) had an encounter with the man over an interpretation of a passage in the book — *Mukhtaṣar Kahlīl*. The "man from Egypt" was the great al-Maghīlī... When Zagaiti returned to his home, he instructed his students to copy and read the "child of al-Mudawannah" — *Mukhtaṣar* to him. He later taught his students the book. This was how the reading of *Mukhtaṣar* was initiated in Kano by Shaykh Zagaiti. Today, throughout the length and breadth of Nigeria, particularly in areas where learned Islamic scholars exist, *Mukhtaṣar* is there among the books on Islamic law.

Conclusion

It has been shown that *Mukhtaṣar* is a very important literature on Islamic law of the Mālikī school of law. This importance has been noticed and appreciated by those who research into Mālikī school of the *Sharī'a*. Nigerian Islamic scholars have always realised the importance and almost indispensability of the book; yet it appears enough work³⁵ has not been published in English language — which is the official language of Nigeria — on the book. Islamic jurists, particularly in Nigeria, need to make available to the largely English audience in the country, objective and critical English works on the book.

NOTES and REFERENCES

1. The schools are founded by Abū Hanīfa (born at Kufā in 80 A.H.); Mālikī b. Anas (born at Medina in 94 A.H.); Muḥammad b. Idrīs Ash-Shafi'ī (born at Ghazzah in Syria in 150 A.H.); and Aḥmad b. Ḥanbal (born at Baghdad in 164 A.H.) respectively.
2. The party of Caliph 'Alī b. Abī Tālib. While all other Muslims are known as Sunnīs — the orthodox Muslims, the party of 'Alī (with their internal divisions) are known as Shi'ites.
3. Shafi' and Mālikī schools accepted *Ijmā'* as a source of law, while Hanfai and Hanbali schools, in theory, do not directly accept *Ijmā'* as a source of law, in practice however. *Ijmā'* is very much at play. For details, see J. Schacht: *The Origin of Muhammadan Jurisprudence*, Oxford, 1950, pp. 82 ff.
4. Directly or indirectly, like *Ijmā'*, all the four principal Sunni schools of law utilize *qiyās* in their legal processes.
5. For example *The Constitution of the Federal Republic of Nigeria*, 1979.
6. *Hadīth* collections made by Imam Mālik b. Anas (712 - 796 C.E.).
7. The book was originally compiled (the title literally means compilation or register) by 'Abdur-Rahmān b. Qasim al-Utaqi, a leading student and disciple of Imām Mālik. It contains a report of Imām Mālik's legal opinions. The book was edited and enlarged by Sahnūn, Abdus-Salām b. Sa'īd (776-854 C.E.). It is to Sahnūn that the book is now popularly

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- ascribed. The published editions of the book carry only Sahnūn's name as the author. A scholar has rightly noted that the book was a production of four great scholars - Imām Mālik (712-796 C.E.); Abdur-Rehman b. Qasim (Ibn al-Qāsim) al-'Utagi (749-806 C.E.) a student of Imām Mālik; 'Asad b. al-Furāt (a contemporary of Ibn al-Qāsim); and Sahnūn 776-854 C.E. (a student of Ibn al-Qāsim.) for details see 'Abdul Wahhāb b. 'Abd al-Latif in his foreward to Muhammad b. Muhammad As-Sambawīyy (1154-1227 AH): *Al-Iklil*, Cairo, n.d., pp. iii ff.
8. There are not less than twenty commentaries on each of the books. See *ibid.*
 9. From the second half of the third century.
 10. For example 'Abdullahi b. Abi-Zayd al-Qayrawāni's (922-996 C.E.) *Ar-Risalah*, Tunis, 1950; Sahnūn and others. See *infra* f.n. 12.
 11. *Infra*.
 12. They are said to be the writings of seven principal earliest scholars of the Maliki school. The scholars are Sahnūn (776-854 C.E.); Ibn al-Hājib, 'Abdullahi b. Abi Zayd al-Qayrawāni (922-996 C.E.); Abū 'l-Hasan 'Alī b. Muhammad al-Lakhmī d. 478 A.H.; 'Abdullahi Ibn Yūnus (451 A.H.) Ibn Rushd (1058-1126 C.E.) and Muhammad b. 'Alī Al-Māziri (1058-1141 C.E.) Peron's introduction to his *precis de Jurisprudence* as translated by F.H. Ruxton: *Mālikī Law*, Luzac, London, 1916, p. 8.
 13. Justice M.A. Ambali, A *Qādi* of the *Shari'a* Court of Appeal, Ilorin considers this as the greatest quality of the book. Interview at Ilorin on the 7th of February, 1986.
 14. F.H. Ruxton, *op.cit.*, p. v
 15. *Ibid.*, p. vi.
 16. Many scholars hold this view. We shall discuss it in more details later.
 17. This writer has examined not less than a hundred *Shari'a* - judgments and in less than fifteen of them, *Mukhtaṣar* or its commentary is not cited as authority.
 18. J. Schacht: *An Introduction to Islamic Law*, Oxford, 1964, pp. 57, 228.
 19. *Supra*, f.n. 12.
 20. H.A.R. Gibb and J.H. Kramers (ed.), *Shorter Encyclopaedia of Islam*, Leiden, 1974, p. 324.
 21. J.S. Tirmingham: *The Influence of Islam Upon Africa*, Longman, London, 1980, p. 62.
 22. A.D. Bivar and M. Hisket: "The Arabic Literature of Nigeria to 1804: A provisional Account" in *Bulletin of the School of Oriental and African Studies*, University of London, Vol. XXV, 1962, p. 145.
 23. Khalīl b. Ishaq: *Mukhtaṣar Khalīl*, edited by Ṭāhir Az-Zāwī, Darul Kutubi 'Arabiyyah, Cairo, n.d. p. 3.
 24. M.A. Ajetunmobi: "A critical study of *Mukhtaṣar Khalīl*" in *Kano Studies*, Vol. 2, No. 3 1982/85 pp. 53-68.
 25. *Ibid.*
 26. As reported by A.D. Russell and A.A. Suhrawardy: *A Manual of the Law of Marriage from the Mukhtaṣar of Sidikhalil*, Law Publishing Company, Lahore, 1979 ed. (first published in 1913) p. vi.
 27. F.H. El-Masri (ed.) of 'Uthamn b. Fūdi: *Bayan Wujub Al-Hijra Ala 'l-'Ibad*, Khartoum University Press and Oxford University Press, Oxford, 1978, p. 39.
 28. A.D. Russell and A.A. Suhrawardy, *op.cit.*, p. vi.
 29. Abdullahi As-Sadiq Al-Ghamāriyy (ed.) in his preface to Muhammad b. Muhammad As-Sambawīyy, *op.cit.*, p. vi.
 30. Opinion of Dr. A.T. Soliman, an Egyptain Arabist and former Acting Head of the Department of Religions, University of Ilorin. Interviewed on the 16th of June, 1984 at Ilorin.
 31. Peron in F.H. Ruxton, *op.cit.*, p. 11.
 32. *Ibid.*
 33. Information used in this section are obtained mostly from Muhammad Al-Hajj: "A Seventeenth Century Chronicle on the origin and missionary activities of the Wangarawa" in *Kano Studies A.B.C.*, Kano, Vol. I no. 4, 1968, pp. 7-16.
 34. *Ibid.*
 35. The present writer is currently writing a Ph.D. thesis on "A Study of Islamic Law as contained in *Mukhtaṣar Khalīl*".