

A COMPARATIVE STUDY BETWEEN FIQH MUQARAN AND APPROACHES TO COMPARATIVE LAW

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ABSTRACT

Keywords:
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In general, the comparison plays an essential role not only on the level individuals but also on the level societies. Especially, the comparative law and Fiqh Muqaran assist to improve the legal structure in the different countries as well as to remove the barriers among the Islamic countries and Muslims respectively. This paper has conducted a critical and comparative study on the literature review aiming to answer several inquiries about the comparative study between Fiqh Muqaran and the approaches to comparative law. Therefore, the definition of Fiqh Muqaran is introduced, as well as the steps of comparison in Fiqh Muqaran, the approaches of Fiqh Muqaran, the benefits of Fiqh Muqaran and the reasons which lead to Al 'kht'Élaf between the jurists. It is also illustrated the definition of comparative law, the benefits of comparative law and the approaches of comparative law as well as the steps of comparison in comparative law. In addition, the differences and similarities between Fiqh Muqaran and comparative Law will be discussed. Finally, this paper has been proved that the Fiqh Muqaran is more comprehensive than the comparative law as well as the approaches of Fiqh Muqaran because it is regarded as a method as well as science for achieving the comparison.

INTRODUCTION

Obviously, I would like to start with these statements which are adopted by different foreigner scholars Thomas Arnold said “Islam is not only religion and state but also Islam is comprehensive system” Strothman said “Islam is a religious and political phenomenon and the Prophet Muhammad (s.a.a.w.) is not only the messenger of Allah but also the Prophet Muhammad (s.a.a.w.) is a political man, wise man and A great leader”

This search neither is not long and boring nor is not short and insufficient, Islamic jurisprudence which is the spirit of the Sharia and its basis. Even if, fourteen centuries had been passed on its inception and its appearance it still maintains on its strong entity as well as its solid structure is still coherent. In spite of, all the circumstances, problems and obstacles which faced the Islamic nation during its establishment, the Fiqh has been characterized in the prominent trait which is behind of survival and persistence of Islam in harmony with the spirit of civilization. So, the meaning of the fiqh is “The knowledge of legal rules of Shari`ah which had derived from their specific source” the Islamic jurisprudence (*Fiqh*) is divided into two parts, (usūl al- fiqh) and (furū al - fiqh) the science of the methodology and the science of the actual rules or legal field respectively.

Moreover, the Fiqh covers two fundamental areas the rules which relate not only to the actions but also circumstances which are surrounding these actions. Furthermore, these kinds of rules cover not only the Mu`amalaat which is the transactions among people but also `Ibadaat which is worship. Moreover, The methodology which had used in order to establish rules has called Usūl Al -Fiqh and it was improved during the classical Islamic period, the science of Usūl Al -Fiqh is to be the most importance method which had been organized by Muslim scholars in other words Usūl Al -Fiqh “principles or methodology used by the jurists (Mujtahid) to deduce the practical Shari`ah ruling from their sources”. So, the source of usūl al -fiqh is primary source (Quran and Sunnah) and secondary source (Ijma’ and Qiyas). Therefore, there is relationship between Fiqh and Usūl Al -Fiqh to illustrate this relation we will give example fiqh is the various Islamic provisions such as Øalat, ZakÉt and ØyaÉm which regard as the fruits, these fruits must reap from the tree which considers as an evidence. So, the judgment or provision is the fruit and the evidence is the tree. Therefore, Usūl Al -Fiqh teaches the faqih how he can deduce and extract the judgment (fruit) from the evidence

(tree) by using different tools and rules. Thus, we can deduce that because the different methods which are used by the Fuqa'ha and these methods are not in the same level of power some differences have emerged. Therefore, Fiqh Muqaran arises and plays an essential role in reducing the size of the gap between the Madhab by using significant methods such as Talfiq, Takhayur and other methods which are adopted by the Mujtahedin.

FIQH MUQARAN

The history of Fiqh Muqaran

Fiqh Muqaran has never existed in the stage of Prophet Mohammad (s.a.a.w.) because there was no disagreement on the doctrinal matters, although if any dispute appeared the words of Prophet Mohammad (s.a.a.w.) were decisive and shall be applied. But after the death of the Prophet Mohammad and because of the necessity for informing people who are in different area about the practical issues which regarded as a branches of Islamic religion. Therefore, this process cannot be done by any person. So, the Islamic religion strived to choose the suitable person to do this kind of job, this person called Faqih. This idea had been inspired by Prophet Mohammad who deduced this idea from Surah At-Tauba.

((وما كان المؤمنون لينفروا كافة فلولا نفر من كل فرقة منهم طائفة ليتفقهوا في الدين ولينذروا قومهم اذا رجعوا اليهم لعلهم يحذرون)) سورة التوبة

((And it is not possible for Muslims that all should come out. Then why should not a party from each groups hold come out that they may gain understanding of religion and warn their people after coming back to them, haply they may guard themselves.)) Surah At-Tauba.

Moreover, throughout the long years which passed on the Islam from the time when it was born, some Islamic issues which were not in the first Islamic era had emerged. So, in order to find the answer about these issues the Faqih exercises his job by adopting the method of Ijtihad which established by Prophet Mohammad (s.a.a.w.). As a result, because the Ijthadat had expanded and each case has more than one fatwa and judgment because the knowledge and experience in Fiqh and Usūl Al - Fiqh differ from Faqhi to another Faqhi. So, that lead to emerge the Fiqh Muqaran which seeks to remove these differences between the Madhab and find the suitable solution for the problems.

The definition of Fiqh Muqaran

- The sub-issues which are not agreed by the Islamic scholars, imam and Mojtahed because they have different opinions regarding to these sub-issues.

- Collect the different opinions of jurists then analyzing and evaluating these opinions and evidences in order to compare between them for choosing the suitable opinion.
- Fiqh Muqaran is regarded as one of the subjects of Islamic jurisprudence it is looking for the judgment of particular issue which has different judgments which issued by jurists according to use different evidences and different understanding in order to find the suitable opinion.
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The issues which do not fall in the scope of Fiqh Muqaran

1. The issues which have conclusive evidence.
2. The disagreement issues which are unrelated to the Islamic legislation and its provisions.
3. The Comparison between the Islamic law or its provision and other religions or any legal systems do not fall in the scope of Fiqh Muqaran according to the idiomatic sense of Fiqh Muqaran.

The conditions of comparison in Fiqh Muqaran

Sincerity in intention

The Commander of the Faithful, `Umar bin. al-Khattâb, relates that he heard Allah's Messenger (peace be upon him) say "Actions are but by intentions and every man will have only what he intended"
(إنما الأعمال بالنيات، وإنما لكل امرئ ما نوى).

That mean the intention of the Faqhi who intends to compare must be so pure in other word the work of comparison must be done only for Allah and in the line with Islam, instead of the reason of comparison is for fancy, or revenge, or defamation. Thus, this work will be blessed by Allah therefore, if this work achieves this goal, the Faqhi will gain double reward but if it does not achieve the goal the jurist will take one reward only.

Perception and knowledge

The Faqhi must know all specific and small details about the topic which is under comparison rather than have a knowledge or knowing the general information about the issue which is under comparison because in Fiqh Muqaran is not enough to know the science of Fiqh and Usûl Al -Fiqh al-Islami but the Faqhi should be a specialist in this science. So, he should know the various views which had been adopted by different imams. As well as, he should be conversant enough in Islamic jurisprudence, because many of differences returning back to the principles and rules of Islamic jurisprudence.

Objectivity and honesty

There is a main condition must exist in the Faqhi who intends to make any comparison between different Madhhad or judgments or opinions, the Faqhi should be far away from the passion and intolerance. He should be like a judge who displays the different words and the views objectively and honestly without showing any kind of bias and he has to transfer these opinions or judgments accurately from the reliable sources or from the approved books. As a result, he should be neutral when he want to show the different opinions which are adopted by different Madhhad or imams.

The steps of comparison in Fiqh Muqaran

Determine the place of difference and similarity

Even if, there is a huge and wide difference between al Madhhab and imams but there are plenty of common and similar points which are agreed by all of them such as the original source in Islam is Q'uran and SuĒnĒh, the reliance on the Arabic language in order to interpret and reach to the main meaning. Because, the disputes and the difference emerge in the branches and molecules of the issue. Hence the Faqhi at first should determine the points of agreement between imam's views in order to implant the agreed provisions in the reader's mind and mention to their adopted evidence. Therefore, after determining the points of agreement, the points of disagreement will appear clearly. So, the Faqhi must arrange, classify, identify and show their different opinions.

Classify the opposite teams and supporting teams in groups

The opinions of the Madhhad should be classified by the Faqhi in two or three groups, for example: put the opinions which accept this act together and the opinions which refuse this act together with highlighting on their reasons. Moreover, as we mentioned previously the Faqih should follow the objectivity when he shows the different opinions and evidence because the reader has the right to know the reasons which led to these judgments as much as possible without any fabrication or amendment.

Discuss and evaluate the evidences and opinions for all groups

these evidences which relied upon by the different jurists should be discussed accurately in order to know whether these evidences from the primary source Q'uran and SuĒnĒh, or from the secondary source QyĒas or ijmaÑ or mental resources such as IstíaĒn or MaĒaĒlĒÖ MĒrsĒlah or from other sources of Fiqh which is agreed or disagreed by the imams and to know how imams deduced and reached to this judgment by using this evidences.

Comparing between the evidences and choosing the suitable evidence

There are two methodology which can be used by the Faqih during this step the first one is discussing and evaluating the evidence directly after showing the evidences, or by introducing all evidence and after that he should return back to discuss and evaluate the evidences one by one. So, both ways in the end must lead to know the result whether the evidence is accepted or rejected.

After introducing these views, discussing and evaluating all evidence completely, the jurist seeks to compare between all evidences in order to make preponderance for accepting some of them or refuse all the evidence or combine the evidences or distribute these evidence separately on diverse issues. So, here the Faqhi must demonstrate not only that his choice was based on significant evidence (دليل) but also he must prove that his choice was far away from any sectarian feeling or negative feelings which induce him to choice this evidence rather than others. Therefore, the Faqhi should respect all imams and Faqhi even if he disagrees with them. As well as, he cannot disbelieve other jurists or regard them as a non-believer or without faith because in the best conditions he considers as a mojtahed who may be right or wrong.

The approaches of Fiqh Muqaran

Talfiq

Talfiq is a stretch of Takhayyur (patchwork or combination) it means the combination of several opinions and views which are adopted by different Madhhad or jurists into one decisive matter which was dissimilar to all. Moreover, the approach of Talfiq is considered as an instrument of Ijtihad as well as the jurists utilize this approach when they want to establish new judgment which is not exists at all, or when there are conflicting between more than one judgment in the same and particular issue in order to find suitable solution and judgment. Furthermore, it considers as jurisprudential concept which proposes that the Madhhad who depends on weak evidence in the particular issue must give up his judgment and follow the evidence which had offered by another Madhhad because it is realistic and compatible with the requirements of the new Age. Therefore, the different opinions which are selected by the scholar integrate together in order to formulate new judgment which differ from the previous one. Thus, selecting the opinions freely without any restrictions will help to serve the goals of law. For example, a person follows ṡanafi school of thought in the area of touches a hand of the women who is not assumed to be touched by him. So, according to the ṡanafi Madhab which does not impose on him to perform another ablution again. As well as, according to ShafiŃ Madhab, he had made a mistake because he should perform

another ablution. But after that man who adopts ṣanafī Madhab had bleed. So, according to the ṣanafī Madhab which imposes on him to repeat the ablution again. In contrast, Shafīī Madhab does not force him to perform ablution. Therefore, if the man prays without performing another ablution and follows the Shafīī madhab which allows him to pray if he bleed (this is talfiq).

Another example the case of Gulam Ahmed v. Muhammad Ibrahim in 1864 a girl who adopted the Shafīī Madhab which stipulated that the consent of father is necessary for making the marriage valid but she made her marriage without taking the permission of her father. When the case brought to the court, she alleged that she decided to change her Madhab and to follow the ṣanafī Madhab which allowed the adult Muslim woman to make a marriage without fathers consent. In other hand, there are two views which determine whether Talfiq is accepted or unaccepted: The first opinion stated that Talfiq is not allowed because it creates third opinion in the issue which already has two opinion. The second view is that Talfiq is allowed especially in the case when Talfiq will be subjected to probable Ijtihad (اجتهاد ظني) not to the ijmaʿ (اجماع).

Takhayyur

Until day the most effective concept in the *Usul al-Fiqh al-Islami* is Takhayyur (selection). It means election or selection one opinion or view which is adopted by single Madhhab or more than one Madhhab in different issue (not in the same issue). Furthermore, this concept had utilized to estimate potential alternatives from the huge number of jurist's views about a specific point as well as it used with the intention to reduce the restriction in the application of fatwa in the issues which arise. Furthermore, it helps the Faqih to select the most favorable opinion which is adopted by the one of the major Jurisprudential Schools. Therefore, this method has been used widely by the jurists because this method is flexible tools especially in case of selecting the existing rules which adopted among the Madhhabs. Finally, Takhayyur has a tremendous significance in improving a number of personal law or family laws which established in the Muslim countries. For instance, the Muslim woman who seeks to the dissolution from marriage and she adopts ṣanafī Madhab which imposes difficult requirements in order to allow the wife to end the marriage compared with the Maliki Madhab which is elastic because it gives a power to the wife to end the marriage by using the reasons of cruelty and truculence of her partner. Such as Syrian law of personal rights 1953.

Tarjih

If there is conflicting among evidences and one of these evidences has an advantage over another. So, this process can describe Tarjeeh (outweighing), In other words, to give preponderance to one evidence over another because it is strong. Therefore, Tarjeeh particularly occurred among the speculative evidences. In contrast, it does not happen in the definite matters which do not face any contradiction in the particular issue. Therefore, the jurists who want to perform Tarjih should have clear and accurate knowledge in Q'uran and Sunnih, also he should cover everything in IjamaÑ for protecting himself from issuing Tarjih which clashes with any IjamaÑ, he should has a back ground in QyĒĒas, he must has huge experiences and back ground in term of rules and grammars of the Arabic language.

A perfect instance which describe the meaning of Tarjeeh is the determining the Salat al 'Asr time according to the bulk of jurists 'Asr time begins immediately when your shadow and length are equal, In contrast, the Imam Abu xanifa adopts different view which stipulates that the time of Salat 'Asr begins when your shadow is double your length. So when jurist looks to the different evidences which adopted by both the majority of imams and imam xanafi will see that the evidences of the majority are stronger than the evidences of xanafi. So, if the Faqhi follows the majority that mean he makes a preponderance to evidence upon another.

Taqleed

According to the Fiqh, the Taqlid can be utilized when someone accepts the opinions of person or his intellectual authority regardless looking at the evidences or the reasons which led to this judgment. As well as without gaining knowledge in the detailed evidences for those opinions. Moreover, the most tangible instance of Taqleed is the child who learns the basic alphabets when he was a child because obviously, the alphabets are learned unconsciously by the child. Another example is, the patient who follows the doctor instructions for medical treatments without asking about the evidence. So, it is the mechanism which aims to follow the opinions which had taken by Mujtahid and Jurist who had derived and concluded the judgments without asking about the reasons or evidences which are used by the Mujtahid to adopt this judgment. This method is used because some individuals have no abilities to perform Ijtihad due to the lake of the Islamic eligibility which prevents them to deduce the judgments if they do not have enough Islamic knowledge.

Itibañ

Is the level which is situated in the middle between Taqleed and Ijtihad because the person in this level does not have the capacity to perform Ijtihad by deducing the autonomous judgments, as well as this person is considered as a person who has knowledge and experiences in Islamic issues more than the person who follows Taqleed. So, in Itibañ the Muslim has enough capabilities and capacities to distinguish the various opinions in order to select the suitable one.

The benefits of Fiqh Muqaran

- 1- Illustrates the difference and the similarity between all Madhhad and opinions by clarifying the original reasons which lead to dissimilarity.
- 2- Shows the ways which are used by Imams in order to adopt these Ijtihad and elicitation.
- 3- Compares with the different opinions to select the powerful and useful evidences which bring plenty of benefits for individuals as well as leads to improve the Islamic nation. For example in Syria the Personal Status Law has amended to cover the four Madhhad without any prejudice to ᵂanfi Madhhad because previously the personal law in Syria followed only the ᵂanfi Madhhad.
- 4- Reduces the lacuna between all Madhhad in hand, and in other hand at least helps to know the nearest Madhhad to the right way in order to apply it.
- 5- Motivates and encourages the jurists to study the sharia law which considers the main source of law.
- 6- Helps to increase the abilities of scholars in the area of analyzing and deducing the judgments.
- 7- Plays a fundamental role in proving that the Islamic law is the law which can be applied in all times and all nations without any restrictions because it fulfills the nation's needs.
- 8- Seeks to establish the perfect relationships among Muslims communities as well as eliminates the obstacles between Muslim communities who follow different Madhhad.
- 9- solves the mistakes which are committed previously by the Ulama' and Mujtahid who adopted weak evidence by extracting new and compatible Fatwa which will be in the line with the renewable developments in the human life thus that lead to enhance the idea which prove that Islamic law is the comprehensive and renewable.
- 10- Fiqh Muqaran play an essential role on relieving and removing the difficulties and obstacles which face the Muslims by comparing these different fatwas or Madhhad and choosing the best one which harmonizes with their true needing such as combining two prayers (الجمع بين صلاتين)

COMPARATIVE LAW

The history of comparative law

The comparative law has emerged in 18th century especially at Europe. However, before this time the legal scholars had used different methodologies in order to compare between more than one legal systems. Moreover, Montesquieu is the first person who discovers the comparative law, comparative law is an academic study which seeks to study the various legal systems and analyses them separately in order to discover the fundamental factors which create them. Therefore, the history of comparative law can be found in three stages.

Ancient World

There are a big number of comparisons which had been carried in the Ancient world. Moreover, Greek had adopted modern laws from different countries as a whole or part law because they seek to develop their own laws. as well as the Greek law influenced positively during these previous periods on the Roman law by the Greek legal beliefs, rather than particular rules. Therefore, this impact plays an essential role on improving the Roman law that called jus gentium. Furthermore, The Roman did not stop accepting the Greek legal ideas law but it continued to receive the canon law. In the middle ages, canon law had improved by the church which considered as a Roman origin. Obviously, The Lombard School adopted the scientific studies which had succeed in extending their knowledge to all major legal systems on their time. However, it does not achieve this by the scope of comparative law. The Lombard school had replaced by the Glossators who has revived the Roman law. Therefore, the comparative law plays an essential role on establishing and creating the new branches of comparative law such as the comparative civil law, criminal, and administrative law.

The Renaissance

in the sixteenth century there is a huge contribution, specially, in the area of scientific and literary improvement because it raised a movement in legal since that plays an fundamental role on making a strong study as well as showing the source of Roman law brilliantly. Moreover, the French Humanists, Zasius and Alciat give their objections against the legal ideas of medievalism of the Bartolists because these legal ideas are persistent in domination. Therefore, plenty of critical studies which are appeared to demand in the source of pure Roman law. The old customary law which was from Germanic origin that clearly applied in the every-day administration of justice. So, under the influence of the juristic Renaissance which had inaugurated by the Humanists, because of the expansion of native or national influences in legal growth which had taken

place in France and Germany that lead to establish a school of national jurists who made the customary law as an element of the scientific treatment as well as methodical comparison. This in turn occasioned the writing a lot of works which are aimed to make comparison among the native laws and the romantic.

In 19th Century is regarded as the golden period to the comparative law because in this era not only the codification of law was so huge but also the comparative law had been taught as a subject. So, the interest in comparative law and the foreign law were still growing in different countries such as England, Germany, United States and French regardless the codifications.

The definition of comparative law

Obviously, the scholars did not give a particular and universal definition for comparative law. Therefore, we will introduce different definitions: Zweigert and Kotz defines comparative law as “an intellectual activity with law as its object and comparison as its process”.

Comparative law is the systematic study which focuses not only on the specific legal rules but also on the legal traditions. Rheinstejn considers that the comparative law as a ‘scientific method’ in other hands according to the Lambert who considers the comparative law as a legal science because he thinks that "the comparative law is a result of pure scientific object" Moreover, Salleilles maintained that comparative law is a ‘science’ whose object is the discovery of concept of principles common to all ‘civilized’ systems of law.

The general definition of comparative law is studying the differences and similarity between the laws and legal systems which relate to different countries. Actually, the comparative is not regarded as a branch of national law, moreover the comparative law can be called also like ‘the comparison of laws’ the comparative study of law, ‘comparative legal study and research’.

The purpose and benefits of comparative law

- 1- Comparative law according to the some scholars “has no direct goal yet”. In theoretical side, comparative law seeks to illustrate how legal systems will be identical or different.
- 2- It seeks to solve ‘common dilemmas which are faced the various legal systems.
- 3- Comparative law deals with the issue of globalization very accurately because it considers as a significant instrument which

seeks to achieve the unification and harmonization of the legislation within a single country or between more than one countries.

- 4- It helps to amend the obsolete legislations and reform the national law by adopting the modern rules which are more suitable to the human needs.
- 5- Increases the understanding and knowledge about the national systems and what is the direction and tendency of the national legislation comparing with the legislation in the global trends as well as it regards as tools which motivates the jurists to criticize and evaluate the national legal system.
- 6- Study the comparative law assists the jurists to obtain more insight not only into sociological but also socio-legal obstacles.
- 7- It aims to discover the history of law as well as the philosophy of law.

The steps of comparisons in comparative law

Determine the Scope of comparison

The scholar should seek to determine the scope of his comparison whether the scope of comparison will cover all legal systems in the world or less or more than two legal systems and whether he wants to compare a wholly legal system or only particular legal issue. Moreover, the scholar must determine accurately what is the legal aspects which will be covered in the time of comparison ? Whether they will be functions or structures or institutions. So, after that, the scholar must decide what is the method which will be used whether, it is cultural or functional comparison or merging between more than one method.

Characterization the data

This is the important point in the comparison because in this stage scholar should collect factual research, again, this matter considers as a personal choice, whether the scholar will concentrate on the soft or hard issues such as economic or social problems and norms respectively. However, the suitable classification is not only necessary but also indispensable.

Identify the differences and the similarities

The scholar in this step should identify the similarities and differences between the legal systems or the particular legal issues which are under comparison accordance with data which were collected by him in the previous step.

Explain and evaluate the differences and the similarities

The scholar in this stage achieves his purpose by using the methodology in order to perform the comparison.

CONFIRM THE THEORY

Comparative study in this step must consist of some generalized statement which describes the results or giving a suggestions which help to improve the legal system or this declaration will confirm and prove that the study corresponds with the general applicability.

The approaches of comparative law

Functional Approach

Obviously, the Functional method is difficult to be existed as a theory. This approach seeks to make not only comparison but also determination the similarities such as common dilemmas and problems, it compares between the actual needs or problems which emerge in different societies, this approach offered a presumption that every legal systems in every society face the same obstacles and dilemmas and these legal systems solve these problems by adopting several methods in the end the function of these different methods achieve the same results. Moreover, this approach concentrates not only on the impact of events but also on the rules. Although it does not give any interesting to the doctrinal structure, because it considers that the legal or non-legal institution is comparable if the legal systems achieve the same function.

So, its purpose is the judicial decision, functional approach aims to compare more than one judicial decisions which are stipulated by various legal systems in the same issue. Finally it assists to uniform the law because its capability to determine the similarities between the rules and laws helps the legislators to do this kind of job. So, the functional approach should be regarded as a useful tool which establishes a huge purpose by creating rules which seek to solve the problems of human being. Furthermore, functionalism as a sociological theory seeks to solve the problem of negative explanation rather than mitigate the problem of causal explanation.

The shape of the functional approach is:
Different countries have the same problem → they adopt different tools or methodology to solve the same problems and in the end the function of these methods achieve the same results.

However, three steps must be fulfilled in the functional method in comparative.

- 1- The problem should be stated purely by the scholar in functional terms as well as this problem should not be influenced by the own legal system.
- 2- Presentation of these ways which are adopted by different legal systems during the resolving the legal problem.
- 3- Making an evaluation, comparison and analyzing these ways from functional perspective.

The main problem of functionalism is that laws mostly did not have one function, but serve indirect functions and sometimes they have numerous functions or did not have any functions. More significantly, the assumption that legal systems face the same issues is clashed with true fact that focuses on the cultural diversity which exists in the societies as a whole. Hence, especially when it comes to legal issues which contain the questions about the values. As well as, moral the functional method under the comparative law is not very beneficial. Moreover, this approach faces essential criticism because some scholars think that the functional method does not success to show the how the legal systems can be combined together according to their structures.

Juxtaposition approach

the purpose of Juxtaposition approach is to make comparison between the statutes, theories, and legal rules in the different legal systems, this approach seeks to study the legal traditions and rules, by bringing two bodies together and looking for the similarities and differences without solving the problem. Therefore, the main goal to this approach is to achieve the classification of laws according to their likenesses and grouped in “families”, “styles”, or “traditions”. As well as, put them in different groups depending on their traditions, families and styles. Moreover, that lead to significant results such as uniform the laws or at least indicate not only the general principles but also precepts or the constants of law. So, this approach is regarded as an "objective confrontation of comparable doctrines, rules and institutions from one legal culture to the other. As well as, this approach faces plenty of criticisms because the comparatists abandon the idea of logical and neutral referral for comparison. And they regard their own systems which adopted by their own countries as a credible, effective, major and natural system without criticizing it, juxtaposition sends the message which stipulates that the legal problems and the legal solutions, are immortal and universal. Finally, this approach assists negatively to establish the phenomenon of egocentrism.

Cultural approach

Culture approach refuses the assumption which is accepted by the functional comparatists because according to its view the similar legal problems does not mean similar legal solutions because of the different cultures and traditional which arise in both societies. Moreover, this approach interests in identifying and explain the differences in each culture which include various elements, such as beliefs, values and traditions. Therefore, this approach establishes a new assumption which believes that different culture mean different law. However, under the cultural approach the convergence of law is not only undesirable but also is not only improbable due to the difference among jurisdictions "satisfies the need for self-transcendence.

Macro and Micro

The distinction between macro and micro comparison is that the first one makes wholly comparison between more than legal systems but the second one focuses only on specific issue or matter which regards realistic problems or specific legal disputes in more than legal systems when starting a comparison. Therefore, the macro comparison is wider than micro comparison. For example: Compare with Syrian legal system and Egyptian legal system. Is macro comparison. Compare how both Syrian and the Egyptian legal system deal with issue of free trade. Is macro comparison.

Moreover, the dichotomy should be understood with some caution because it is impossible to the scholar to achieve micro comparison without understanding the macro comparison vice versa. Therefore, the Segmentation among the micro and macro is simple because the theory troubles occur in comparative methodology. Although both macro and micro comparison remain an essential connection in numerous ways. Especially, macro asks the significant questions whether if the scholars can arrange and classify the different legal systems either families or 'conventionalism'. In other hand, at the sphere of micro comparison, it argued extensively that the real basis of comparative law is 'functional equivalence'.

THE DIFFERENCE AND SIMILARITY BETWEEN FIQH MUQARAN AND COMPARATIVE LAW

- Both of them are doing comparison as well as both Fiqh Muqaran and comparative law follow the same steps of comparisons. However, Fiqh Muqaran deals with the religious affairs issues but comparative law deals with laws and legal systems.

- Fiqh Muqaran is limited because it used especially in the issues or matters which relate to the Islam. So, the jurist cannot use the Fiqh Muqaran in order to compare between Islam and another religion in general or in specific issues compared with comparative law which can be used without any restriction between any legal systems or laws which are adopted by different countries.
- Fiqh muqaran is used only in the issues which do not have conclusive evidence rather than the issues which have conclusive judgment such as performing hajj and Siyam (حج, صيام) and the number of prayers compared with comparative law.
- Fiqh Muqaran is regarded as one of the subjects of Islamic jurisprudence but comparative law does not regard as a branch of national law.
- The Faqhi can use Fiqh Muqaran in the issues of Ibadaat and Mu`amalaat
- Fiqh Muqaran focuses on the similarity and differences between the judgments, opinions, and evidences which are adopted by madhab as well as comparative law focuses on the similarity and differences between more than one legal system or statute, law or doctrine.
- The Madhab use different methods to solve the same problem but the function of these methods do not achieve the same result because finally the Madhab will take different judgments and opinions such as the issue of dowry, the jurists adopt different opinion about how much the dowry should be so the Madhab of Maliki said the minimum is three Dirhams compare with Hanafi madhab which said the dowry at least ten Dirham (درهم). But, the functional approach in comparative law assumes that every legal system in every society face the same problem which is solved by different methods and the function of these methods achieve the same result, such as Syria and Egypt have common problem which is pollution. Both countries use different method to reduce the pollution rate. Syria uses the sun's energy which regards as a clean energy as well as helps to reduce the pollution rate, Egypt determines the particular areas for establishing the factories which must be far away from the place where the citizens live. So, we can see that even if both Syria and Egypt used different method to reduce the pollution but in the end the function of these methods achieve the same result (reducing the rate of pollution).
- The jurists in Fiqh Muqaran not only stop on the judgments and evidence when they decide to compare between more than one madhab but also they strive to choose the strongest and the best evidence after making the huge analyzing and evaluation. So, they seek to solve the particular problem. However, the scholar who uses the justosposition approach makes comparison

only to find the similarity and difference between legal rules or statutes or doctrines of different systems which are under comparing without attempting to solve the problems.

- Jurists in Fiqh Muqaran concentrate on the evidences and opinions in order to choice the strongest one because in his view the rules of Islamic law can be applied in all ages and all times without any concern compared with culture approach which assumes different cultures mean different legal systems. So, the scholar who uses this approach cannot compare between different legal systems which relate with different culture or follow different traditional or legal mind.

CONCLUSION

So, we can deduce that the Fiqh Muqaran is totally comprehensive and complete compared with the comparative law because Fiqh Muqaran is not only the method to study the comparison between madhab but also it is a science which studies the history of Islamic jurisprudence (Fiqh) because it combines all of them in terms of form and objectivity. As well as the approaches of Fiqh Muqaran are multiple and useful compared with the approaches of the comparative law. So, the Fiqh Muqaran is the binding basis not only for the Muslim but also for Islamic countries as well as the non-Muslim countries which can take plenty of advantages from it because the comparative law until now still needs more reforming and improving by adopting accurately the ideas and principles of the Fiqh Muqaran to establish the suitable environment for achieving his goals and purposes.

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