IBN HALDUN UNIVERSITY

SCHOOL OF GRADUATE STUDIES

DEPARTMENT OF ISLAMIC STUDIES

MASTER'S THESIS

ANALYSIS OF IBN AL-HUMĀM'S VIEWS ABOUT *TALFĪQ*

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THESIS SUPERVISOR

ASSOC. PROF. TUBA ERKOÇ BAYDAR

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by

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A thesis submitted to the School of Graduate Studies in partial fulfillment of the requirements for the degree of master's of art in Islamic Studies.

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This thesis has been read by us, and it has been decided that it is sufficient in terms of scope and quality to obtain a master's of art degree in the field of Islamic Studies (Islamic Jurisprudence).

Thesis Jury Memberss

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This is to confirm that this thesis complies with all the standards set by the School of Graduate Studies of Ibn Haldun University:

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I hereby declare that all information in this document has been obtained and presented by academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

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ÖZ

İBNÜ'L-HÜMÂM'IN TELFİK HAKKINDAKİ GÖRÜŞLERİNİN ANALİZİ

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Hanefî fıkıh kaynaklarında telfikin cevazından ilk bahseden kişinin Tarasüsî olduğu söylenir. Daha sonra İbnü'l-Hümâm, *Tahrîr* ve *Fethu'l-Kadîr* adlı kitaplarında, görünüşe göre *ittibâu'r-ruhas*'ın caiz olduğuna ve *telfîkin* yasaklanmadığına işaret eden birtakım mübhem ifadeler zikretmiştir. İbnü'l-Hümâm'ın yaşadığı dönemde tüm İslami ilimlerde olduğu gibi fıkıh usulü alanında da en önde gelen âlimlerden biri olduğu herkes tarafından bilinmektedir. Bu sebeple onun görüşleri ve problemli konulara yaklaşımları her zaman usulcülerin dikkatini çekmiştir. İbnü'l-Hümâm'ın yanında okumuş olması hasebiyle bu ifadelerin gerçek anlamını en iyi kavrayan âlimlerden biri olan Kâsım b. Kutluboğa, birçok yerde *telfîkin* caiz olmadığını ifade etmiştir. Ancak İbnü'l-Hümâm'ın bu kapalı ifadeleri hakkındaki tartışma burada bitmemiş, aksine daha da kızışmıştır. Bunun açık bir örneği İbn Nüceym el-Mısrî'nin birçok yerde *telfîki* kullanarak fetva vermesi ve bunun caiz olduğu görüşünü İbnü'l-Hümâm'a atfetmesidir. Bir diğer örnek ise Molla Ferruh'un *telfîkin* bir istidlal yöntemi olduğunu ispatlamak için müstakil bir risale yazması ve bunun caiz olduğunu ispatlamaya çalışmasıdır. Nitekim İbnü'l-Hümâm'ın mücmel ifadeleri usul âlimleri tarafından günümüze kadar çokça incelenmiştir. Bu yüksek lisans çalışmasının temel amacı da, İbnü'l-Hümam'ın bu ifadelerden neyi kastettiğini ve bu ifadelerin telfikin geçerliliğine delil olup olamayacağını ortaya koymaktır.

Anahtar Kelimeler: Hukm, İttibâu'r-Ruhas, Taklidü'l-Mutlak, Telfîk.

ABSTRACT

ANALYSIS OF IBN AL-HUMĀM'S VIEWS ABOUT *TALFĪQ*

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In Hanafi jurisprudential sources, it is said that Tarasūsī spoke first about the permissibility of *talfīq*. Then Ibn al-Humām mentioned several ambiguous phrases in his books *Tahrīr* and *Fath al-Qadīr*, which indicated the permissibility of *tatabbuʿ al-rukhos* and the non-prohibition of *talfīq*. It is known to everyone that Ibn al-Humām was one of the most prominent scholars in the field of *usūl al-fiqh,* as well as all Islamic sciences in his time. Due to this, his views and approaches to problematic issues have always been in the spotlight of *usūlī* scholars. Qāsim bin Qutlūbughā, one of the scholars who is most likely to understand the true meaning of these phrases due to his study in the presence of Ibn al-Humām, has stated in many places that *talfīq* is not permissible. But the debate about these ambiguous phrases of Ibn al-Humām did not end there; rather, it heated up even more. A clear example of this is Ibn Nujaym al-Miṣrī, who issued a *fatwā* in several places using *talfīq* and attributed the opinion of its permissibility to Ibn al-Humām. Another example is Mullā Farrūkh, who wrote an independent *risālah* to prove that the *talfīq* is a type of legal reasoning and tried to prove its permissibility. Thus, Ibn al-Humām's ambiguous expressions are examined a lot by *usūlī* scholars to this day. The main goals of this master's paper are to reveal what Ibn al-Humām intended from these expressions and that these phrases cannot be proof of the validity of *talfīq*

Keywords: Al-Hukm, Ittibāʿ Al-Rukhos, Al-Taqlīd Al-Mutlaq, Al-Talfīq.

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CHAPTER I

INTRODUCTION

1.1. The Topic of the Thesis

The Hanafi madhhab of law, like other schools, uses several different methods of legal reasoning from the four primary sources of Islamic law. It can be said that methods of legal reasoning such as *istihsān* and *takhrīj* are among them. Nowadays, there are some scholars who say that *talfīq,* combining the jurisprudential views, is one of the legal reasoning methods of the Hanafi madhhab. In Hanafi jurisprudential sources, it is said that Tarasūsī is who spoke first about the permissibility of *talfīq*. Then Ibn al-Humām mentioned a number of ambiguous phrases in his books *Tahrīr* and *Fath al-Qadīr*, which apparently indicated the permissibility of *tatabbu' al-rukhos* and the non-prohibition of *talfīq*. It is known to everyone that Ibn al-Humām was one of the most prominent scholars in the field of *usūl al-fiqh,* as well as all Islamic sciences in his time. Due to this, his views and approaches to problematic issues have always been in the spotlight of *usūlī* scholars. Qāsim bin Qutlūbughā, one of the scholars who is most likely to understand the true meaning of these phrases due to his study in the presence of Ibn al-Humām, has stated in many places that *talfīq* is not permissible. But the debate about this ambiguous phrase of Ibn al-Humām did not end there; rather, it heated up even more. A clear example of this is Ibn Nujaym al-Miṣrī, who issued a *fatwā* in several places using *talfīq* and attributed the opinion of its permissibility to Ibn al-Humām. Another example is Mullā Farrūkh, who lived in Makkah, wrote an independent *risālah* to prove that the *talfīq* is a type of legal reasoning and tried to prove its permissibility. Thus, Ibn al-Humām's ambiguous expressions are examined a lot by *usūlī* scholars to this day. The primary objective of this study is to reach what Ibn al-Humām meant by these enigmatic phrases in his books.

The thesis will try to find answers to the following questions:
- Is it *talfīq* permissible according to the Hanafi madhhab of law's standards?
- Did Ibn al-Humām really support the permissibility of *talfīq*?

- Are there acceptable *talfīq* and non-acceptable *talfīq*?

- In what sense should we understand these enigmatic phrases?

- Can *talfīq* be used as a permissible type of legal reasoning?

- What are the reasons for the disagreement of *usūlī* scholars about these phrases?

- Which of these approaches is more correct?

1.2. The Importance of the Thesis

Literal interpretation of jurisprudential texts, inappropriate use of *qiyās*, orientalist approach, inability to distinguish between *ʿurf* and *hukms* or attempts to make them one thing, and misunderstanding or denying the usūl of *mujtahids*' approach to *nass* have undermined the importance of madhhabs in reality and started to cause various issues in the society. Accordingly, the desire to use other new methods rather than the classical *usūl al-fiqh* in solving new cases caused by modern changes in both scientific and intellectual fields made this situation even more complicated. Superficial and unilateral approaches that are not based on *usūl al-fiqh*, which has been formed and polished for thousands of years and do not have an entrenched foundation, have given rise to new discussions and started to cause a split between Muslims. Today, one such approach is the phenomenon of *talfīq*. Some scholars especially refer the validity of *talfīq* to the *muhaqqiq* scholars of the Hanafi madhhab of law, particularly to Ibn al-Humām, so it increases the topic's relevance too. It can be said that the aim of this study is *usūlī* analysis of Hanafi scholars' views, who interpreted ambiguous phrases of Ibn al-Humām or used them in their *fatwās*. In addition, the differences between *talfīq* and similar concepts, whether it can be a type of legal reasoning or not, were also taken into consideration.

In this study, only the original meaning of phrases about *talfīq* attributed to Ibn al-Humām has been analyzed through commentaries, approaches, and glosses on these expressions. However, other scientific aspects of Ibn al-Humām, the manifestation of *talfīq* in modern issues particularly, in financial transactions, and irrelevant topics such as *rukhsah* have not been examined.

1.3. Research Methodology and Scope

Ibn al-Humām's *al-Tahrīr* and *Fath al-Qadīr* have been selected as the main sources of this study. In the study, Ibn al-Humām's views on *talfīq* are discussed. Ibn al-Humām's statements about *talfīq* are ambiguous; therefore, a summary of the commentaries written by other scholars on these statements is also presented. It is not possible to claim a definitive conclusion about Ibn al-Humām's approach to the issue of *talfīq*. Nevertheless, it is possible to understand his approach to the issue of *talfīq* through the expressions in his books. Sometimes, the various interpretations given by the commentators also make it difficult to determine Ibn al-Humām's approach to the issue of *talfīq*.

1.4. Literature Review

1.4.1. Turkish Academic Works

Yakup Kaya's master's thesis titled *İbnü'l-Hümam'ın İbadetler Alanındaki Görüşleri*[1] in 2001 is one of the most important academic works related to this topic. The thesis consists of an introduction and two chapters. It is 78 pages in total. In the introduction, detailed information about Ibn al-Humām's life is given, and the whole of the first chapter is devoted to *sharī'ah* evidence. The second chapter is devoted to Ibn al-Humām's method of discussion of the subjects, his comparisons between madhhabs, and his approaches to other topics. This study differs from our study in that Ibn al-Humām's approach to the issue of *talfīq* is not mentioned at all.

Another work on Ibn al-Humām in the field of Islamic law is Ravza Cihan's master's thesis entitled *İbnü'l-Hümâm'ın Fethu'l-Kadîr Adlı Eserinin Metot ve Muhteva Açısından İncelenmesi*[2]. This thesis, which consists of 131 pages, is divided into three chapters. In the first part, Ibn al-Humām's introduction was given, and in the second part, after the introduction of *Fath al-Qadīr*, the analysis of the work in terms of the method was revealed. In the third chapter, Ibn al-Humām's approach to topics such as the conditions of marriage, types of marriage, and *mahr* (dowry) is illustrated

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[1] Yakup Kaya, *İbnü'l-Hümam'ın İbadetler Alanındaki Görüşleri,* (Master thesis, Marmara university, 2001).

[2] Ravza Cihan, *İbnü'l-Hümâm'ın Fethu'l-Kadîr Adlı Eserinin Metot ve Muhteva Açısından İncelenmesi,* (Master thesis, Sakarya university, 2010).

with examples. Although the study analyzed the *Fath al-Qadīr* in detail, it did not touch on the ambiguous statements on *talfīq* in it.

Apart from these two academic studies, Hakkı Aydın's book entitled *Sivaslı İbn al-Humam ve Tahrir*[3] is one of the most comprehensive studies ever done in terms of introducing Ibn al-Humām in all aspects and revealing his scholarly personality. In addition to this, Ibn al-Humām's work titled *al-Tahrīr*, which he wrote on usūl al-fiqh, is also a work that is analyzed in depth. In this work, the content of *al-Tahrīr* is analyzed in general; in this regard, it is different from our study which presents the issue of *talfīq*.

Ethem Demir's master's thesis *İslam Hukukunda Taklid ve Telfik*[4] among the Turkish academic studies written on the subject of *talfīq* has its own characteristics that other studies on *talfīq* do not have. In particular, it has succeeded in providing detailed information about *taqlīd too*.

One of the academic articles discussing whether *talfīq* can be a method among methods of proof is Burak Ergin's article, *Hanefi Mezhebinde Yeni Bir İstidlal Yöntemi: Mezheb İçi Telfik*.[5] In the study, the author addresses issues such as when the issue of *talfīq* arose in the Hanafi Madhhab, which jurists were involved in discussing the issue, and which group was more accurate.

1.4.2. Arabic Academic Works

There are a few classical articles directly related to the subject, but when it comes to academic studies, there is not this intensity. Among the studies written on *talfīq*, we can say that the doctoral thesis *al-Talfīq wa Mawqiful-Usūliyyīna minhu*[6] is one of the best. The author, Muhammad Abdurrazzāq Ahmad Darwish, has tried to give detailed information about the characteristics of *talfīq*, its origins, principles, as well as its areas and *hukm*.

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[3] Hakkı Aydın, *Sivaslı İbn al-Humam ve Tahrir,* 1st., (Sivas: Sivas Belediyesi Yayınları, 1993).
[4] Ethem Demir, *İslam hukukunda taklid ve telfik,* (Master thesis, Uludağ University, 2014).
[5] Ergin, Hanefi Yeni Bir İstidlal Yöntemi: Mezheb İçi Telfik, *Journal of Islamic Review 12*, (September 2022).
[6] Muhammad ʿAbdurrazzāq bin Ahmad al-Darwīsh, *al-Talfīq wa mawqif al-ʾUsūliyyīna minhu*, 1st ed., (Kuweyt: Wizāratu al-ʿAwqāf wa al-Shuʿūn al- al-Islāmiyyah, 2013).

One of the academic articles that provides detailed information about *talfīq* and how it differs from other terms is Abdullāh bin Muhammad bin Hasan al-Saʿīdī's article *al-Talfīq wa hukmuhu fī al-fiqh al-Islāmī*.[7] The author has brought together in one place all the different views on *talfīq* and has attempted to write a work of an academic standard.

Since the term *talfīq* is very similar to other terms, it is necessary for every scholar to know the differences between them. Another study that we have benefited from on this subject is Ibrāhīm Kāfī Dönmaz's *Hukm al-Rukhsah wa Tatabbuʿ al-Rukhos fī al-Fiqh al-Islāmī*[8] written in Arabic. In this study, very detailed information is given about the *tatabbuʿ al-rukhos*.

1.4.3. English Academic Works

There are a number of English-language academic works which address the subject of *talfīq*. For instance, Birgit, Krawietz's *article Cut and Paste in Legal Rules: Designing Islamic Norms with Talfīq.*[9] This article represents one of the earliest English-language contributions to the topic of *talfīq*. This article contains several chapters. Initially, the author emphasises that *talfīq* is also relevant in other fields of study beyond *fiqh*. One of the key elements of the article is an analysis of the various approaches adopted by the madhhabs to the *talfīq*. The article, which is based on a comprehensive review of the literature from the four madhhabs, has greatly contributed to the development of our thesis.

Another academic work related to the *talfīq* is *Private Muftīs In A Postcolonial State: A Study Of Legal Reasonıng Among Deobandī Ḥanafīs In Contemporary Pakistan.*[10] This study examines the legal reasoning of Deobandī Ḥanafī jurists in contemporary Pakistan. It addresses a range of classical and modern issues in *usūl al-fiqh*, including

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[7] ʿAbdullāh bin Muhammad bin Hasan al-Saʿīdī, al-Talfīq wa Hukmuhu fī al-Fiqh al-Islāmī, *Dirāsah Islāmīyya* 16, no. 893845 (January 2009).
[8] Ibrāhīm Kāfī Dönmaz, Hukm al-Rukhsah wa Tatabbuʿ al-Rukhos fī al-Fiqh al-Islāmī*, Dirāsah fiqhiyyah wa Usūliyyah* 91, n.707 (February 2014).
[9] Krawietz, Birgit. "Cut and Paste in Legal Rules: Designing Islamic Norms with Talfīq." Die Welt des Islams 42, n.1 (2002): 340. https://www.jstor.org/stable/1571293.
[10] Āmir Bashīr, *Private Muftīs In A Postcolonıal State: A Study Of Legal Reasonıng Among Deobandī Ḥanafīs In Contemporary Pakistan,* (Phd. Dissertation, The University Of Chicago, 2022).

fatwā, *ijtihād*, custom, and *tatabbu' al-rukhos* and *hiyal*. The present study is of great significance, primarily due to its comprehensive analysis.

The following article, *Al-Talfīq as an Innovative Solution for Primary Fiqh Issues in Halal Supply Chain Operations*,[11] makes further mention of the use of *talfīq*, as previously discussed, in the field of economics. Despite its brevity, the article provides a general overview of *talfīq*. However, given the article's focus on economics, it does not present any new findings on the subject of *talfīq*.

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[11] Muhamad Rahimi Osman, Al-Talfīq as an Innovative Solution for Primary Fiqh Issues in Halal Supply Chain Operations, *Pertanika Journals*, 25, n.39-50 (November 2017).

CHAPTER II

THE DEFINITION OF *TALFĪQ*, ITS DIFFERENCES FROM OTHER RELATED TERMS

2.1. The Definition of *Talfīq*

Humans use words to convey the concepts in their minds to other people. It is known that there are associations of people engaged in various fields in society. Therefore, these people develop certain terms to express concepts related to their field. As long as they speak the same language, they always pick the above-mentioned terms from a word in that language. This selection is made by turning a word with a general meaning into a specific meaning. As a result, it turns out that there is always a close connection between the lexical meaning and the idiomatic meaning. That is why it is very important to find this connection to understand the technical meaning of terms.

2.1.1. The Lexical Meaning of *Talfīq*

In Arabic, the *masdar lafqun* signifies the appropriateness between things. But it has different meanings when it comes with different verbs. It is said in Arabic تلافق أمرهم and meant by this *becoming appropriate for each other*[12]. It is also worth mentioning that this meaning is more metaphorical.[13] There is another lexical meaning of this word, and it is shedding light on by examples brightly. The example for another meaning of *talfīq* is combining and conjoining, and it is said لَفَقْت الثوب بالثوب لَفْقا and meant *to combine one part of material with another and sew it*. This meaning is closer to technical meaning including some aspects of the meaning.[14] But sometimes it is also used in other real meanings like لَفَقَ فلان أمرا فلم يدركه that is *to say he tried to*

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[12] Abul Hasan Ahmad bin Fāris bin Zakariyya, *Maqāyīs al-Lughah,* 2nd ed., (Beirut: Dār al-fikr, 1979), 5:257.

[13] Abul Qāsim Mahmūd bin ʿUmar bin Ahmad al-Zamakhsharī, *Asās al-Balāghah,* 1st ed., (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1998), 2:175. Majduddin Muhammad bin Yaʿqūb al-Fīrūzābādī, *al-Qāmūs al-Muhīṭ,* 8th ed., ((Beirut: al-Risālah publishers, 2005), 922.

[14] Muhammad Murtaḍā bin Muhammad bin Muhammad bin ʿAbdurazzāq al-Husaynī al-Zabīdī, *Taj al-ʿArūs,* 1st ed., (Kuweit: Matbaʿah al-Hukūmah, 1990), 26:361.

do something but didn't obtain it.[15] So here it can be said this word has homonymic meaning. Furthermore, there is another word لَفِقَ الشيء لَفْقا which is contained with similar letters and means to *obtain something.*[16] The difference between the last two examples is that the first one is (لَفَقَ- يَلْفَقُ), and the second one is (لَفِقَ- يَلْفَقُ). In brief, there are various meanings of the *maṣdar lafq* like combining, obtaining and becoming appropriate for something. *Talfīq* (تلفيق) is one form of *maṣdar* which belongs to *bāb* (تفعيل) and it has the meaning of exaggeration. This meaning is closer to the meaning of combining one part of a material with another and sewing it. But it also has an additional meaning, which is the meaning of exaggeration.

2.1.2. The Technical Meaning of *Talfīq*

The term with the same name can have different meanings in different sciences. Therefore, it is also appropriate to mention here that we attempt to reach the technical meaning of *talfīq* only in terms of *usūl al-fiqh* in this subchapter. First, the definitions given by usūlī scholars are reviewed one by one. Then, through analysing these definitions, the definition of *talfīq*, which is acceptable according to us, emerges. As for the literal meaning of this term, *usūlī* scholars have been defined by several definitions. For example, Muhammad Saʿīd al-Bānī (d.1351/1933) defined it like this: التلفيق هو الإتيان بكيفية لم يقل بها مجتهد and it can be translated into English like following: *talfīq is coming up with a form that is not said by a mujtahid.*[17] However, some contemporary scholars have criticized this definition a little.[18] He claims that this definition covers more than just the concept of *talfīq.*[19] However, it is necessary to deeply analyze this opinion expressed in the form of criticism about the above definition. This analysis should be based on the definitions given by other contemporary *usūlī* scholars. Another definition for *talfīq* is تركيب صـورة مـن مـذاهب مختلفة لا يقول بها أحد من هذه المذاهب حال تركيبها and it can be translated into English like this: *combining a form based on the schools of law' views but none of them accept*[20]

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[15] Abul Faḍl Jamāluddin Muhammad ibn Manẓūr al-Miṣrī, *Lisān al-ʿArab,* 1st ed., (Beirut: Dār Ṣādir, 1990), 10:331. Abu Manṣūr Muhammad bin Ahmad al-Aẓharī, *Tahzīb al- Lughah*, 1st ed., (Cairo: Dār al-Qawmiyyah al-ʿIlmiyyah, 1964), 9:159.

[16] Comission, *al-Muʿjam al-Wasīt*, 1st ed., (Cairo: Maktabah al-Shurūq al-Dawliyyah, 2004), 833.

[17] Muhammad Saʿīd ʿAbdurrohmān al-Bānī al-Husaynī, *ʿUmdah al-tahqīq fī al-taqlīd wa al-talfīq,* 2nd ed., (Damascus: Dār al-Qādirī, 1997), 183.

[18] Ethem Demir, *İslam hukukunda taklid ve telfik,* (Master thesis, Uludağ University, 2014), 60.

[19] Demir, *İslam hukukunda taklid ve telfik,* 60.

[20] Muhammad ʿAbdurrazzāq bin Ahmad al-Darwīsh, *al-Talfīq wa mawqif al-ʾUsūliyyīna minhu*, 1st ed., (Kuweyt: Wizāratu al-ʿAwqāf wa al-Shuʿūn al- al-Islāmiyyah, 2013), 147.

this form as their view.[21] It can be said that this definition is more specific than other definitions and can distinguish the concept of *talfīq* from other concepts and terms. Furthermore, there is another definition that helps to understand the meaning of *talfīq* clearly*: to form the ḥukm of an issue by utilizing elements selected from more than one madhhab.*[22]

All these mentioned definitions complement each other. It can be said that the last two definitions represent very close meanings. As far as the first definition is concerned, it is noticeable that this definition is a bit more general.[23] We will try to discuss the strengths and weaknesses of this definition through a few examples. The first point to be considered in the definition is the word *mujtahid*. Because of the use of this word, the definition included *mujtahids* who have not an independent madhhab. Due to this problem, the definition has faced two criticisms. Firstly, if there are no basic rules that distinguish the madhhabs from each other, the concept of *talfīq* itself will not exist because not all mujtahids have madhhab based on specific rules.This shows that following the views of a *mujtahid* that has reached us is not *talfīq*, but a form of absolute *taqlīd*. Although absolute *taqlīd* is not permissible according to some scholars[24], there are some differences between *talfīq* and absolute *taqlīd*. Secondly, since the word *mujtahid* is general, it indicates that there could be *talfīq* even during the time of the Companions. Although there were *mujtahid*s at that time, madhhabs had not been formed. Muslims were asking *mujtahid*s about daily issues and getting answers to their problems. Since there were no madhhabs, it was not necessary to follow a certain madhhab, but impossible. The word *mujtahid* causes the occurrence of *talfīq* to be realized by the Muslims living at that time to enter the definition. There are also little differences between the second and third definitions. This difference is that none of the madhhabs accepts the complex form resulting from *talfīq*. From this point of view, it can be said that the second definition is more accurate than the third. The third definition points out that *talfīq* is

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[21] ʿAbdullāh bin Muhammad bin Hasan al-Saʿīdī, al-Talfīq wa Hukmuhu fī al-Fiqh al-Islāmī, *Dirāsah Islāmīyya* 16, n. 893845 (January 2009): 6.

[22] Eyyüb Said Kaya, "Telfîk", TDV İslâm Araştırmaları Merkezi, accessed March 12, 2024, https://islamansiklopedisi.org.tr/telfik--fikih.

[23] Demir, *İslam hukukunda taklid ve telfik,* 60.

[24] Muhammad Taqī ʿUthmānī, *al-Taqlīd fī Nazar al-Sharʿ,* 3rd ed., (Karachi: Quranic Studies Publishers, 2017), 21.

one of the types of legal reasoning.[25] However, madhhabs do not accept *talfīq* as an independent type of legal reasoning. This is exactly the meaning of the sentence لا يقول بها أحد من هذه المذاهب in the second definition. Therefore, the second definition explains the meaning of *talfīq* in more detail.

By the way, here is another specific definition that reveals the meaning of *talfīq*. This definition is as follows: الجمع بين المذاهب الفقهية المختلفة في أجزاء الحكم الواحد and it may be translated into English like that: *combining (views of) different schools of law in parts of the same ḥukm.*[26] After he says that al-Bānī's definition mentioned above is more general, he goes on to explain the definition that is correct according to him. According to him, the last part of this definition, *in parts of the same ḥukm,* excludes *tatabbuʿal-rukhos* and *al-intiqāl among madhhabs* from the definition.[27] However, it is necessary to elaborate on this claim. Here, the entry that excludes tatabbu rukhos from the definition is that no madhhab accepts the ruling resulting from *talfīq* as correct. However, this entry is not given in its definition.

In brief, it is desirable not to include the word *mujtahid* in the definitions mentioned above. Since the concept of *talfīq* is closely linked to the *usūl* of the madhhabs, it is necessary to include the word madhhab in the definition. Inferring from these definitions, it can be said that *talfīq* is an *invalidly[28] combining (views of) different schools of law in parts of the same issue*. The word *combining* in this definition points to the dictionary meaning of *talfīq*. As we mentioned above, every term is formed by specializing in a word that has a general meaning in a language. The word *different school of law* in the definition means that *talfīq* appeared after the emergence of madhhabs[29] and occurred by combining two or more judicial issues. Considering that *talfīq* occurs after the action and *tatabbuʿal-rukhos* occurs before the action, *tatabbuʿal-rukhos* is excluded from the definition with the word *same ḥukm*. By adding the word *invalidly* to the definition, the concept of *al-intiqāl* is

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[25] Kaya, "Telfik".
[26] al-Saʿīdī, al-Talfīq wa Hukmuhu fī al-Fiqh al-Islāmī, 12.
[27] al-Saʿīdī, al-Talfīq wa Hukmuhu fī al-Fiqh al-Islāmī, 12.
[28] Ergin, Hanefi Yeni Bir İstidlal Yöntemi: Mezheb İçi Telfik, 675.
[29] al-Saʿīdī, al-Talfīq wa Hukmuhu fī al-Fiqh al-Islāmī, 13.

excluded from the definition. Because *al-intiqāl among madhhabs* is not always invalid, but sometimes it may be permissible.[30]

2.2. Related Terms to *Talfīq*

Distinguishing the invisible differences between the terms will significantly help you understand the concept better. For this reason, it is necessary to explain the terms similar to *talfīq* in several aspects but differ when analyzed in detail. In this section, we will discuss the differences between them.

2.2.1. *Tatabbuʿ al-Rukhos*

Usūlī scholars defined this term as such: الأخذ من المذاهب ما هو أهون فيما يقع من المسائل and it may be translated into English *to choose the one that is easier for himself from the madhhabs in the issues that he faces.*[31] Some scholars defined this term like that the transformation of the original *hukm* into an easy *hukm* due to a necessity that has arisen, even though the original *hukm* is still valid.[32] It is known that a number of conditions are required for the *rukhsah* to be followed, which is a clear indication that the *rukhos* are not the original *hukm* of Islamic law. Many scholars have stated that the life of Muslims should be based on *ʿaziymah* and not on *rukhsah*. Nevertheless, sometimes one can follow the *rukhos* according to the situation. When a person follows his own madhhab in cases that are advantageous to him and follows the *rukhsah* of other madhhabs in cases that are disadvantageous to him, *tatabbuʿ al-rukhos,* which is a synonym for *talfīq*, occurs.[33] Interestingly, due to the similarity of these two terms, some scholars have said that both terms are the same.[34] However, there are some differences and similarities between them. At this point, it is time to address the differences between the two terms.

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[30] Muhammad ʾAmīn bin ʿUmar Ibn ʿĀbidīn, *Sharhu ʿUqūdi Rasm al-Muftī*, 2nd ed., (Istanbul: ISAM yayınları, 2022), 181.

[31] Muhammad ʾAmīn bin Mahmūd al-Bukhārī ʾAmīr Pāshāh, *Taysīr al-Tahrīr,* 1st ed., (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1983), 4:254.

[32] Hasan ʿAttār ʿAbdurrohmān bin Muhammad ʿAlī bin Husayn al-Shirbīnī, *Hāshiyah al-ʿAttār ʿAlā Jamʿ al-Jawāmiʿ*, (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2004), 1:162.

[33] Sayit Tahirov, *İslam Hukukunda Telfîk,* (Master thesis, Uludağ University, 2016), 11.

[34] ʿAbdulhakīm al-Rumīlī, *Taghayyur al-fatwā bi taghayyur al-ijtihād,* (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1971), 265.

- Knowledge. One of the main differences between the two terms is knowledge.[35] Sometimes *talfīq* occurs consciously and sometimes unconsciously, but *tatabbuʿal-rukhos* always occurs consciously. Logically, without knowing *hukms* of other madhhabs, one cannot apply them. How can someone act on what is not in his mind?! When a person knows the easy *hukms* of other madhhabs, he begins to follow them for his own advantage. In fact, his own madhhab has not given him the easy *hukm* he wants in this particular case. But *talfīq*, sometimes, can be done intentionally and sometimes unintentionally.[36] For example, if a person asks *hukm* of a certain issue from the scholars of different madhhabs without knowing that it is not permissible and follow them, he becomes a *mulaffiq*. But *tatabbuʿal-rukhos* occurs as a result of following the *rukhos* of other madhhabs even though he knows that it is not permissible.

- Fulfillment in the context of a single issue. Another difference that sets the two terms apart is fulfillment in the context of a single issue.[37] As many *usūlī* scholars have pointed out, *talfīq* and *tatabbuʿal-rukhos* are different from each other in terms of combining *hukms*[38] of two madhhabs in one case.[39] For example, if he performs ablution according to the Shāfiʿī madhhab and anoints part of his head. Afterwards, he prays after touching a woman without lust and imitates Mālikī madhhab on the issue of the ablution not being invalidated; this imitator would be following two madhhabs, Mālikī and Shāfiʿī, in one ablution. However, if he acts in accordance with both madhhabs on two separate cases, this is *tatabbuʿal-rukhos*, not *talfīq*.[40] Someone says to his wife you are three *talāq* and asks one *muftī* about *hukm* of this marriage. This *muftī* says him there is major *talāq bāʾin* between them, so he leaves her and divorces. After that, very person says to his another wife you are three *talāq* then asks another *muftī* about the result of his action. The second *muftī* says to him that there is only *talāq rajʿiyy*. In that case, it is permissible for him to remarry the

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[35] Demir, *İslam hukukunda taklid ve telfik,* 70.

[36] Tahirov, *İslam Hukukunda Telfik,* 12.

[37] Ahmet Aydin, Taklid Kavramına Dair Tartışmalardan Biri Olarak Mezhepler Arasında İntikâl Meselesi, *Şırnak Üniversitesi İlahiyat Fakültesi Dergisi 7,* (June 2013): 14. Ghazī bin Murshid bin Khalaf al-ʿUtaybī, al-Talfīq bayna al-Mazāhib al-Fiqhiyya wa ʿAlāqātuhu bitaysīr al-fatwā, *Majallah al-Majmaʿ al-fiqh al-Islāmī 23,* (January 2010): 18.

[38] Jabroʾīl al-Mahdī bin ʿAlī, al-Qawl al-Sadīd fī Bayān Silah al-Talfīq bi Tatabbuʿal-rukhos, *Majallah al-Buhūs wa al-Dirāsāt al-sharʿiyyah 8,* (March 2013): 66.

[39] Husayn Mutāwiʿ al-Tartūrī, *al-Talfīq wa Tatabbuʿal-rukhos,* (Master thesis, Khalil University, 2006), 108.

[40] Tartūrī, *al-Talfīq wa Tatabbuʿal-rukhos,* 108.

second woman. It should be noted that he said the same words in both cases. However, why is the *hukm* different? This is because he said the same words in two different cases.[41] Exactly, this is *tatabbuʿal-rukhos*, not *talfīq*.

- *Tashahhī*. Another difference between the two concepts is the *Tashahhī*.[42] *Tashahhī* is an integral part of the concept of *tatabbuʿal-rukhos*. Whenever *tatabbuʿal-rukhos* takes place, the *tashahhī* will take place there as well. However, this element is not necessary for *talfīq* to occur. Sometimes, *talfīq* can take place even without *tashahhī*.[43]

- Occurrence. Another difference that distinguishes the two concepts is the difference in their historical emergence. As we mentioned above, the term *talfīq* did not exist in earlier periods, and the term *talfīq* dates back to the 13th-14th centuries AD.[44] This shows that, unlike *tatabbuʿal-rukhos*, *talfīq* is one of the later comer terms in *usūl al-fiqh*. *Tatabbuʿal-rukhos* was already in existence long before the emergence of the *talfīq*.[45] A few important points remain unexplored here. One of them is that some contemporary scholars say that when a *tashahhī* person takes *hukms* of two madhhabs and applies them to the same issue, it is considered *talfīq*. If *tashahhī* caused this situation to arise, i.e. if the *talfīq* is based on the *tashahhī*, then this is an example of both *tatabbuʿal-rukhos* and *talfīq*.[46] If the is disappeared, then it is only *talfīq*.[47] Since this approach contradicts the definition of *talfīq*, it is necessary to analyze it from several perspectives and clarify the points that need to be considered. If the above view is analyzed thoroughly, it will be seen that the point that unites *talfīq* and *tatabbuʿal-rukhos* is that they arise based on *tashahhī* in one case. However, this view is in absolute contrast to one of the differences mentioned above, that of fulfillment in the context of a single issue, which distinguishes the two terms. It is known that the difference that distinguishes two concepts means a specific element that is found in one concept but not in the other. Accordingly, a concept with

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[41] Kaya, "Telfik". Emrah Demirtaş, İbrahim Sizgen, İslam Hukukunda Telfîk Nazariyyesi, *Çukurova Üniversitesi İlahiyat Fakültesi Dergisi 18*, no. 1 (June 2018): 553.
[42] Kaya, "Telfik".
[43] Demirtaş and Sizgen, "İslam Hukukunda Telfîk Nazariyyesi", 553.
[44] Mehmet Ali Sezer, Telfîk ve Hükmü, *The Journal of International Social Research 63*, (April 2019), 1289.
[45] al-Mahdī, "al-Qawl al-Sadīd fī Bayān Silah al-Talfīq bi Tatabbuʿal-rukhos", 66.
[46] al-ʿUtaybī, al-Talfīq bayna al-Mazāhib al-Fiqhiyya wa ʿAlāqātuhu bitaysīr al-fatwā, 18.
[47] Demir, *İslam hukukunda taklid ve telfik,* 70. Tahirov, *Talfīq in Islamic Jurisprudence,* 12.

this special element cannot be a second concept that does not have the very element. The second concept cannot be the first concept because it does not have this element. It is possible to think of two such concepts separately because of this element. It follows that as long as the concept of *talfīq* has the characteristic of fulfillment in the context of a single issue, it cannot be the same thing as *tatabbuʿ al-rukhos*. Similarly, *tatabbuʿ al-rukhos* can never be *talfīq*, as it has the characteristic of applying the views of two different madhhabs not in the context of one issue but on two independent issue. It is also related to the same topic that many contemporary scholars have said that the relationship between the two terms is *ʿumūm wa khusūs min wajh*.[48] The conclusion that follows from this approach is that sometimes *talfīq* is *tatabbuʿ al-rukhos*, and sometimes it is not. Nevertheless, as we mentioned above, there are big differences between them that distinguish one from the other. According to this, it can be said that the relationship between these terms is *tabāyun*, not *ʿumūm wa khusūs min wajh*.

In brief, after everything is clear, the question arises: Is combining the views of two madhhabs on one issue and applying them based on *tashahhī*, while the relation between these two concepts is *tabāyun*, considered as *talfīq* or *tatabbuʿ al-rukhos*? Probably, we can say it is unpermissible *talfīq*, not *tatabbuʿ al-rukhos*.[49]

2.2.2. *Al-Taqlīd al-Mutlaq*

One of the most important parts clarifiying this topic is learning the difference between *al-taqlīd al-mutlaq* and *talfīq*. Therefore, this section will not discuss all types of *taqlīd* or related topics, but only *al-taqlīd al-mutlaq*.

Literally, *taqlīd* means to hang or attach something around the neck of a person or animal.[50] As a term of *usūl al-fiqh*, it refers to the imitation or application of a scholar's opinion on an *ijtihādī* matter without evidence.[51] There is also a different definition of the *taqlīd*. It is as follows *the acceptance of another person's view*

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[48] Demir, *İslam hukukunda taklid ve telfik,* 70. Tahirov, *Talfīq in Islamic Jurisprudence,* 12.

[49] al-Bānī, *ʿUmdah al-tahqīq fī al-taqlīd wa al-talfīq,* 224.

[50] al-Fīrūzābādī, *al-Qāmūs al-Muhīṭ,* 312.

[51] Eyyüb Said Kaya, "Taklid", TDV İslâm Araştırmaları Merkezi, accessed March 12, 2024, https://islamansiklopedisi.org.tr/taklid--fikih.

without knowing the correctness of it.[52] It is important to note that the second definition is more widely accepted and is more accurate than the first definition. The relationship between *taqlīd* and *talfīq* is evident in the following aspects. Most scholars who have discussed *taqlīd* and *talfīq* have also discussed *talfīq* concerning *taqlīd* because of the strong ties between them.[53] Both *taqlīd* and *talfīq* involve following someone's opinion, but in *taqlīd*, people follow his opinion completely, whereas, in *talfīq*, one follows the opinion of a number of scholars whose opinions are different in terms of the same issue.[54] Therefore, some scholars see *talfīq* as a form of imitation.[55] However, to claim that *talfīq* is a part of *taqlīd*, or to say that each *talfīq* is *taqlīd*, but not every *taqlīd* is *talfīq*, is a serious point that needs to be considered in more detail.[56] There will be a return to this point later.

Al-taqlīd al-mutlaq is defined by some contemporary scholars as follows: *Not following a certain mujtahid, but following one of the mujtahids when he faces a special issue.*[57] As stated above, *al-taqlīd al-mutlaq* was widespread during the time of the Companions. Individuals, who did not have the time or ability to acquire knowledge or perform *istinbāt* would seek guidance from the jurist Companions and imitate them.[58] A large number of reports indicate that *al-taqlīd al-mutlaq* was widespread during this period. However, with the formation of the four madhhabs and the disappearance of the *fiqh* of other *mujtahid*s over time, the jurists began to discourage ordinary people from following any madhhabs other than the four.[59] Directly imitating the views of other *mujtahid*s is prohibited for ordinary people due to the incomplete and missing of their jurisprudence views.[60] At this point, differences between *talfīq* and *al-taqlīd al-mutlaq* begin to emerge.[61]

- Historical emergence. One of the main differences between the two concepts is historical emergence. Before the emergence of madhhabs, Muslims sought answers

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[52] Shihābuddīn Ahmad bin Muhammad al-Hamawī, *al-Durr al-Farīd fī Bayāni Hukm al-Taqlīd,* 1sted,. (Cairo: Dār al-Sālih, 2019), 26.
[53] al-Bānī, *ʿUmdah al-tahqīq fī al-taqlīd wa al-talfīq,* 194.
[54] Demir, *İslam hukukunda taklid ve telfik,* 67.
[55] al-Saʿīdī, al-Talfīq wa Hukmuhu fī al-Fiqh al-Islāmī, 13.
[56] al-Mahdī, al-Qawl al-Sadīd fī Bayāni Sila al-Talfīq bi Tatabbuʿal-rukhos, 66.
[57] Muhammad Taqī ʿUthmānī, *al-Taqlīd fī Nazar al-Sharʿ,* 16.
[58] Mehmet Ali Sezer, Telfik ve Hükmü, 1292.
[59] Muhammad Ibrāhīm al-Khafāwī, *Tabsīr al-Nujabāʾ*, 1st ed., (Cairo: Dār al-hadith, 1995), 248.
[60] ʿUthmānī, *al-Taqlīd fī Nazar al-Sharʿ,* 23.
[61] al-Darwīsh, *al-Talfīq wa mawqif al-ʾUsūliyyīna minhu*, 139.

to everyday problems by asking and imitating *mujtahid*s, whom they considered more knowledgeable. Although this behavior is considered *al-taqlīd al-mutlaq*[62], it is not the same as *talfīq*. *Talfīq* arises when the views of several madhhabs are combined on one issue or when several views within a madhhabs are combined on one issue. On the basis of these arguments, it can be argued that *talfīq* cannot occur before the emergence of madhhabs, as opposed to *talfīq*.

- Fulfillment in the context of a single issue. As mentioned earlier, both *taqlīd* and *talfīq* involve following someone's opinion. However, in *taqlīd*, someone should follow exclusively the view of a single *mujtahid* on a particular issue. But in *talfīq*, someone follows one *mujtahid* for a portion of one issue and another *mujtahid* for another portion of the same issue, even if their views contradict each other.[63]

- Combining between contradicting views. Another difference between them can be seen when combining opposing views in *talfīq*. In *taqlīd* there is not any combining different views of *mujtahid*s, whereas in all forms of *talfīq*, different views of *mujtahid*s should be united, even if they contradict each other. Regarding the scholarly debates on this topic, it is widely accepted that *talfīq* is a form of *taqlīd*.[64] There are, however, objections to this approach on several points. One such criticism is that no *mujtahid* or madhhab accepts the *hukm* reached by *talfīq* as its own. This demonstrates that *talfīq* is fundamentally different from imitation. Nevertheless it can be said that *talfīq* is similar to *taqlīd* in appearance, but its essence is different from *taqlīd*.

2.2.3. *Al-Taysīr*

The word *taysīr* literally means *to make something easy, to facilitate*[65]. The technical definition of this term is that the *muftī* conveys to the questioner the *hukm,* which is the lighter of those that are permitted in the *shariah.*[66] The connection between the two concepts becomes apparent when a person typically desires easy-to-follow

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[62] al-Khafāwī, *Tabsīr al-Nujabāʾ*, 248.
[63] Demir, *İslam hukukunda taklid ve telfik,* 67.
[64] Tahirov, *İslam Hukukunda Telfik,* 12.
[65] Comission, *al-Muʿjam al-Wasīt*, 1064.
[66] Muhammad bin Sulaymān al-Ashqar, *al-Futyā wa Manāhij al-Iftā*, 1st ed., (Kuwait: Maktaba al-Manār al-Islāmī, 1976), 42.

hukms. After all, it is a fact that the majority of people, if presented with a choice, would opt for the most ease-to-follow *hukm*. Consequently, the desire to adhere to the lighter *hukm* can lead a person to *talfīq*.[67] In order to avoid *talfīq*, it is essential to comprehend the boundaries of taysir and to refrain from exceeding these limits. To illustrate, a *fatwā* directed at *taysīr* must always be in accordance with the rules of the *fatwā*, and *taysīr* must never be contrary to the rules of the *fatwā*.[68] Furthermore, it is important to note that the basis of a *fatwā* is not *taysīr*. *Taysīr* must be at a certain time and under certain conditions.[69] Therefore, *taysīr* is not a permanent and immutable basis for judgments. Some scholars have claimed that, in the *darūrah*, the *muftī* may issue a *fatwā* based on *talfīq*.[70] This claim contradicts the rules of the *fatwā* in several respects. As previously stated, a *fatwā* given on the basis of *taysīr* should not contradict the rules of *fatwā*. However, issuing a *fatwā* on the basis of *talfīq* with the aim of *taysīr* is contrary to the rules of *fatwā*. Furthermore, the majority of contemporary *muftīs* who issue *fatwās* are not *mujtahids*, but rather *muftīs* who convey the opinions of scholars preceding them. It can be argued that this point indicates that new *hukms* obtained on the basis of *talfīq*, which do not express the jurisprudential view of any jurist, are considered invalid automatically. It is indeed the case that an in-depth analysis of the subtle differences between the two concepts will assist in a more profound understanding of the topic.

- Subject of the action. Upon closer analysis, it becomes evident that *taysīr*, a concept that is often confused with *taqlīd* and *talfīq*, typically occurs in *fatwās* issued by *muftīs,* and it is typically attributed to *muftīs*. This indicates that the subject of *taysīr* is *muftīs*. While *talfīq* can be done by a *muftī* or an ordinary person, the second one is more common in reality. Consequently, *talfīq* occurs as a form of *taqlīd* by ordinary people and as a form of legal reasoning by *muftīs* which may be considered a form of *ijtihād*.

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[67] al-Saʿīdī, al-Talfīq wa Hukmuhu fī al-Fiqh al-Islāmī, 14.
[68] Demir, *İslam hukukunda taklid ve telfik,* 73.
[69] Tahirov, *İslam Hukukunda Telfîk,* 17.
[70] Demir, *İslam hukukunda taklid ve telfik,* 73.

2.2.4. *Murāʿātul-Khilāf*

The word *khilāf* is defined by several meanings within the dictionary. In order to provide a focused analysis of this topic, we will restrict our discussion to the most well known definitions and those that are most pertinent to this subject. The primary definition of the word *khilāf* as provided in the dictionary is "contradiction".[71] Additionally, some linguists interpret the term like "disagreement".[72] The technical meaning of this term is not limited by the definition found in the dictionary; it is as much as its linguistic meaning. Some defined that *khilāf* is a dispute between two opponents to achieve a *haqq* or invalidate a *bātil*.[73] Others say that *khilāf* is choosing one of the two contradictions from each of the two opponents.[74] When *fuqahā* use the term *khilāf*, they usually mean disagreement, which is the dictionary meaning of this term.[75] However, the full definition of *murāʿātul-khilāf* is to follow weak evidence or giving credit to it for a sharʿī necessity.[76] It should be noted, however, that there are a number of other definitions that have not been mentioned in this context. *Murāʿāt al-khilāf*, like *talfīq*, can be expressed in two forms: that which occurs before the action takes place or, alternately, that which occurs after the action.[77] It is also worth mentioning that it is advisable for both *muftī* and *muqallid* to refrain from disagreements of *fuqahā* and to adhere to the rulings that have been collectively agreed upon. To comprehend the relationship between the two concepts, it is essential to analyse the contrasts and similarities that exist between them.

- Validity. One of the principal differences between these two concepts is validity. It is known that the *hukm* obtained with the help of *talfīq* is considered invalid and it is not permissible to follow it. Conversely, *murāʿāt al-khilāf* is not only permissible, but also considered *mustahab*. That is why some scholars have referred to *murāʿāt al-khilāf* as *musbat talfīq*.[78] The two concepts are similar in numerous aspects. For instance, in both cases, there is adherence to the views of two or more scholars on the

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[71] ibn Manẓūr al-Miṣrī, *Lisān al-ʿArab,* 9:90.
[72] al-Fīrūzābādī, *al-Qāmūs al-Muhīṭ,* 808.
[73] ʿAlī bin Muhammad bin ʿAlī al-Jurjānī, *al-Taʿrīfāt*, 1st ed., (Cairo: Dār al-Fadiylah, 2004), 89.
[74] ʿAbdurrohmān bin Abdullāh al-Shaʿlān, *Murāʿātul-khilāf fī al-Fiqh*, (Master thesis, Imam Muhammad bin Saud Islamic University, 1998), 31.
[75] al-Shaʿlān, *Murāʿātul-khilāf fī al-Fiqh*, 33.
[76] al-Shaʿlān, *Murāʿātul-khilāf fī al-Fiqh*, 89.
[77] al-Shaʿlān, *Murāʿātul-khilāf fī al-Fiqh*, 93.
[78] al-Saʿīdī, al-Talfīq wa Hukmuhu fī al-Fiqh al-Islāmī, 13.

same issue.[79] As *talfīq* occurs in *ijtihād* and *taqlīd*, *murāʿāt al-khilāf* also occurs in both of them.[80] However, one of them is invalid, and the other is valid.

- Preference. Another distinguishing feature between the two terms is preference. As is well known, a new jurisprudential *hukm* is arrived with the help of *talfīq*, which involves the combining of one or more views. It should be noted that, regardless of its validity, this *hukm* is independent. In contrast, in *murāʿāt al-khilāf*, a new, independent *hukm* is not achieved; instead, only one of the views is preferred over the others.[81]

- Incomplete following. As mentioned above, *talfīq* is the combination of conflicting views of two madhhabs or scholars in one case. To illustrate, if a person enters into a marriage without *shāhid* according to Mālikī madhhab and without *walī* according to Hanafi madhhab, such an individual would be considered a clear *mulaffiq*, demonstrating the combination of two conflicting views. In this marriage, the Mālikī madhhab's view about *shāhid* and the Hanafi view about *walī* were disregarded. According to the Hanafi madhhab, the presence of *shāhid* is compulsory, although *walī* is not considered one of the compulsory conditions of marriage. Consequently, this *mufalliq* did not follow any madhhab completely and became a clear example for *talfīq*. Very person if marries a woman in the presence of a *walī* and *shāhid*, while also paying *mahr* can be example for *murāʿāt al-khilāf* because he follows to both madhhabs in this marriage. It is clear that in *murāʿāt al-khilāf*, a person adheres to several madhhabs fully and consider them, so his marriage is not considered invalid according to any madhhab.

2.2.5. *Al-Intiqāl* Between Madhhabs

Literally, *al-intiqāl* is a shift from one place to another.[82] The etymological meaning of this term is very close to the dictionary meaning, which is to leave the view of the madhhab to which one belongs and accept the view of another madhhab on a specific jurisprudential issue.[83] It is known that every *muqallid* follows one of the four

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[79] Demir, *İslam hukukunda taklid ve telfik,* 76.
[80] al-Shaʿlān, *Murāʿātul-khilāf fī al-Fiqh*, 100.
[81] al-ʿUtaybī, al-Talfīq bayna al-Mazāhib al-Fiqhiyya wa ʿAlāqātuhu bitaysīr al-fatwā, 14.
[82] Comission, *al-Muʿjam al-Wasīt*, 949.
[83] al-Khafāwī, *Tabsīr al-Nujabāʾ*, 235.

madhhabs in his daily life. This raises the question of whether a *muqallid* must to adhere to the madhhab they have followed throughout their life or whether it is possible to leave their madhhab and adopt another. In short, there are two views on this issue[84], both of which are widely held. According to the first view, if a person considers a particular madhhab is correct, it becomes an obligation for him to remain in this madhhab. The rationale for this is that this individual believes that the madhhab he has chosen represents the correct path; therefore, it becomes obligatory to adhere to that belief.[85] According to the second perspective, it is not compulsory for a *muqallid* to remain within a particular madhhab[86], but rather, he is obliged to seek guidance[87] from scholars in matters he lacks expertise in. It is not inherently wrong to move from one madhhab to another as long as all four are considered correct, although adherents of the second view do stipulate several preconditions for such a move. These will be considered later. For the present, it is sufficient to note that the terms *talfīq* and *intiqāl* refer to the process whereby one madhhab is chosen and then another is chosen subsequently.

- *al-Ittibāʿ*. One similarity between the two concepts is following[88] a *mujtahid*. It is known that a person who changes from one madhhab to another will necessarily follow an *imām* from another madhhab. Similarly, a *mulaffiq* follows a particular *imām* at least in certain parts of one issue as mentioned above. It is of particular importance to note the term *ittibāʿ* is used instead of the term *taqlīd* here. The concept which connects *intiqāl* and *talfīq* is *ittibāʿ*, rather than *taqlīd*. As mentioned at the beginning of the paper, the relationship between *talfīq* and *taqlīd* is *tabāyun*, so the two cannot be combined. However, *talfīq* can be combined with *ittibāʿ*.

Combining. One of the primary differences between the two concepts is the process of combining. In *talfīq*, it is common practice to combine many different jurisprudential perspectives on a single issue and arrive at a new jurisprudential *hukm*. This is not the case in *intiqāl*, where a new ruling is not reached, but rather, one is chosen from several existing *hukms*. From this perspective, *intiqāl* is similar to

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[84] al-Tartūrī, *al-Talfīq wa Tatabbuʿ al-rukhos,* 54.

[85] al-Darwīsh, *al-Talfīq wa mawqif al-ʾUsūliyyīna minhu*, 139.

[86] Habīb Ahmad al-Kayrānawī, *Fawāidu ʿUlūm al-Fiqh,* 3rd ed., (Karachi: Quranic Studies Publishers, 1993), 292.

[87] Yasemin Korucu*, İslam Hukukunda Telfik*, ((Master thesis, Dokuz Eylül University, 2010), 49.

[88] Aydin, Taklid Kavramına Dair Tartışmalardan Biri Olarak Mezhepler Arasında İntikâl Meselesi, 14.

taqlīd. However, on occasion, *intiqāl* can be employed to achieve *talfīq*. This occurs when two conditions are met: the follower selects only those *hukms* in madhhabs which are considered to be lighter, and he continues to do so over time.

2.3. The Concept of *Talfīq* Before Ibn al-Humām

2.3.1. History of *Talfīq*

During the lifetime of our Prophet (peace be upon him), people frequently asked him questions that they did not know the answer to. Upon his passing, the Companions were obliged to engage in *ijtihād* in order to find solutions to issues that were not explicitly mentioned in the Qur'an and the Sunnah. In those days, due to the large number of *mujtahids*, people did not adhere to a particular madhhab. This meant that there was no need for it. However, over time, the necessity for forming madhhabs became apparent. This was due to several factors. Firstly, the development of Islamic sciences meant that it was no longer possible for one scholar to master all Islamic sciences alone. Secondly, the increasing complexity of Islamic sciences meant that scholars needed to specialize in particular areas of knowledge. This led to the formation of madhhabs in the 3rd century AH. As a result of these factors, by the 4th century AH, four schools of jurisprudence were fully formed, which led to the widespread practice of *taqlīd* among Muslims. Therefore, before the formation of madhhabs and the widespread adoption of *taqlīd*, the term *talfīq* did not exist. As a consequence of the aforementioned circumstances, the term *talfīq* is absent from the books of scholars who lived in the first four centuries AH. Moreover, there are no records of its use in their narrations.

The jurist Yahyā al-Zanātī (d.656/1258) is generally regarded as the first to discuss the term *talfīq*.[89] Before the 7th century AH, no independent sources are known to mention this term. Despite this lack of earlier references in sources, it can be reasonably argued that the first practical manifestations of *talfīq* can be seen to have originated with the formation of madhhabs entirely.[90] However, Shihābuddīn al-Qarāfī. (d.801/1398) was the first systematic scholar to identify *talfīq* as an

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[89] Mehmet Ali Sezer, Telfîk ve Hükmü, 1289.
[90] Tahirov *İslam Hukukunda Telfîk,* 4.

independent *usulī* topic.[91] This suggests the debate about the term *talfīq* intensified in the 8th century AH. Consequently, by the end of the 8th century AH, this term was discussed in books as a separate term of *usūl al-fiqh*. Some scholars even mention that numerous scientific *rasā'il* and debates were written about *talfīq* in the 9th century AH. It is known that the formation of *talfīq* in its true sense cannot be imagined until the madhhabs are fully formed. Nevertheless, some contemporary researchers have also attributed *talfīq* to *mujtahids*.[92] This is an important point that will be discussed in more detail later.

2.3.2. Tarasūsī's Approach to *Talfīq*

One of the jurists who first discussed *talfīq* within the Hanafi legal school before Ibn al-Humām was Tarasūsī (d. 758/1357). Najmuddīn Tarasūsī was a prominent jurist within the Hanafi legal school and served as *qāḍī* in the *Shām* region.[93] According to Hanafi jurists, Tarasūsī was the first *muftī* to issue a *fatwā* based on intra-madhhab *talfīq*.[94] This indicates that *talfīq* may involve combining the jurisprudential views of several different madhhabs, or it may involve combining different jurisprudential views within the same madhhab.[95] Nevertheless, some researchers have argued that intra-madhhab *talfīq* is not real *talfīq*.[96] Returning to Tarasūsī's *fatwā* based on *talfīq*, Tarasūsī referred to *talfīq* when he was asked about the *waqf* of a person who is prohibited from *tasarruf* of his property due to debt or *safah*. He issued a *fatwā* that *waqf* is valid if it is established by a person who is prohibited by *qāḍī* from *tasarruf* of his property due to debt or *safah*[97]. In this *fatwā*, Tarasūsī combines two different jurisprudential views of the Hanafi legal school in one issue. There are three independent cases here: firstly, according to Abū Hanīfa (d.150/767), if a debtor or *safīh* establish *waqf*, this *waqf* is not considered valid, contrary to Abū Yūsuf (d.182/798). Similarly, according to Abū Yūsuf, *qāḍī* can prohibit *safīh* or a debtor from tasarruf of their property, contrary to Abū Hanīfa. Tarasūsī combines these two

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[91] Tahirov *İslam Hukukunda Telfîk,* 4.
[92] Mehmet Ali Sezer, Telfîk ve Hükmü, 1289.
[93] Ergin, Hanefî Mezhebinde Yeni Bir İstidlal Yöntemi: Mezheb İçi Telfîk, 675.
[94] Hasan bin ʿAmmār bin ʿAlī al-Shurunbulālī, *al-ʿIqd al-Farīd libayān al-Rājih min al-khilāf fī jawāz al-taqlīd,* 2nd ed., (Istanbul: Dār al-Lubāb, 2021), 237-238.
[95] Tahirov, *İslam Hukukunda Telfîk,* 51.
[96] Sayit Tahirov, Telfîk'in İcma ile İlişkisi, Onun Gerçekleşme Şekli ve Mezheblerin Buna Yaklaşımı, *Akademik Tarih ve Düşünce Dergisi,* 10/4, (August, 2023), 1124.
[97] Najmuddīn Ibrāhīm bin ʿAlī bin Ahmad al-Tarasūsī, *al-Fatāwā al-Tarasūsīyyah*, 1st ed., (Beirut: Muʾassasatu al-Rayyān, 2014), 309.

independent jurisprudential views in one issue. If *safīh* or the debtor make *waqf* something after *qāḍī* prohibits them from *tasarruf* of their property, this *waqf* is not considered valid according to both *imāms*. According to Abū Hanīfa, *waqf* of *safīh* or a debtor is not valid regardless of whether *qāḍī* prohibits them from *tasarruf* or not. Abū Yūsuf, however, posits that if *qāḍī* forbids *safīh* or a debtor from *tasarruf* of their property, they cannot establish any *waqf*, and even if they do it, it is not considered valid. Consequently, *waqf* established by *safīh* or the debtor, which *qāḍī* has prohibited from *tasarruf*, will not be valid under any circumstances. However, Tarasūsī deduces from Abū Hanīfa's jurisprudential view that *qāḍī* does not have the right to prohibit them from *tasarruf* and also deduces from Abū Yūsuf the validity of the *waqf* established by the debtor or *safīh*. In a brief, he states that if a *waqf* is established after *qāḍī* forbade *safīh* or the debtor from *tasarruf*, it will be valid because of Abū Hanīfa says that *qāḍī* does not have the right to prohobit the debtor or *safīh* from *tasarruf* and due to Abū Yūsuf says that *waqf* founded by them is valid.[98] In this way, the conflicting jurisprudential views of two *mujtahid imāms* are being combined in one issue and a separate independent jurisprudential view is emerging.

It can be seen that Tarasūsī was the jurist who first opened the concept of *talfīq* in the Hanafi legal school and used it as a type of legal reasoning. It is evident that although Ibn al-Humām did not mention anything about using *talfīq* as a type of legal reasoning, the concept of *talfīq* was not unfamiliar to the scientific environment.

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[98] al-Tarasūsī, *al-Fatāwā al-Tarasūsīyyah,* 308.

CHAPTER III

UṢŪLĪ ANALYSIS OF IBN AL-HUMĀM'S AMBIGUOUS PHRASES ABOUT *TALFĪQ*

3.1. Identification of Ambigious Phrases About *Talfīq* in Ibn al-Humām's Works and Their Context

In studying the works of Ibn al-Humām, two instances were identified where expressions could be interpreted as indicating the permissibility of *talfīq*. Since the original expressions are in Arabic, we have chosen to quote them from *al-Taḥrīr fī usūl al-fiqh* in Arabic without translation or adaptation. First instance is as follows:

لا يرجع المقلد فيما قلد فيه: أي عمل به اتفاقا، وهل يقلد غيره في غيره؟ المختار نعم للقطع بأنهم كانوا يستفتون مرة واحدا ومرة غيره غير ملتزمين مفتيا واحدا. فلو التزم مذهبا معينا كأبي حنيفة أو الشافعي، فقيل يلزم، وقيل لا، وقيل كمن لم يلتزم إن عمل بحكم تقليدا لا يرجع عنه، وفي غيره له تقليد غيره وهو الغالب على الظن لعدم ما يوجبه شرعا. ويتخرج منه جواز اتباع رخص المذاهب ولا يمنع منه مانع شرعي، إذ للإنسان أن يسلك الأخف عليه إذا كان له إليه سبيل بأن لم يكن عمل بآخر فيه، وكان صلى الله عليه وسلم يحب ما خفف عليهم. وقيده متؤخر بأن لا يترتب عليه ما يمنعانه، فمن قلد الشافعي في عدم الدلك، ومالكا في عدم نقض اللمس بلا شهوة وصلى، إن كان الوضوء بدلك صحت وإلا بطلت عندهما.[99]

> An imitator does not return to what he imitated. Does he imitate another (madhhab) in another (issue)? The chosen one is yes, because it is certain that once they used to consult one and once another, without committing to a particular *muftī*. If he adheres to a particular madhhab, such as (maddhab of) Abū Ḥanīfa or Shāfiʿī, it is said to be obligatory (to follow), and it is also said not (to be obligatory to follow). It is said that (it is) like a person who did not commit (a certain madhhab) if he followed a hukm by imitating, he does not return from it and in other (case) he can imitate another one. It is most likely because there is no legal obligation to do so. The permissibility of following *rukhos* of the madhhabs is derived from it, and no legal restriction prevents it. A person may take the path that is easiest for him if he has a way to do so by not following another one, and the Prophet (peace and blessings of Allah be upon him) liked what was easiest for them. A later (scholar) limited that it should not include anything that two madhhabs forbid. If he imitates Shāfiʿī in not kneading and Mālik in not invalidating touching (woman) without *shahwah* and prays, if the ablution was done with kneading, it is valid, otherwise it is invalid according to both of them.[100]

It is clear from these original phrases of Ibn al-Humām that there are two ambiguous problematic points. Firstly, the phrase: وقيل كمن لم يلتزم إن عمل بحكم تقليدا لا يرجع عنه، وفي غيره له تقليد غيره وهو الغالب على الظن لعدم ما يوجبه شرعا indicates that it is not obligatory to adhere to one particular madhhab. Some modern scholars have even gone so far as to quote these expressions as proof of the permissibility of non-sectarianism. Secondly,

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[99]Kamāluddīn Muhammad bin ʿAbdilwāhid bin ʿAbdilhamīd bin Masʿūd al-Siwāsī, *al-Tahrīr fī Usūl al-fiqh*, 1st ed.,(Cairo: Matbaʿatu Mustafā al-Bābī al-Halabī, 1933), 551-552.

[100] Ibn al-Humām, *al-Tahrīr fī Usūl al-fiqh*, 552.

وقيده متؤخر بأن لا and ويتخرج منه جواز اتباع رخص المذاهب ولا يمنع منه مانع شرعي :the phrases يترتب عليه ما يمنعانه seems to indicate the permissibility of *talfīq*.

The second place where Ibn al-Humām mentions an ambiguous phrase in his book is as follows:

يعمل بقول أبي حنيفة، فيما يقع له من المسائل التي تتعين في الوقائع، فإن أرادوا هذا الالتزام فلا دليل على وجوب اتباع المجتهد المعين بإلزامه نفسه ذلك قولا أو نية شرعا، بل الدليل اقتضى العمل بقول المجتهد فيما احتاج إليه لقوله تعالى ﴿فاسألوا أهل الذكر إن كنتم لا تعلمون﴾ [النحل: ٤٣] والسؤال إنما يتحقق عند طلب حكم الحادثة المعينة، وحينئذ إذا ثبت عنده قول المجتهد وجب عليه عمله به، والغالب أن مثل هذه إلزامات منهم لكف الناس عن تتبع الرخص وإلا أخذ العامي في كل مسألة بقول مجتهد قوله أخف عليه. وأنا لا أدري ما يمنع هذا من النقل أو العقل.[101]

> He follows Abu Hanifa's opinion in the cases he faces. If they mean this obligation, there is no evidence that it is obligatory to follow the particular mujtahid by obligating himself to do so by word or intention. Instead, the evidence requires acting on the sayings of the mujtahid in what he needs, as Allah says: Ask the people of remembrance if you do not know' [al-Nahl: 43], and asking is only achieved when asking for the ruling on the particular case, and then if he has established the opinion of the *mujtahid*, he must act on it, and it is likely that such obligations are from them to stop people from following *rukhos*, otherwise the ordinary person in every matter would take the opinion of a *mujtahid* whose words are lighter for him to act on them. I don't know what prohibits this from *naql* or *'aql*.

As noted above, these phrases also seem to indicate that *talfīq* and non-sectarianism are permissible. For this reason, it is necessary to analyze these expressions in depth and to know exactly what the intention of the author is. Particularly, the phrase: وأنا لا أدري ما يمنع هذا من النقل أو العقل is the most important point to pay attention to because of its ambiguity. By doing so, the phrases with possible meanings have been determined from Ibn al-Humām's books. Significant comments, critics, and approaches to these expressions will be collected and analyzed in the following sections.

3.2. Comments and Interpretations From *Uṣūlī* Scholars

3.2.1. Disciples of Ibn al-Humām's Comments and Interpretations

It is known that when an author writes a review of his book, that review reveals the purpose of the book better than any other written. In the same way, the disciples of the author of a book are better interpreters of their teacher's book than others. Therefore, it is appropriate to mention firstly the comments of Ibn al-Humām's disciples on the statements about *talfīq* mentioned in *Tahrīr*.

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[101] Kamāluddīn Muḥammad bin ʿAbdilwāḥid bin ʿAbdilhamīd bin Masʿūd al-Siwāsī, *Fatḥ al-Qadīr lī al-ʿAjiz al-Faqīr*, 1st ed., (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2003), 7:238-239.

Shamsuddīn Abū ʿAbdillāh Muhammad bin Muhammad Ibn Amīr al-Hājj al-Halabī (d. 879/1475) is one of Ibn al-Humām's most renowned students and authored one of the most comprehensive commentaries on his mentor's book *Tahrīr*. The title of this commentary is *Taqrīr*, and the author has discussed *talfīq* and *tatabbuʿ rukhos* on several occasions within this commentary.[102] In conclusion, Ibn Amīr al-Hājj al-Halabī's interpretation of the ambiguous statements focused on four critical problems. Firstly, before discussing *talfīq*, Ibn Amīr al-Hājj addressed the question of whether it is obligatory to follow a particular madhhab.[103] He noted that the rulings of a *mujtahid* and a *muqallid* are different in this matter and that the phrases mentioned in *Tahrīr* are about a *muqallid*. He discusses the disagreements of *uṣūlī* scholars in the matter of a *muqallid's* adherence to a madhhab. If a *muqallid* has chosen a madhhab, he is obliged to adhere to it, as he believes it to be correct. However, according to him, since Allah and the Prophet (peace be upon him) did not make it obligatory to adhere to a particular madhhab, it is not obligatory for a Muslim to adhere to a particular madhhab. It is worth noting that, as Ibn Amīr al-Hājj states, although Allah or the Prophet (pbuh) did not make it obligatory to adhere to a specific madhhab, scholars may make it obligatory. Therefore, it can be said that following a madhhab is not *wājib li zātihi*, but *wājib li ghoyrihi*. Ibn al-Humām also indicated this interpretation.[104] Secondly, following his remarks on the matter of madhhab adherence, he dealt with the topic of *intiqāl*.[105] According to his interpretation, if a Muslim transfers from one madhhab to another after performing such an action within the first madhhab, *intiqāl* from the first madhhab to another is considered unpermissible. However, if a Muslim transfers from one madhhab to another before acting according to the specific madhhab, this is considered permissible in the *mutlaq* sense due to the existence of some conditions. Indeed, Allah ordered a Muslim to seek guidance from scholars about *hukm* of a matter that he does not know rather than from scholars of a specific madhhab. Accordingly, a *muqallid* is regarded to have fulfilled the commandments of Allah by seeking the guidance of every *mujtahid* in matters of which he is unaware. Thirdly, Ibn Amīr al-Hājj addresses the subject of *tatabbuʿ rukhos* concerning the second issue. This

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[102] Ibn al-Humām, *al-Tahrīr fī Usūl al-fiqh*, 551-552.
[103] Shamsuddīn Abū ʿAbdillāh Muhammad bin Muhammad Ibn Amīr al-Hājj al-Halabī, *al-Taqrīr wa al-Tahbīr,* 1st ed., (Beirut: Dār al-Kutub al-ʿIlmiyyah, 1999), 3:445-446.
[104] Ibn al-Humām, *Fath al-Qadīr lī al-ʿAjiz al-Faqīr*, 7:238-239.
[105] Ibn Amīr al-Hājj, *al-Taqrīr wa al-Tahbīr,* 3:446.

indicates that Ibn al-Humām considered *tatabbuʿ rukhos* as a part of *intiqāl*. Indeed, this is the case, as a person who attempts to adhere to the simplified *rukhos* of certain madhhabs will inevitably become the subject of *intiqāl*. However, there are several differences between *tatabbuʿ rukhos* and *intiqāl*. One such difference is that in *tatabbuʿ rukhos*, a person moves from one madhhab to another on a *tashahhī* basis. In other words, the main characteristic of *tatabbuʿ rukhos* is that it is based on *tashahhī*. In commenting on Ibn al-Humām's expressions about the permissibility of following more than one madhhab, he mentions that these expressions are not *mutlaq*, but *muqayyad* with three conditions.[106] The first is to combine two or more madhhabs in a way that does not contradict the *ijmāʿ*. The second is not to be based on *tatabbuʿ al-rukhos*. Finally, he must not become a *mutalāʿib* (playing with Islam according to his desires) in following the religious *hukm.*[107] The fourth key issue highlighted by Ibn Amīr al-Hājj is that of *talfīq.*[108] In response to the condition previously mentioned by Ibn al-Humām regarding the adherence more than one madhhabs, Ibn Amīr al-Hājj offers the following commentary:

أن لا يجمع بينهما على صورة تخالف الإجماع كمن تزوج بغير صداق ولا ولي ولا شهود فإن هذه الصورة لم يقل به أحد .

Not to combine them in a way that contradicts the consensus, such as marrying without a *mahr, walī,* or *witnesses*. This case is not said (valid) by anyone.

This phrase can be interpreted as evidence that Ibn Amīr al-Hājj is discussing *talfīq* in this context. Two points may provide evidence to support this claim. The first point: Ibn Amīr al-Hājj mentioned أن لا يجمع بينهما. It is common knowledge that الجمع is used to describe a situation in which more than one thing is combined. It is evident from the context that the subject under discussion combines more than one madhhab. The second point is evidenced by the expression على صورة تخالف الإجماع, which indicates a desire for *talfīq* rather than *tatabbuʿ rukhos* or *intiqāl*. This can be demonstrated by his noting that it is "does not contradict the *ijmāʿ*". This note serves to prove that Ibn Amīr al-Hājj is discussing *talfīq* and not *tatabbuʿ rukhos* or *intiqāl*. This is because only combining two or more madhhabs in one issue results in a situation of opposition to *ijmāʿ* not in different issues. To illustrate, as previously stated, a Muslim man may enter into a marriage with a Muslim woman without *shāhid*, *waliyy*, and *mahr*. However, if the same person combine two or more

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[106] Ibn Amīr al-Hājj, *al-Taqrīr wa al-Tahbīr,* 3:448.
[107] Ibn Amīr al-Hājj, *al-Taqrīr wa al-Tahbīr,* 3:448.
[108] Ibn Amīr al-Hājj, *al-Taqrīr wa al-Tahbīr,* 3:448.

madhhabs in multiple independent issues, this is referred to as *tatabbuʿ rukhos* or *intiqāl*. While this is evaluated as a situation of *tatabbuʿ rukhos* or *intiqāl*, it is not considered to be in opposition to *ijmāʿ* and is not regarded as *talfīq*. It subsequently became evident that Ibn Amīr al-Hājj was aware of Ibn al-Humām's ambiguous statements about *talfīq* and that he identified *talfīq* as being impermissible in *taqlīd*.

Another disciple of Ibn al-Humām is Qāsim bin Qutlūbughā (d. 879/1475). He is also regarded as one of the most renowned students of Ibn al-Humām and is considered to have a high rank within the Hanafi legal school. In Hanafi legal school, following Tarasūsī, Qāsim bin Qutlūbughā mentioned[109] firstly, Tarasūsī's *fatwās* based on *talfīq* are invalid and analyzed *talfīq* as an independent topic. In his works, Qāsim bin Qutlūbughā does not openly analyze the expressions mentioned in Ibn al-Humām's books and does not appear to criticise his teacher on this subject. However, upon closer examination of his works, it becomes evident that Qāsim bin Qutlūbughā focused on two main problems related to *talfīq*. The first of these is the issue of intra-madhhab *talfīq*.[110] As previously stated, Tarasūsī used intra-madhhab *talfīq* as a new type of legal reasoning within the Hanafi madhhab. However, he faced considerable opposition to this idea. Qāsim bin Qutlūbughā systematically refutes each of his arguments in favour of intra-madhhab *talfīq* and even asserts that there is *ijmāʿ* about the impermissibility of *talfīq*.[111] The second point that Qāsim bin Qutlūbughā highlighted was the issue of *talfīq* between madhhabs, which is the subject of our current discussion. In the introduction to his book *al-Tashīh wa al-Tarjīh ʿAlā Mukhtasar al-Qudūrī,* Qāsim bin Qutlūbughā attempts to provide a detailed explanation about *talfīq*.[112] In this instance, Qāsim bin Qutlūbughā cites the opinions of Shāfiʿī scholars in support of his position and says[113]:

لا يصح التقليد في شيء مركب من اجتهادين مختلفين بالإجماع.

It is not permissible to imitate something that is a composite of two contradicting *ijtihād* by consensus.

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[109] Abul ʿAdl Zaynuddīn Qāsim bin Qutlūbughā bin ʿAbdillāh, *Mūjabāt al-Ahkām wa Wāqiʿāt al-Ayyām,* 1st e., (Bagdad: Matbaʿatu al-Irshad, 1983), 246.

[110] Ergin, Hanefi Mezhebinde Yeni Bir İstidlal Yöntemi: Mezheb İçi Telfik*, Journal of Islamic Review,* 679.

[111] Ergin, Hanefi Mezhebinde Yeni Bir İstidlal Yöntemi: Mezheb İçi Telfik*, Journal of Islamic Review,* 679.

[112] Abul ʿAdl Zaynuddīn Qāsim bin Qutlūbughā bin ʿAbdillāh, *al-Tashīh wa al-Tarjīh ʿAlā Mukhtasar al-Qudūrī*, 1st ed., (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2002), 123-125.

[113] Ibn Qutlūbughā, *al-Tashīh wa al-Tarjīh ʿAlā Mukhtasar al-Qudūrī*, 123.

Therefore, according to him, it is not possible to combine the *rukhos* of two madhhabs in one issue, in particular *talfīq*. It is, of course, possible to argue that the Arabic expression *ijtihādayni mukhtafilayni* (اجتهادين مختلفين) is used, and this expression does not indicate that the author is talking about *talfīq* between madhhabs because of its ambiguity. *Ijtihādayni mukhtafilayni* (اجتهادين مختلفين) can indicate intra-madhhab *talfīq* due to the word *ijtihādayni* (اجتهادين). There can be two *ijtihāds* within one madhhab. However, this statement[114] demonstrates that the author is discussing *talfīq* between madhhabs: ومثلوا له بما إذا توضأ ومسح بعض شعره ثم صلى بنجاسة الكلب. It is clear from the citation that he is talking about *talfīq* between madhhabs. The author then claims that there is a consensus that *talfīq* is invalid and provides evidence to support this claim. However, it is not appropriate to claim that there is a real *ijmāʿ*.[115] Consequently, it can be posited that the author's intention was to mention the consensus of the majority of scholars, rather than all scholars. The question thus arises as to why Qāsim bin Qutlūbughā did not quote from Hanafi madhhab scholars in order to prove that *talfīq* is not permissible. Instead, he used the opinions of Shāfiʿī scholars to prove this claim. It can be argued that the reason for this was that there were almost no scholars within the Hanafi madhhab who spoke about *talfīq* during this period.

3.2.2. The Opinions of The Scholars After Ibn al-Humām

They also wrote commentaries on the statements he mentioned because of their importance in this field. We will now examine this type of comment in detail.

- Ibn Nujaym al-Misrī (d.970/1563) also mentioned and wrote some commentaries about Ibn al-Humām's phrases. Ibn Nujaym touched upon the subject of *talfīq* generally and statements of Ibn al-Humām, particularly in his article on the sale of *waqf* properties. In order to understand the issue, we need to analyze the example given by Ibn Nujaym. According to Ibn Nujaim, it is permissible to sell *waqf* property with *ghubn fāhish* in the form of *istibdāl*.[116] This *hukm* was obtained by

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[114] Ibn Qutlūbughā, *al-Tashīh wa al-Tarjīh ʿAlā Mukhtasar al-Qudūrī*, 123.
[115] al-Bānī, *ʿUmdah al-tahqīq fī al-taqlīd wa al-talfīq,* 206-207.
[116] Zaynuddīn bin Ibrāhīm bin Muhammad al-Misrī Ibn Nujaym, *al-Rasāʾil al-Zayniyyah fī al-Mazhab al-Hanafiyyah*, 1st ed.,(Cairo: Dār al-Salām, 1999), 346.

combining the jurisprudential views of two *imāms* within the madhhab.[117] We are going to analyze a little bit of this judgement that was reached based on *talfīq*. It is well known that according to Abū Yūsuf, the sale of *waqf* property in the form of *istibdāl* is permissible. But Abū Yūsuf clearly states that although *wafq* property can be sold in the form of *istibdāl*, *wafq* property cannot be sold with *ghubn fāhish*.[118] Because the *mutawallī* is a *wakīl* in this case, and the *wakīl* does not have the right to sell *wafq* property with *ghubn fāhish*. Similarly, according to Abū Hanīfa, a *wakīl* has the right to sell the *muwalkil's* property with *ghubn fāhish*.[119] But according to him, *waqf* property cannot be sold in the form of *istibdāl*. Therefore, according to neither *imām*, it is not permissible to sell *waqf* property with *ghubn fāhish* in the form of *istibdāl*. Perhaps Abū Yūsuf clearly mentions the invalidity of this contract. Ibn Nujaym, combining the jurisprudential views of Abū Hanīfa and Abū Yūsuf, to prove the permissibility of this contract based on *talfīq*, says:

يمكن أن تؤخذ صحة السبتبدال من قول أبي يوسف وصحة البيع بغبن فاحش من قول أبي حنيفة بناء على صحة التلفيق في الحكم من قولين[120]

The validity of the *istibdāl* can be taken from Abū Yūsuf's opinion, and the validity of the sale with *ghubn fāhish* from Abū Hanīfa's opinion based on the validity of the *talfīq* combining two opinions in the judgment

After that, in order to prove that intra-madhhab *talfīq* is a valid type of *istidlāl*, he refers to the phrases mentioned in Ibn al-Humām's *Tahrīr* and says:

وما وقع في آخر تحرير ابن الهمام من منع التلفيق فإنما عزاه إلى بعض المتأخرين وليس هذا هو المذهب[121]

What was mentioned at the end of Ibn al-Humām's *Tahrīr* regarding the prohibition of *talfīq* was attributed to some of the latercome scholars, and this is not the (approach of our) madhhab.

At this point, Ibn Nujaym's approach to Ibn al-Humām's phrases differs from other scholars in the following points. Firstly, Ibn Nujaym mentions phrases of Ibn al-Humām as proof of the permissibility of *talfīq* within the madhhab, and he wants to

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[117] Ergin, Hanefi Mezhebinde Yeni Bir İstidlal Yöntemi: Mezheb İçi Telfik, *Journal of Islamic Review,* 681.

[118] ʾAbul-Mahāsin Fakhruddīn Hasan bin Mansūr bin Mahmud al-Farghānī Qādīkhān, *Fatāwā Qādīkhān*, 1st ed., (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2009), 3:184.

[119] Qādīkhān, *Fatāwā Qādīkhān*, 3:184.

[120] Ibn Nujaym, *al-Rasāʾil al-Zayniyyah fī al-Mazhab al-Hanafiyyah*, 346.

[121] Ibn Nujaym, *al-Rasāʾil al-Zayniyyah fī al-Mazhab al-Hanafiyyah*, 347.

say that the Hanafi madhhab's *rājih* view is permissibility of *talfīq*. Secondly, he also attributes the permissibility of *talfīq* to Ibn al-Humām refusing *Qārāfī's* statement.

- Another scholar who commented *Tahrīr* is ʾAmīr Pāshāh (d.970/1565). In his book *Taysīr al-Tahrīr*, he specifically mentions the issue of *talfīq*. Interestingly, Ibn Amīr al-Hājj, who was the first commentator of *Tahrīr*, did not mention clearly the word "*talfīq*" in his book[122]. Nevertheless, ʾAmīr Pāshāh clearly said that the phrases mentioned by Ibn al-Humām were about *talfīq*.[123] While talking about *talfīq*, he touches upon very important points of the matter. It is known that Ibn al-Humām mentions the following phrase when talking about *tatabbuʿ al-rukhos* and *talfīq*: قيده متأخر بأن لا يترتب عليه ما يمنعانه.ʾAmīr Pāshāh emphasises the note (ما يمنعانه) mentioned. According to him, when a *shāfiʿī* person acts, he automatically contradicts some or all thoughts expressed by Abū Hanīfa about that action. Even though this *muqallid* "completely" contradicts Imam Abū Hanīfa by following Imam Shāfiʿī, Abū Hanīfa does not consider his action invalid. Similarly, Imam Shāfiʿī does not consider the action of a *muqallid* who "completely" contradicts himself by following Imam Abū Hanīfa invalid. For example, according to Imam Abū Hanīfa, if a *shāfiʿī* person marries a woman without *mahr*, the marriage is not invalid. Similarly, Imam Shāfiʿī did not say that if a *muqallid* from the Hanafi madhhab marries without a *walī*, the marriage is invalid. Although a *muqallid* who follows one madhhab contradicts other madhhabs "completely," the imams of other madhhabs do not consider the action of this *muqallid* invalid.[124] So why is the act of a *muqallid* who combines the views of two madhhabs on an issue based on *talfīq* considered invalid? After all, he contradicts the Imams of other madhhabs, not "completely" but "partially", not more than.[125] For example, the Imams of other madhhabs do not invalidate the *muqallid's* act if a *muqallid* "completely" contradicts them by following Abū Hanīfa. So how can they invalidate the action of the *muqallid* who "partly" followed Abū Hanīfa and "partly" followed Shāfiʿī? In fact, ʾAmīr Pāshāh's argument is significant. Therefore, it is also worth answering this criticism. It should be noted that Ibn al-Humām has used the word[126] *yamnaʿānihi* (يمنعانه - prohibite) and not the word *yubtilānihi* (يبطلانه

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[122] Ibn Amīr al-Hājj, *al-Taqrīr wa al-Tahbīr,* 3:448.
[123] ʾAmīr Pāshāh, *Taysīr al-Tahrīr,* 4:255.
[124] ʾAmīr Pāshāh, *Taysīr al-Tahrīr,* 4:254.
[125] ʾAmīr Pāshāh, *Taysīr al-Tahrīr,* 4:255.
[126] Ibn al-Humām, *al-Tahrīr fī Usūl al-fiqh*, 552.

- invalidate). Therefore, three important points should not be forgotten. Firstly, it would not be correct to say that the word (يمنعانه) only means "invalidation". Because sometimes the scholars prohobite following *hukm* even though it is possible to follow it.[127] Therefore, *hukm* can be "valid", yet its implementation can be "prohibited". Secondly, *mulaffiq* "partly" follows both madhhabs and "partly" does not follow them. According to ʾAmīr Pāshāh, the fact that the act of a *muqallid* who "completely" contradicts an imam is not invalid means that the act of a *muqallid* who "partially" contradicts the same imam is not invalid.[128] However, there is no statement by any imam that the act of a *muqallid* who partially does not follow and partially follows him is valid. Based on this, it can be said that evidence is needed to prove what ʾAmīr Pāshāh claims. Thirdly, ʾAmīr Pāshāh says that the subject of the verb *yamnaʿānihi* (يمنعانه) is "two *mujtahid*s."[129] However, this claim is disputed on two sides. The first objection is that *talfīq* did not appear during the time of the *mutlaq mujtahid*s. This means that any *mujtahid* opinion on action based on *talfīq* cannot be mentioned. Based on this argument, it can be said that they are not able to prohibit an act that is performed based on *talfīq*. Therefore, it is not correct to say that the meaning of the verb *yamnaʿānihi* (يمنعانه) is two *mujtahid*s, but it is correct to say two madhhabs. Ibn Amīr al-Hājj explicitly mentioned this meaning in his book, saying that the word *yamnaʿānihi* (يمنعانه) means two madhhabs[130].

- The scholar who explained his approach to Ibn al-Humām's statements about *talfīq*, in other words, commented on it, is Ibn Mullā Farrūkh al-Makkī (d.1061/1651). He discusses the views that *talfīq* is not permissible and rejects them one by one[131]. He summarised his views on *talfīq* and ijtihad in his book *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*. He explains the occurrence of *talfīq* and its permissibility and says:

> قد استفاض عند فضلاء العصر منع التلفيق في التقليد وذلك بأن يعمل مثلا في بعض أعمال الطهارة والصلاة أو أحدهما بمذهب إمام وفي بعض العبادات بمذهب إمام آخر. لم أجد على امتناع ذلك برهانا بل قد أشار إلى عدم منعه المحقق في التحرير وأنه لم يرد ما يمنع ونقل منع التلفيق عن بعض المتأخرين. قال شارح تحريره العلامة ابن أمير حاج: القائل بالمنع العلامة القرافي رحمه الله تعالى. قلت: والقرافي رجل من فضلاء الأصوليين من المالكية ولا علينا أن نأخذ بقوله[132]

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[127] Ibn al-Humām, *Fath al-Qadīr lī al-ʿĀjiz al-Faqīr*, 7:238-239.
[128] ʾAmīr Pāshāh, *Taysīr al-Tahrīr,* 4:255.
[129] ʾAmīr Pāshāh, *Taysīr al-Tahrīr,* 4:254.
[130] Ibn Amīr al-Hājj, *al-Taqrīr wa al-Tahbīr,* 3:447-448.
[131] Muhammad ʿAbdulʿazim, Ibn Mullā Farrūkh al-Makkī, *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*, 1sted., (Kuweit: Dār al-Daʿwah, 1988), 79-90.
[132] Ibn Mullā Farrūkh al-Makkī, *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*, 84-86.

> It has been widely recognized by the scholars of the time that it is not permissible to prohibit the practice of *talfīq* in imitation, for example, in some acts of *tahārah* and *salāh*, or one or both of them, according to the madhhab of an imam and in some other acts of worship according to the madhhab of another imam. I have not found any proof that this is prohibited, but the *Muhaqqiq* (Ibn al-Humām) has indicated that it is not prohibited in *Tahrīr* and he has not been mentioned what prohobite (*talfīq)*. He has quoted the prohibition of *talfīq* from some latercomers. The commentator of *Tahrīr*, Ibn Amīr Hājj, said: Who mentioned this prohibition is al-Qarāfī, may Allah have mercy on him. I said: Al-Qarāfī is one of the best Mālikī jurists, and it is not compulsory to accept his opinion.

He says that the statements mentioned by Ibn al-Humām indicate the permissibility of *talfīq*. Ibn Mullā Farrūkh al-Makkī tried to prove that *talfīq* is permissible in the Hanafi madhhab in terms of *usūl* and commented on the phrases of Ibn al-Humām.[133] Then, pointing out that his claim is also in reality, he begins to mention the *farʿī hukm* given on the basis of *talfīq*. According to him, scholars of the Hanafi madhhab used *talfīq* as a type of legal reasoning in several places. For example, *al-Fatāwā al-Bazzāziyyah* cites some *hukm* based on *talfīq*, such as the *fatwā* on making a mistake in recitation of the prayer[134], followed by Ibn Nujaim's *fatwā* on the sale of *waqf* property.[135] Ibn Mullā Farrūkh al-Makkī emphasizes several important points in his treatise. First, until then, no scholar of the Hanafi madhhab had discussed the areas of *talfīq*. He is the first in the Hanafi madhhab to separate two important areas of *talfīq* and mention them separately.[136] Secondly, he is the first Hanafi scholar to assert the permissibility of *talfīq* in both *ijtihād* and *taqlīd.*[137] Nevertheless, his views are criticized on several grounds. First, he uses the ambiguous statements of Ibn al-Humām to methodically prove the permissibility of *talfīq* in the Hanafi madhhab. However, he does not analyse his statements in depth. It was mentioned above that Ibn Amīr Hājj implicitly mentioned[138] the conditions for *talfīq* in his book. However, he uses Ibn Amīr Hājj's statements to support his approach and ignores his phrases about *talfīq*. In addition, he gives several examples to prove the permissibility of *talfīq* but does not really address whether the examples he gives are accepted as reliable *fatwā* in the Hanafi madhhab. Furthermore, Ibn Mullā Farrūkh al-Makkī ascribed the occurrence of *talfīq* by Abū Yūsuf too.[139] The issue of the attribution of *talfīq* to *mujtahid*s will be the subject of a separate discussion. In short, his claims are

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[133] Ibn Mullā Farrūkh al-Makkī, *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*, 84.

[134] Ibn Mullā Farrūkh al-Makkī, *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*, 87.

[135] Ibn Nujaym, *al-Rasāʾil al-Zayniyyah fī al-Mazhab al-Hanafiyyah*, 347, Ibn Mullā Farrūkh al-Makkī, *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*, 88.

[136] Ibn Mullā Farrūkh al-Makkī, *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*, 94.

[137] Ibn Mullā Farrūkh al-Makkī, *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*, 94.

[138] Ibn Amīr al-Hājj, *al-Taqrīr wa al-Tahbīr,* 3:448.

[139] Ibn Mullā Farrūkh al-Makkī, *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*, 104.

open to criticism on several fronts. For this reason, he cannot fully present Ibn al-Humām's position on *talfīq*.

- The next scholar who commented Ibn al-Humām's ambiguous phrases mentioned in *Tahrīr* is Hasan bin ʿAmmār bin ʿAlī al-Shurunbulālī (d.1069/1659). His article *al-ʿIqd al-Farīd libayān al-Rājih min al-khilāf fī jawāz al-taqlīd* is one of the most significant articles in *usūl al-fiqh* generally, and in the topic of *ijtihād* particularly.

One of the most important questions raised by al-Shurunbulālī in his treatise is whether *taqlīd baʿd al-aʿmal* is possible or not. As mentioned above, Ibn al-Humām mentioned that *taqlīd baʿd al-aʿmal* is not permissible (لا يرجع المقلد فيما قلد فيه: أي عمل به اتفاقا).[140] al-Shurunbulālī tries to prove that Ibn al-Humām's sayings should not be taken in an absolute sense by using several arguments in the introduction to the treatise. According to him, Ibn al-Humām's statements regarding the impermissibility of *taqlīd baʿd al-aʿmal* implies two different possibilities.[141]

According to the first possibility, the purpose of Ibn al-Humām in these expressions is not the absolute impermissibility of *taqlīd baʿd al-aʿmal*, but only its impermissibility in a specific matter.[142] According to this possibility, if a Muslim completes an action according to a particular madhhab, it is forbidden to follow another madhhab in this very matter. But it is not forbidden to follow another madhhab in other matters or when the same matter arises again.[143] For example, if a Muslim wants to sell his house, his neighbor can demand him to sell the house to himself by using the right of *shufʿah* according to the Hanafi madhhab. If this person sells a house to his neighbor through the right of *shufʿah*, according to the Hanafi madhhab, after the sale is completed, he cannot break the contract agreed by them in order to take back the yard according to the Shāfiʿī madhhab[144] (in the Shāfiʿī madhhab, the neighbor cannot use the right of *shufʿah*). Thus, the aim of Ibn al-Humām is that it is only after the completion of a particular action based on a

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[140] Ibn al-Humām, *al-Tahrīr fī Usūl al-fiqh*, 551.
[141] Hasan bin ʿAmmār bin ʿAlī al-Shurunbulālī, *Majmūʿ Rasāʾil al-Shurunbulālī*, 2nd ed., (Istanbul: Dār al-Lubāb, 2021), 1:219.
[142] al-Shurunbulālī, *Majmūʿ Rasāʾil al-Shurunbulālī*, 1:216.
[143] al-Shurunbulālī, *Majmūʿ Rasāʾil al-Shurunbulālī*, 1:220.
[144] al-Shurunbulālī, *Majmūʿ Rasāʾil al-Shurunbulālī*, 1:221.

particular madhhab that it is forbidden to follow a different madhhab in a very particular action.

According to the second possibility, Ibn al-Humām's statement about the impermissibility of *taqlīd ba'd al-a'mal* was said about *talfīq*.[145] In other words, *taqlīd ba'd al-a'mal* is permissible only if it does not lead to the occurrence of *talfīq*. al-Shurunbulālī gives the following definition of *talfīq*: remaining a sign of the previous action that leads to what neither of the two imams says (true):

بقاء أثر من الفعل السابق يؤدي إلى ما لا يقول به كل من الإمامين [146].

Remaining a part of the previous act leads to what neither of the two Imams say (valid).

According to this definition, if a Muslim performs ablution according to the Shāfi'ī school and mops up only one part of his head, and if after performing ablution he touches a dog considering its purity according to the Māliki school and then prays without renewing his ablution, this action is considered *talfīq* obviously.[147] This form of is considered impermissible. Therefore, the meaning intended by Ibn al-Humām is that *taqlīd ba'd al-a'mal* is permissible only if it does not lead to *talfīq*. Based on this analysis, it can be said that Ibn al-Humām did not say that *talfīq* is permissible, but he indicated that *talfīq* is impermissible. The second important issue that al-Shurunbulālī highlights in his treatise is the true meaning of Ibn al-Humām's statements on *tatabbu' al-rukhos*[148], and the issue that no type of *talfīq* is permissible.[149] As stated earlier, Ibn al-Humām stated in several places that *tatabbu' al-rukhos* is permissible and that there is no *'aqlī* or *naqlī* forbidding to follow them.[150] Firstly, al-Shurunbulālī focuses on clarifying Ibn al-Humām's words about whom. According to him, *'ammī* cannot be attributed to any madhhab because he is incapable of distinguishing between madhhabs. The madhhab of his *muftī* is his madhab, no matter to which *muftī* he asks a question.[151] Briefly, he is not talking about an *'ammī*, but a person who knows the differences between the madhhabs and

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[145] al-Shurunbulālī, *Majmū' Rasā'il al-Shurunbulālī*, 1:219.
[146] al-Shurunbulālī, *Majmū' Rasā'il al-Shurunbulālī*, 1:219.
[147] al-Shurunbulālī, *Majmū' Rasā'il al-Shurunbulālī*, 1:218.
[148] al-Shurunbulālī, *Majmū' Rasā'il al-Shurunbulālī*, 1:235.
[149] al-Shurunbulālī, *Majmū' Rasā'il al-Shurunbulālī*, 1:237.
[150] Ibn al-Humām, *Fath al-Qadīr lī al-'Ājiz al-Faqīr*, 7:238-239.
[151] al-Shurunbulālī, *Majmū' Rasā'il al-Shurunbulālī*, 1:226.

who is familiar with *fiqh*. Therefore, it is always necessary to keep this important point in mind when analyzing the sayings of Ibn al-Humām. Secondly, al-Shurunbulālī tries to clarify what kind of *rukhos* Ibn al-Humām wanted while he was dealing with *tatabbu' al-rukhos.*[152] It is known that Ibn Amīr al-Hājj and Amīr Pāshāh, commenting on Ibn al-Humām's *Tahrīr*, discussed a little about the type of *rukhos*. Al-Shurunbulālī, trying to study this topic in detail, says that the type of *rukhos* mentioned by Ibn al-Humām may include two different possibilities. According to the first possibility, he wanted to say that *tatabbu' rukhos,* which does not contradict *nass*, *ijmā'*, or *qiyās* is permissible despite its contradicting with other madhhabs.[153] Al-Shurunbulālī mentions that Ibn al-Humām wanted to say this.

According to the second possibility, Ibn al-Humām meant *rukhos* only on *ijtihādī issues*[154] that do not conflict with those listed above. At this point, al-Shurunbulālī also responds to this possible objection. According to this objection[155], if it is said that Ibn al-Humām meant *rukhos* only in *ijtihādī issues* matters, then the actions of the followers of one madhhab become invalid according to another madhhab in opposing *hukms*? But the scholars of any madhhab do not consider the actions of people from other madhhabs to be invalid! According to al-Shurunbulālī, the actions of followers of one madhhab in opposing *hukms* are invalid according to another madhhab.[156] For example, the presence of *shāhid* in a marriage is a requirement according to the Hanafi madhhab, just as the presence of *walī* is a requirement in a marriage according to the Māliki school. So, although the scholars of the Hanafi madhhab do not openly say that if a person in the Shāfi'ī madhhab enters into a marriage without *shāhid*, his marriage is not valid, in reality, his marriage is not a marriage according to the Hanafi madhhab. It is also necessary to mention that if someone looks carefully, he can see that every madhhab openly mentions the above invalidity. Every madhhab says: "Our madhhab is right, but it may be wrong" (مذهبونا حق ولكن يحتمل الخطأ). Accordingly, not because other madhhabs say they are right, but because they are likely to be right in the presence of Allah, each school of thought does not judge actions performed according to another madhhab to be invalid.

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[152] Ibn al-Humām, *al-Tahrīr fī Usūl al-fiqh*, 552.
[153] al-Shurunbulālī, *Majmū' Rasā'il al-Shurunbulālī*, 1:240.
[154] al-Shurunbulālī, *Majmū' Rasā'il al-Shurunbulālī*, 1:235.
[155] al-Shurunbulālī, *Majmū' Rasā'il al-Shurunbulālī*, 1:240.
[156] al-Shurunbulālī, *Majmū' Rasā'il al-Shurunbulālī*, 1:240.

Thirdly, al-Shurunbulālī addresses the question of how the *rukhos* are to be implemented in reality.[157] Here he is forced to analyse the issue of *talfīq* separately. In order to explain the occurrence of *tatabbuʿ rukhos*, he says:

ووجدنا في كلام ابن الهمام أنه يتخرج من جواز اتباع المقلد غير من قلده أولا ومن عدم التضييق عليه جواز اتباعه رخص المذاهب من غير مانع شرعي. فنقول: إن تلك الرخص جزئيات المسائل لا أجزاؤها...فلو جاز التلفيق ما اشترط للصحة شروطا وما حكم ببطلان الصور التي فقدت فيها الشروط.

We found in the words of Ibn al-Humām that it is permissible for an imitator to follow someone other than the one he first imitated and that it is permissible for him to follow the rukhos of the madhhabs without any legal prohibition. We say: Indeed, these rukhos are (permitted to follow) in independent cases, not the parts of one case. If it were permissible *talfīq*, the conditions for validity would not have been required, and the cases in which the conditions were not fulfilled would not have been invalidated.

It is clear from this that it is not permissible to combine and follow (*talfīq*) the conflicting views of madhhabs in one particular issue. To prove this, he says:

فالجزئيات مشروطة بشروطها عند القائل بها، ينتفي بانتفائها، وتوجد بوجودها فلا تجد شيئا حالة التلفيق

Partials (independent cases) are conditional on their requirements by the one who formed them, negated by their (requirements) negation, and exist by their (requirements) existence, so there is nothing in the case of *talfīq*

As long as it is not permissible to combine two opposing views on an issue, it is also not permissible to combine different views in a way that contradicts *ijmāʿ*, as Amir Hajj mentioned.[158] But Ibn Amīr al-Hājj did not call this compilation *talfīq*, unlike al-Shurunbulālī. He tries to prove that the example mentioned by Ibn Amīr al-Hājj is *talfīq*[159] and therefore not permissible. al-Shurunbulālī, concluding on the subject of *talfīq*, says:

فتحصل مما ذكرناه أنه ليس على الإنسان التزام مذهب معين وأنه يجوز له العمل بما يخالف ما عمل على مذهبه مقلدا فيه غير إمامه مستجمعا شروطه ويعمل بأمرين متضادين في حادثتين لا تعلق لواحدة منهما بالأخرى .

It is clear from what we have mentioned that a person does not have to adhere to a particular madhhab and that he may act contrary to his madhhab if he imitates someone other than his Imam and fulfills all the conditions thereof. And acts on two conflicting matters in two cases in which one is not related to the other

It is clear from this that according to al-Shurunbulālī, only *talfīq* in the form of *murāʿāt al-khilāf* is permissible, but in fact, it is not real *talfīq*.

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[157] al-Shurunbulālī, *Majmūʿ Rasāʾil al-Shurunbulālī*, 1:235.
[158] Ibn Amīr al-Hājj, *al-Taqrīr wa al-Tahbīr,* 3:448.
[159] al-Shurunbulālī, *Majmūʿ Rasāʾil al-Shurunbulālī*, 1:240.

Ibrāhīm bin Husayn bin Ahmad al-Makkī Pīrīzādah (d.1099/1688) is another jurist who commented on Ibn al-Humām's ambiguous expressions. Pīrīzādah analyzed the issue of talfīq in his article.[160] In this treatise, the author thoroughly analyses the issue of intra-madhhab talfīq but does not dwell on the issue of talfīq between madhhabs. Indeed, this treatise has several unique features. We should mention its special features here. One of these features is that the author refutes the works written before him on the permissibility of talfīq. For example, he demolishes all the arguments of Ibn Mullā Farrūkh al-Makkī for the permissibility of talfīq.[161] He points out that the evidence presented by some usūlī scholars for the permissibility of talfīq is very weak and that those usūlī scholars did not address far'iyy issues presented in the books of Hanafi madhhab. Furthermore, he attempts to correct by commenting on points that previous authors have misjudged. For example, by summarising the views of Abū Hanīfa and Abū Yūsuf, he openly criticizes Ibn Nujaym regarding selling waqf property based on talfīq[162], but does not openly mention him by name. Pīrīzādah takes a deeper approach to this issue, focusing on the need to analyze Qādīkhān's statements.[163] According to him, it is not possible to sell waqf property with ghubn fāhish. As mentioned above, according to Abū Hanīfa, wakīl can sell the property of the muwakkil with ghubn fāhish, but wakīl (mutawallī) cannot sell waqf property in the form of istibdāl. Qādīkhān did not say that Abū Hanīfa would allow the sale of waqf property in the form of istibdāl, but rather that if Abū Hanīfa would have allowed the sale of waqf property in the form of istibdāl, he would have automatically allowed the sale of waqf property.[164] However, Abū Hanīfa did not quote like this.[165] As a result, it can be said that those who have said that talfīq is permissible based on Qādīkhān's words have not properly understood Qādīkhān's statements. Here it becomes clear that Pīrīzādah is obviously indicating that talfīq is not used as a method of legal reasoning in the Hanafi madhhab with this example historically.

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[160] Ibrāhīm bin Husayn bin Ahmad al-Makkī Pīrīzādah, *Majmūatu' Rasā'il Pīrīzādah,* 1st ed., (Istanbul: Dār Bāb al-'Ilm, 2022), 76.
[161] Pīrīzādah, *Majmūatu' Rasā'il Pīrīzādah,* 76.
[162] Pīrīzādah, *Majmūatu' Rasā'il Pīrīzādah,* 94.
[163] Pīrīzādah, *Majmūatu' Rasā'il Pīrīzādah,* 78.
[164] Pīrīzādah, *Majmūatu' Rasā'il Pīrīzādah,* 78.
[165] Pīrīzādah, *Majmūatu' Rasā'il Pīrīzādah,* 78.

-One of the other unique features of Pīrīzādah is that he brings with him a number of narrations that indicate the inadmissibility of the use of *talfīq* in *farʿiyy* issues in books of Hanafi madhhab. Based on these narrations, Pīrīzādah tries to prove that any form of *talfīq* is not permissible.[166] Whoever says that intra-madhhab *talfīq* is impermissible is automatically forced to say that *talfīq* between madhhabs is also impermissible. Although Pīrīzādah does not explicitly speak of *talfīq* in *ijtihād* anywhere in his treatise, his approach requires that any form of *talfīq,* according to him, is impermissible.

Pīrīzādah also has an independent article about Ibn al-Humām's ambiguous phrases.[167] It is called *Sharhu Masʾalati al-Talfīq al-Wāqiʿati fī al-Tahrīr*. The author opposes several views of Ibn al-Humām in this article. One of these views is the *intiqāl* from one madhhab to another. According to Ibn al-Humām, to take place real *intiqāl*, a person first must follow (*taqlīd*) a particular *mujtahid* and act based on the statements of that *mujtahid.*[168] It is when he has followed a particular *mujtahid,* after that he can change his madhhab. How can a person who has no connection with any madhhab and does not follow any *mujtahid* be considered to have transferred to another madhhab? In addition, a person does not imitate a *mujtahid* just by saying, "I imitate such a *mujtahid*". With such a statement, a person is only considered to have promised to imitate but is not considered to have actually imitated.[169] Pīrīzādah states that he disagrees with this view as follows:

أقول: لا بعد من أن التقليد كما يكون حقيقة يكون حكما، ولذلك نظائر لا تنحصر أو أن قصده إلى فعل لا يحدث له على هذا المذهب كالفعل، وله نظائر جعل القصد فيها إلى الشيء فيها ملحقا بحقيقة ذلك [170].

It is clear from this phrase that Pīrīzādah does not agree with Ibn al-Humām's views on the reality of *intiqāl*. According to him, if a person says, "I follow such a madhhab," even if he has not yet performed any act according to that madhhab, he becomes a *muqallid.*[171] Another view of Ibn al-Humām criticised by Pīrīzādah is on the issue of *tatabbuʿ al-rukhos.*[172] Pīrīzādah evaluates Ibn al-Humām's statements on

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[166] Pīrīzādah, *Majmūatuʿ Rasāʾil Pīrīzādah,* 83.

[167] Pīrīzādah, *Majmūatuʿ Rasāʾil Pīrīzādah,* 135.

[168] Ibn al-Humām, *Fath al-Qadīr lī al-ʿAjiz al-Faqīr,* 7:238.

[169] Ibn al-Humām, *Fath al-Qadīr lī al-ʿAjiz al-Faqīr,* 7:239.

[170] Pīrīzādah, *Majmūatuʿ Rasāʾil Pīrīzādah,* 135-136.

[171] Pīrīzādah, *Majmūatuʿ Rasāʾil Pīrīzādah,* 135-136.

[172] Pīrīzādah, *Majmūatuʿ Rasāʾil Pīrīzādah,* 139.

tatabbu' al-rukhos (ويتخرج منه جواز تتبع رخص المذاهب ولا يمنع منه مانع شرعي) and points out that Ibn al-Humām's words are not acceptable according to Hanafi madhhab, giving several examples.[173] However, unlike al-Shurunbulālī, Pīrīzādah does not analyze Ibn al-Humām's statements in depth, but only superficially. For example, Pīrīzādah ignores what kind of *tatabbu' al-rukhos* Ibn al-Humām intended and in what form it is permissible to follow *tatabbu' al-rukhos*.

Pīrīzādah's third objection to Ibn al-Humām is reflected in the debate about the *hukm* of following a certain madhhab. It is well known that according to Ibn al-Humām, following a particular madhhab is not *wājib li zātihi* because it is not determined by any *nass*, but following the scholars is *wājib*.[174] The proof of his claim is this verse:

فسئلوا أهل ٱلذّكر إن كنتم لا تعلمون[175]

This view is the most common view among *usūlī* scholars. Pīrīzādah disagrees with Ibn al-Humām on this matter and says following:

أقول: إن كان هذا التأويل هو الموجب لأصحية هذا القول فغير واضح؛ لأن العامي مأمور باتباع واحد من أهل العلم لا بعينه ولا ريب أن تعيينه مفوض إليه بأمر الشرع، فلما عينه كان تعيينا لما هو المأمور به في النص بالنسبة إليه[176]

> I say: If this interpretation is the reason for the validity of this statement, it is not clear, because the ordinary person is commanded to follow one of the scholars, not a particular one, and there is no doubt that his selection is authorized by the command of the Sharī'ah, so when he selects him, it is a selection of what is commanded in the *nass* in relation to him.

According to this example, if a Muslim swears an oath but then breaks his oath, he will have to accept one of three punishments according to the verse.[177] If this person chooses one of the three options and completes it, he cannot say after doing it, "I wanted to choose the other punishment instead of this one." For example, once he has chosen *kiswah* and given it, then he cannot go back and change what he has chosen. Just as a person chooses one of the options and cannot choose another, it becomes *wājib* for a person to follow a madhhab after believing it to be true. However, there are several problematic points in this *qiyās*. One of them, in the verse of *Surah an-Nahl*, *hukm* of asking the scholars was mentioned *mutlaq*; it was not

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[173] Pīrīzādah, *Majmūatu' Rasā'il Pīrīzādah,* 139.
[174] Ibn al-Humām, *al-Taḥrīr fī Usūl al-fiqh*, 552.
[175] Al-Qur'ān, 16:43.
[176] Pīrīzādah, *Majmūatu' Rasā'il Pīrīzādah,* 138.
[177] Al-Qur'ān, 5:89.

mentioned with *muqayyad* with any madhhab. However, in the verse of *Surah al-Mā'idah*, Allah gave the right to choose one of the three things, and he emphasized with (أو) that a person who chooses one of the three things cannot choose another. Secondly, Ibn al-Humām does not say that *taqlid ba'd al-'amal* is permissible rather he says that a person cannot imitate another madhhab in the actions he performs according to one madhhab[178], just like Pīrīzādah. In other words, according to Ibn al-Humām, it is permissible to follow different madhhabs in two independent matters because Allah has not made it obligatory to follow any particular madhhab, just as it is permissible for a person who breaks two oaths to choose a *kiswah* in one of them and an *it'ām* in the other. It can be said that Ibn al-Humām is more right in his approach from Pīrīzādah.

- Another scholar who is a commentator on phrases of Ibn al-Humām is 'Abdulghanī al-Nābulsī (d.1143/1731). al-Nābulsī discussed the issue of *talfīq* in the last part of his treatise.[179] The author raises several important issues in this tract. The first of these topics is the question of whether or not the adherence to a particular madhhab is obligatory.[180] First, before getting into this issue, al-Nābulsī divides the people into two groups: *mujtahids* and *muqallids*.[181] The author begins to talk about *muqallids* after a brief discussion about *mujtahids*.[182] Therefore, we can say that the author believes that *talfīq* can only come from *muqallids*. According to al-Nābulsī, it is not compulsory to follow a particular madhhab, but it is permissible for *muqallid* to follow one of the four madhhabs, provided that they fulfill the conditions required by that very madhhab.[183] However, these expressions should not be taken in *mutlaq* sense, although the appearance of these expressions indicates, "every *muqallid* can follow the madhhab which he wants". In fact, in another part of the treatise, it is possible to find out what al-Nābulsī intention was from the above phrases.[184] Therefore, when al-Nābulsī says *muqallid*, he means a person who has some knowledge of madhhabs. Nevertheless, the difference between al-Nābulsī and other *usūlī* scholars in this matter is that according to him *muqallid* can follow another

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[178] Ibn al-Humām, *al-Tahrīr fī Usūl al-fiqh*, 552.
[179] 'Abdulghanī bin 'Ismā'īl bin 'Abdulghanī al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 1st ed., (Cairo: Dār al-Ihsān, 2020), 58.
[180] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 58.
[181] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 58.
[182] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 58.
[183] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 58-59.
[184] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 66.

madhhab even if there is no real *darūrah*.[185] We will deal with this issue separately. The second important issue that al-Nābulsī raises is the question of the conditions that are imposed on a person of a particular madhhab in order to be allowed to follow another madhhab.[186] In order to analyze this issue, al-Nābulsī uses concepts of Ibn al-Humām. According to Ibn al-Humām, the first condition for being allowed to follow another madhhab is that the act performed based on *taqlīd* should not have taken place, as Ibn al-Humām said after the act is completed according to one madhhab.[187] The second condition is that it should not include anything that two madhhabs forbid. Al-Nābulsī agrees with Ibn al-Humām on these two requirements.[188] A third condition is that there should be no *tatabbu' al-rukhas*. Mentioning this condition, al-Nābulsī says:

الثالث: أن لا يتتبع الرخص ويلتقطها وهذا الشرط اعتبره الإمام النووي رحمه الله وغيره، ولكن ابن الهمام لم يعتبره ولم يلتفت إليه [189].

> The third: This condition is considered by Imam al-Nawawī (may Allah have mercy on him) and others, but Ibn al-Humām did not consider it and did not take note of it.

However, Ibn al-Humām does not say what the real purpose of these expressions was. Therefore, it can be concluded that Ibn al-Humām *tatabbu' al-rukhos* is permissible according to al-Nābulsī words, but not in an *mutlaq* sense, as mentioned above. The third important point that al-Nābulsī focuses on is to give refutations to the scholars who say that *talfīq* is permissible.[190] Al-Nābulsī is particularly critical of Ibn Mullā Farrūkh al-Makkī and accuses him of a lack of understanding of Ibn al-Humām's phrases as follows:

فانظر كيف فهم منه هذا القاصر الفهم أن مراده صحة التلفيق بقوله: "فأخذ العامي في كل مسألة بقول مجتهد أخف عليه". فإن المراد بالمسألة تمام الحكم لا بعضه؛ لأنه في مقابلة التزام مذهب معين وقد صرح في كتابه التحرير المذكور بمنع التلفيق فكيف الإشارة تعارض الصريح على فرض صحتها [191].

> See how this weak-minded person understood him to mean that he meant the validity of *talfīq* when he said: The *'āmmī* takes in each issue with the opinion of a *mujtahid*, which is lighter (for him). In fact, the intended meaning of the issue is the entire judgment and not part of it because it is in contrast to the following specific madhhab. He has stated in his book *Tahrīr* that *talfīq* is forbidden, so how can the indication oppose the obvious (meaning), assuming that it is true.

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[185] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 67.
[186] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 64.
[187] Ibn al-Humām, *al-Tahrīr fī Usūl al-fiqh*, 552.
[188] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 64.
[189] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 65.
[190] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 68-69.
[191] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 69.

Like Pīrīzādah, he responds to each of Ibn Mullā Farrūkh al-Makkī's arguments with a counter-argument. One of the most important points to mention here is that al-Nābulsī, while refuting the scholars who stated the permissibility of *talfīq* refers to the phrases of Ibn Nujaym and says that there are more than two possibilities about his expressions[192]. One of them is that he wanted when he says (وما وقع في آخر تحرير ابن الهمام من منع التلفيق فإنما عزاه إلى بعض المتأخرين وليس هذا هو المذهب) that *talfīq* within one madhhab is not impermissible, contrary, Ibn al-Humām did not want to say about impermissibility of *talfīq* within one madhhab, but only impermissibility of *talfīq* between madhhabs. It is clear from these phrases that, according to al-Nābulsī, the phrases mentioned by Ibn Nujaym about *Tahrīr* indicate the impermissibility of *talfīq* between madhhabs, not the impermissibility of intra-madhhab *talfīq*.[193] That is why we can say exactly that Ibn Nujaym stated permissibility of *talfīq*. Here the classical methodologists' comments, opinions and approaches to Ibn al-Humām's ambiguous statements came to an end. There are other *uṣūlī* scholars within the Hanafi madhhab who have spoken about *talfīq*. However, we have not mentioned them because they did not comment on Ibn al-Humām's statements directly.

3.2.3. Modern *Uṣūlī* Scholars' Comments and Interpretations

This section will focus on how contemporary *uṣūlī* scholars have interpreted Ibn al-Humām's statements. By contemporary scholars, I mean scholars of the 20th and 21st centuries.

One of the modern approaches to the issue of *talfīq* in general, and the ambiguous statements of Ibn al-Humām in particular, was developed by Rashid Rizā (d. 1354/1935). Rizā continued to expand his scientific activities in Egypt and left a number of scientific papers for the next generation to read. He dealt with the issue of *talfīq* in several of his works. There are several points in which Rizā's approach to the issue of *talfīq* differs from that of other *uṣūlī* scholars. One such point is that, according to him, the reason why *uṣūlī* scholars forbade *talfīq* is that *talfīq* is a part of *taqlīd*.[194] Interestingly, although Rizā cites the invalidity of *taqlīd* as a proof of the

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[192] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 71.
[193] al-Nābulsī, *Khulāsatu al-Tahqīq fī Bayāni Hukmi al-Taqlīd wa al-Talfīq,* 71.
[194] Muhammad Rashīd Rizā, *Muhāwarāt al-Muslih wa al-Muqallid,* 1st ed., (Minneapolis: Dār al-Manār, 2007), 84.

scholars' consensus on invalidity of *talfīq*, he says nothing about the type of this *taqlīd*. However, *uṣūlī* scholars have been repeating for centuries that *taqlīd* of one of the four madhhabs is *wājib*. So how can Riẓā attribute to the scholars the view that *the invalidity of taqlīd is the cause of the invalidity of talfīq*? To prove that Riẓā tries to prove the validity of *taqlīd*. It can be said that if he proves the validity of *taqlīd*, the permissibility of *talfīq* also has been proven because of that *talfīq* is the part of *taqlīd.* Nevertheless, he refers to the books of *kalām* to prove the permissibility of *taqlīd.*[195] From the above, it is clear that Riẓā has been incorrect in his attribution of the above-mentioned view to the *uṣūlī* scholars. This is because there are several areas such as *kalām*, *fiqh* in which *taqlīd* is found. Riẓā answers the question in the field of *fiqh* with the view of *taqlīd* in the field of *kalām* and gives evidence from books written in the field of *kalām.*[196] Another point that distinguishes Riẓā from the others is his view that the Hanafi madhhab consists of *talfīq* fully[197] and that Ibn al-Humām is the supporter of *talfīq.*[198] Riẓā describes this view as follows:

ومن العجب أن ينقل صاحب الدر هذا القول الذي لم يقل به أحد من أئمة مذهبه وكيف يقولونه والمذهب كله تلفيق لأنه مذهب ثلاثة أئمة. ومن آية عدم قول الأئمة بمنع التلفيق أن مجتهدهم في القرون المتوسطة الكمال بن الهمام نسبه في تحريره إلى متأخر.....[199].

It is surprising that *Sāhib al-Durr* transmitted this statement, which was not said by any of the imams of his madhhab, and how could they say it when the entire madhhab is *talfīq* because it is the madhhab of three imams. It is a sign that the imams did not say that *talfīq* is prohibited because their *mujtahid* in the middle centuries, Kamāl Ibn al-Humām, attributed it to a latecomer scholar in his (book) *Tahrīr.*

It is clear from this that, according to Riẓā, the concept of *talfīq* is different for him than for others. Riẓā understood *talfīq* differently than anyone else. Proof of this is that Riẓā did not mention a specific definition of *talfīq* in any of his books. As long as there is disagreement among scholars on the definition, it is natural that there will be disagreement in *hukm*. Riẓā says that the Hanafi madhhab is formed entirely from *talfīq*[200], while the scholars of the Hanafi madhhab say that *talfīq* is prohibited. It can be said that when scholars are talking about *talfīq*, they are talking about combining several views of *mujtahid*s in one issue, but Riza is criticized for not considering this important point. It is clear from the above and the examples given by Riẓā in several

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[195] Riẓā, *Muhāwarāt al-Muslih wa al-Muqallid*, 84.
[196] Riẓā, *Muhāwarāt al-Muslih wa al-Muqallid*, 84.
[197] Riẓā, *Muhāwarāt al-Muslih wa al-Muqallid*, 85.
[198] Riẓā, *Muhāwarāt al-Muslih wa al-Muqallid*, 85.
[199] Riẓā, *Muhāwarāt al-Muslih wa al-Muqallid*, 84.
[200] Riẓā, *Muhāwarāt al-Muslih wa al-Muqallid*, 85.

places that he did not mean *talfīq* between madhhabs when he said that *talfīq* is permissible, but he meant the permissibility of *talfīq* within one madhhab.[201] In another work, he explains his views on *talfīq* between madhhabs as follows:

هل يجوز التقليد من مذاهب الأئمة الأربعة وغيرها في العقائد والمعاملات والعبادات وغيرها، كالوضوء والغسل والصلاة وغيرها أم لا؟ إن جمع الأقوال الملفقة من المذاهب المختلفة للعمل بها تقليدا لأهلها عبث بالدين واتباع الهواء، ولكن الذي يتبع قوة الدليل...لا يعد ملفقا ولا مقلدا [202].

Is it permissible to imitate the four imams and others in beliefs, transactions, worship, and other matters, such as ablution, washing, praying and others or not? Collecting fabricated sayings from different madhhabs to imitate them is playing with religion and following desires. However, those who follow the stronger evidence are neither a *mulaffiq* nor a *muqallid*..

It is clear from this that Rizā clearly mentioned the unvalidity of *talfīq* between madhhabs in this place, although he tried to prove the permissibility of *talfīq* in other place.[203] Therefore, it is incorrect to attribute the view of the permissibility of *talfīq* to Rizā in an absolute sense because he returned from this view.[204] Some scholars have even mentioned that Rizā said that during the time of *salaf*, *talfīq* was performed involuntarily.[205] However, Rizā also mentioned that even at that time it was a rule that *talfīq* should not be based on *tatabbu' al-rukhos* and should not be in contradiction with the *nass.*[206] Therefore, it can be said that Rizā was suggesting that if *talfīq* is performed by the *'ammī* person, it could be involuntary, not in the absolute sense.

Muhammad Taqī Uthmānī is one of the contemporary scholars who has methodically analyzed Ibn al-Humām's view on *talfīq* and has discussed the issue of *talfīq*. In his book on the problems of *iftā*, he discusses *hukm* of *talfīq*. It is clear from the debate that the attribution of the permissibility of *talfīq* to Ibn al-Humām is not correct.[207] In this debate, Muhammad Taqī Uthmānī focuses on a number of important points. One of them is that Ibn al-Humām said a number of conditions are necessary for *tatabbu' al-rukhos* to be permissible, according to some latercome scholars. According to

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[201] Rizā, *Muhāwarāt al-Muslih wa al-Muqallid*, 85-86.

[202] Muhammad Rashīd Rizā, *Fatāwā al-Imām Muhammad Rashīd Rizā*, 1st ed., (Cairo: Dār al-Kitāb al-Jadīd, 2005), 5:2141.

[203] Rizā, *Fatāwā al-Imām Muhammad Rashīd Rizā*, 4:1534.

[204] Özgür Kavak, *Reşid Rıza'nın Fıkıh Düşüncesi Çerçevesindeki Görüşleri*, (Master thesis,Marmara University,2009), 255.

[205] Kavak, *Reşid Rıza'nın Fıkıh Düşüncesi Çerçevesindeki Görüşleri*, 255-256.

[206] Rizā, *Fatāwā al-Imām Muhammad Rashīd Rizā*, 4:1536.

[207] Muhammad Taqī ʿUthmānī, *Usūl al-Iftā wa Ādābuhu,* 1st ed., (Karachi: Quranic Studies Publishers, 2011), 209-210.

Taqī Uthmānī, the fact that latercome scholars first discussed talfīq does not mean that *mutaqaddim* scholars did not discuss the issue at all. It is possible that the *mutaqaddim* scholars also argued about this issue, but these arguments did not reach us, or we did not fully investigate all the sources ourselves.[208] Therefore, these statements of Ibn al-Humām alone do not indicate the permissibility of *talfīq*, even according to Ibn al-Humām. Moreover, proving that the mutaqaddim scholars did not transmit the prohibition of *talfīq* is considered very weak evidence. For in the same way that the impermissibility of *talfīq* was not transmitted by them, they did not transmit the permissibility of *talfīq* either. Therefore, since there are no clear narrations from the *mutaqaddim* scholars about the permissibility and impermissibility of *talfīq*, it is necessary to refer to other evidence in this case. The second important point stressed by the Taqī Uthmānī, who claimed the impermissibility of *talfīq*, is that although there is disagreement among scholars on the issue of the impermissibility of *talfīq*, all scholars of the madhhab agree on the impermissibility of bad results arising from *talfīq*.[209] In other words, what is *talfīq* commonly used for? According to him, *talfīq* is usually used for benefiting *rukhos* of madhhabs.[210] Since every madhhab has its own method of legal reasoning, there is no need for *talfīq* in any madhhab to make a new decision on contemporary issues. So why should *talfīq*, which is usually based on bad intentions, be permissible? After all, it is proved by the *nass* that *ittibāʿ al-hawā* is not permissible.[211] When scholars like Ibn al-Humām are credited with the permissibility of *talfīq* , people of our time begin to play with religion and shariah as they please, saying that *talfīq* is permissible. From the words of Taqī Uthmānī, it can be concluded that that which serves as a means for the implementation of *harām* is forbidden, so that the haram is not performed.

Thus, we have considered several methodological scholars' comments, opinions, and approaches to Ibn al-Humām's ambiguous statements about *talfīq*. In the next section, starting with Ibn al-Humām's statements, we will discuss the problematic points in the commentaries on these statements and try to solve these problems.

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[208] ʿUthmānī, *Usūl al-Iftā wa Ādābuhu*, 210.
[209] ʿUthmānī, *Usūl al-Iftā wa Ādābuhu*, 213.
[210] ʿUthmānī, *Usūl al-Iftā wa Ādābuhu*, 213.
[211] ʿUthmānī, *Usūl al-Iftā wa Ādābuhu*, 213.

3.3. Problematic Points of Traditional and Modern *Uṣūlī* Interpretations

3.3.1. Uncertainty About the Type of *Talfīq* in Ibn al-Humām's Statements

Many scholars who discussed the ambiguous statements of Ibn al-Humām attributed to him the view of the permissibility of *talfīq*[212], but they did not specify the type of this *talfīq*. This has led to a growing number of modern scholars who argue for the absolute permissibility of *talfīq* based on the ambiguous statements made by Ibn al-Humām. It is known that *talfīq* is divided into several types, such as *talfīq* in *ijtihād*, *talfīq* in *taqlīd,* and *talfīq* in *fatwā*. Therefore, it should be the main task of every researcher to determine which type of *talfīq* Ibn al-Humām is talking about. Ibn al-Humām clearly stated his views on the issue of *talfīq* in *ijtihād* and mentioned that it is not permissible.[213] Therefore, there is no ambiguity in his statements on the issue of *talfīq* in *ijtihād*; in fact, they are very clear. Some classical methodologists have ignored even this problematic point. For example, the sayings of Ibn Nujaym clearly indicate that he mentioned that the sayings of Ibn al-Humām cannot be proof of the unacceptability of *talfīq* within madhhab, and he believed that the unacceptability of *talfīq* is not the view of Ibn al-Humām and the Hanafi madhhab, but the view of another madhhab.[214] In fact, although Ibn al-Humām's statements are about *talfīq* between madhhabs, Ibn Nujaym said that these statements do not mean that intra-madhhab *talfīq* is not permissible. Moreover, Ibn al-Humām never said that *talfīq* is permissible in *ijtihād*. Rather, he prohibited it clearly. Mulla Farrūkh al-Makkī, after him al-Shurunbulālī, were the first among the classical methodologists to clearly state what kind of *talfīq* his ambiguous expressions are.[215] As a result, the statements of Ibn al-Humām only indicate the permissibility or impermissibility of *talfīq* in *taqlīd*, there is no mention of other types of *talfīq* in these statements.

3.3.2. The Lack of Complex Analysis of Ibn Al-Humām's Statements

The lack of a complex analysis of Ibn al-Humām's statements is also one of the problems that have been the cause of various disagreements among *uṣūlī* scholars. It

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[212] Demir, *İslam hukukunda taklid ve telfik,* 90.
[213] Ibn al-Humām, *al-Taḥrīr fī Usūl al-fiqh*, 409-410.
[214] Ibn Nujaym, *al-Rasāʾil al-Zayniyyah fī al-Mazhab al-Hanafiyyah*, 347.
[215] Ibn Mullā Farrūkh al-Makkī, *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*, 94.

is known that when studying a scholar's approach to a certain issue, it is necessary to look at this and related issues comprehensively. Sometimes scholars express *hukm* of a matter in an absolute sense in one place, and in another place, they limit this absoluteness with certain criteria. Therefore, in studying Ibn al-Humām's approach to the issue of *talfīq*, it is necessary to use this method. This means that as long as there is uncertainty in Ibn al-Humām's ambiguous expressions in the book of *Tahrīr*, it is necessary to first refer to other books of Ibn al-Humām to interpret these expressions. It cannot be said that it is permissible to interpret based on the apparent meaning of what he says in a particular sense. Here, it is evident that Mulla Farrūkh al-Makkī says that *talfīq* is permissible in the Hanafi madhhab based on the apparent meaning of the phrases in *Fath al-Qadīr* and that these phrases of Ibn al-Humām are indications of the permissibility of *talfīq*.[216] Therefore, the issue of *talfīq* will become even clearer if we turn to other phrases of Ibn al-Humām related to this issue. For example, in *Fath al-Qadīr*, Ibn al-Humām says:

يعمل بقول أبي حنيفة، فيما يقع له من المسائل التي تتعين في الوقائع، فإن أرادوا هذا الالتزام فلا دليل على وجوب اتباع المجتهد المعين بإلزامه نفسه ذلك قولا أو نية شرعا، بل الدليل اقتضى العمل بقول المجتهد فيما احتاج إليه لقوله تعالى ﴿فاسألوا أهل الذكر إن كنتم لا تعلمون﴾ [النحل: ٤٣] والسؤال إنما يتحقق عند طلب حكم الحادثة المعينة، وحينئذ إذا ثبت عنده قول المجتهد وجب عليه عمله به، والغالب أن مثل هذه إلزامات منهم لكف الناس عن تتبع الرخص وإلا أخذ العامي في كل مسألة بقول مجتهد قوله أخف عليه. [217]

He follows Abū Hanīfa's opinion in cases he faces. If they mean this obligation, there is no evidence that it is obligatory to follow the particular mujtahid by obligating himself to do so by word or intention. Rather, the evidence requires acting on the sayings of the mujtahid in what he needs, as Allah says: Ask the people of remembrance if you do not know' [al-Nahl: 43], and asking is only achieved when asking for the ruling on the particular case, and then if he has established the opinion of the *mujtahid*, he must act on it, and it is likely that such obligations are from them to stop people from following *rukhos*, otherwise the ordinary person in every matter would take the opinion of a *mujtahid* whose words are lighter for him to act on them. I don't know what prohibits this from *naql* or *'aql*.

This word of his (عند طلب حكم الحادثة المعينة) clearly indicates that it is possible to use the *rukhos* of another madhhab in any independent, unrelated case. The phrase (وحينئذ إذا ثبت عنده قول المجتهد وجب عليه عمله به) has very important meaning here. This is because *talfīq* is a situation in which in one case the *mulaffiq* will partly follow some of the jurisprudential views of a *mujtahid* and partly will not follow. This is a clear indication that according to Ibn al-Humām, a person who wants to follow a different madhhab in a particular matter is following that madhhab in its entirety and not just partly. Moreover, Ibn al-Humām says in another place in *Fath al-Qadīr*:

[216] Ibn Mullā Farrūkh al-Makkī, *al-Qawl al-Sadīd fī badi masāil al-ijtihād wa al-taqlīd*, 84-86.
[217] Ibn al-Humām, *Fath al-Qadīr lī al-'Ājiz al-Faqīr*, 7:238-239.

وقالوا: المنتقل من مذهب إلى مذهب آخر باجتهاد وبرهان آثم يستوجب التعزير فبلا اجتهاد وبرهان أولى، ولا بد أن يراد بهذا الاجتهاد معنى التحري وتحكيم القلب لأن العامي ليس له اجتهاد. ثم حقيقة الانتقال إنما تتحقق في حكم مسألة خاصة قلد فيه وعمل به، وإلا فقوله قلدت أبا حنيفة فيما أفتى من المسائل مثلا والتزمت العمل به على الإجمال وهو لا يعرف صورها ليس حقيقة التقليد بل هذا حقيقة تعليق التقليد أو وعد به.²¹⁸

It is said: A person who converts from one madhhab to another madhhab with *ijtihād* and proof is a sinner and is subject to punishment, so without *ijtihād* and proof it is more appropriate. Ijtihād must be understood in the sense of *taharrī* and deciding the heart because an uneducated person does not have *ijtihād*. Otherwise, saying, I have imitated Abū Ḥanīfa in what he has issued an opinion on, for example, and I am committed to following him in general, even though he does not know the specifics of the matter, is not the real meaning of *taqlīd*, but rather the real meaning of suspending *taqlīd* or promising to do so

It is clear from these statements that Ibn al-Humām does not support *intiqāl* from one madhhab to another. On the contrary, he thinks it's right to follow a particular madhhab. In short, if we put together his opinions mentioned elsewhere, it becomes clear that, firstly, Ibn al-Humām is a supporter of following a particular madhhab. Secondly, a follower of a particular madhhab can use *rukhos* of other madhhabs in a way that does not contradict his madhhab.²¹⁹ Finally, to use these *rukhos*, it is necessary to adhere fully to another madhhab in a particular case. In *talfīq*, none of the three attributes mentioned above can be found. As a result, the permissibility of *talfīq* cannot be attributed to Ibn al-Humām.

3.3.3. The Addressee of Ibn al-Humām's Statements

Another problematic point regarding this issue is that the addressee of Ibn al-Humām's statements is not considered. It is well known that every sentence has its addressee. Understanding the meaning of the phrases relies heavily on knowing the intended audience. Ibn al-Humām's statements also have no exception. If we analyse them in-depth, we can say to whom they are addressed. In the Hanafi madhhab, as in other madhhabs, when a questioner asks a *muftī* a question, the *muftī* must answer according to the madhhab of the questioner.²²⁰ The *fatwā* of a *muftī* who has issued a *fatwā* based on other madhhabs by the desires of the questioner is considered invalid. It is compulsory for the questioner to ask a *muftī* who knows *the hukm* of a certain issue because he does not know this *hukm*. If the questioner, who follows a certain madhhab, does not even know *hukms* the issues he needs, how can he know *the*

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²¹⁸ Ibn al-Humām, *Fath al-Qadīr lī al-ʿĀjiz al-Faqīr*, 7:238.
²¹⁹ al-Shurunbulālī, *Majmūʿ Rasāʾil al-Shurunbulālī*, 1:235.
²²⁰ Muhammad ʾAmīn bin ʿUmar Ibn ʿĀbidīn, *Sharhu ʿUqūdi Rasm al-Muftī*, 181.

rukhos of other madhhabs? In a way, he becomes a scholar if he knows *rukhos* of all other madhhabs. Based on this, these expressions:

ويتخرج منه جواز اتباع رخص المذاهب ولا يمنع منه مانع شرعي، إذ للإنسان أن يسلك الأخف عليه إذا كان له إليه سبيل بأن لم يكن عمل بآخر فيه[221]

The permissibility of following the *rukhos* of the madhhabs is derived from it, and no legal restriction prevents it. A person may take the path that is easiest for him if he has a way to do so by not following another one

can shed light on who Ibn al-Humām is referring to. These expressions require that the person Ibn al-Humām is referring to should know the *rukhos* of other madhhabs in addition to the *rukhos* of his own madhhab. Such people are certainly not considered ordinary people. The following expressions in *Fath al-Qadīr* support this meaning:

المنتقل من مذهب إلى مذهب آخر باجتهاد وبرهان آثم يستوجب التعزير فبلا اجتهاد وبرهان أولى، ولا بد أن يراد بهذا الاجتهاد معنى التحري وتحكيم القلب لأن العامي ليس له اجتهاد[222] .

A person, who converts from one madhhab to another madhhab with *ijtihād* and proof, is a sinner and is subject to punishment, so without *ijtihād* and proof it is more appropriate. Ijtihād must be understood in the sense of *taharrī* and deciding the heart because an uneducated person does not have *ijtihād*.

Therefore, it can be said that the addressee of Ibn al-Humām's expressions is not an ordinary people but a scholar. It is appropriate to mention this important point – which it is permissible for a scholar to act according to another madhhab.[223] In necessary cases, a scholar can use *rukhos* of other madhhabs based on the conditions that his own madhhab has set for following other madhhabs.[224] In short, when we say that Ibn al-Humām supported the permissibility *of tatabbu' al-rukhos*, we should also say that Ibn al-Humām knows that it is inconceivable for scholars to follow the *rukhos* of other madhhabs on the basis of their desires and he wanted to limit this permissibility with exceptional situations.

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[221] Ibn al-Humām, *al-Tahrīr fī Usūl al-fiqh*, 552.

[222] Ibn al-Humām, *Fath al-Qadīr lī al-ʿĀjiz al-Faqīr*, 7:238.

[223] Ibn ʿĀbidīn, *Sharhu ʿUqūdi Rasm al-Muftī*, 181.

[224] al-Shurunbulālī, *Majmūʿ Rasāʾil al-Shurunbulālī*, 1:235.

3.3.4. Validity of *Fatwās* Issued Based on *Talfīq* in the Hanafi Madhhab

 The question of the validity of *fatwās* issued based on *talfīq* in the Hanafi madhhab is also one of the problematic points related to this topic. Many methodical scholars have cited these *fatwās* as proof of the permissibility of *talfīq*. Of course, a deeper analysis of this point will shed light on the question of whether *talfīq* is actually permissible or not. Pīrīzāda is one of the best methodological scholars to have debated this issue. It is a well-known fact that a particular *fatwā* in the books of *fatwās* does not always mean the approach of a particular madhhab on a particular issue. Sometimes, one *fatwā* is considered valid at the time it is issued, but its validity expires over time for various reasons[225] or because they were issued against the madhhab, some *fatwās* are considered invalid from the beginning. Nevertheless, even famous scholars sometimes make such mistakes. As a result, there are cases where some later scholars use invalid *fatwās* as evidence for some issues. It can be said that the *fatwās* on the permissibility of *talfīq* in the Hanafi madhhab are among such *fatwās*. For example, in the Hanafi madhhab, Tarasūsī is the first scholar to issue a *fatwā* based on *talfīq*. However, Tarasūsī was one of the most famous scholars of the Hanafi madhhab, the jurists who came after him considered his *fatwā* invalid.[226] In another example, although Ibn Nujaym openly supported the issuance of a *fatwā* based on *talfīq*, prominent scholars accepted his view as a contrary approach to the Hanafi madhhab. Even Ibn Nujaym, no matter how great a scholar he is, was severely criticized for his opinion that it is possible to issue a *fatwā* based on *talfīq*.[227] This means that none of the *fatwās* issued based on *talfīq* can testify to the permissibility of *talfīq* in the Hanafi madhhab. Consequently, it became clear that the *fatwās* cited as evidence for the permissibility of *talfīq* are accepted as invalid *fatwās* in Hanafi madhhab and do not represent the Hanafi madhhab's approach to the issue of *talfīq*.

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[225] Ibn ʿĀbidīn, *Sharhu ʿUqūdi Rasm al-Muftī*, 166.

[226] Qāsim bin Qutlūbughā, *Mūjabāt al-Ahkām wa Wāqiʿāt al-Ayyām,* 246. Ergin, Hanefi Mezhebinde Yeni Bir İstidlal Yöntemi: Mezheb İçi Telfik, *Journal of Islamic Review,* 680.

[227] Pīrīzādah, *Majmūatuʿ Rasāʾil Pīrīzādah,* 78.

3.3.5. The Attribution of *Talfīq* to Abū Yūsuf

 As mentioned above, there are several types of *talfīq* in terms of areas, such as *talfīq* in *ijtihād* and *talfīq* in *taqlīd*. Having clarified that Ibn al-Humām's ambiguous statements refer to *talfīq* in *taqlīd*, it is appropriate to consider the issue of attributing *talfīq* to Abū Yūsuf. It is well known that Abū Yūsuf is one of the three most important figures in the Hanafi madhhab. Although some scholars claim that Abū Yūsuf was a *mujtahid* in madhhab[228], he was a *mujtahid muntasib.[229]* It is said that one day, after making *ghusl*, Abū Yūsuf performed *salah* as an imam on Friday. After the prayer, it is reported[230] that there is a dead mouse in the water that he used for the *ghusl*. Abū Yūsuf: We are acting in accordance with the view of our brothers from Madinah: "When the water reaches *qullatayni*, it does not carry any impurity". Many methodical scholars cite this narration as proof of the permissibility of the *talfīq*. Therefore, our methodological analysis of this narration will contribute to a better understanding of the issue. First, we need to examine the confirmation of this narration and collect other similar narrations, if any. This narration is mentioned in *al-Muhīt al-Burhānī.*[231] In another narration, after being informed about the uncleanness of the water, Abū Yūsuf repeated *salah.[232]* As a result, it became clear that this incident likely happened. Secondly, it is very important to find the point of *istidlāl* in this narration. What indicates that *talfīq* was involved in that incident is that Abū Yūsuf made *ghusl*, which is a condition of *salah* according to one, and he prayed *salah* based on that *ghuls*. When it became clear that the water he used for *ghusl* was impure, even though the *salah* he performed was considered invalid according to that madhhab, he imitated the view of another madhhab and stated that this *salah* was valid. It is clear from this that the claim of the scholars who use this incident as evidence for the permissibility of *talfīq* is that Abū Yūsuf combined the conflicting views of the Hanafi and Mālikī madhhabs on two independent issues before the effect of the first one had stopped on another one. The proof that the effect of the first had not ended is that ablution is necessary for the validity of *salah*, and if

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[228] Ibn ʿĀbidīn, *Sharhu ʿUqūdi Rasm al-Muftī*, 71.

[229] ʿUthmānī, *Usūl al-Iftā wa Ādābuhu*, 96.

[230] Burhānuddīn bin Mahmūd bin Ahmad Ibn Māzah al-Bukhārī, *Al-Muhīt al-Burhānī*, 1st ed., (Beirut: Dār al-Kutub al-ʿIlmiyyah, 2004), 3:187.

[231] Ibn Māzah al-Bukhārī, *Al-Muhīt al-Burhānī*, 3:187.

[232] Mukhtār bin Mahmūd bin Muhammad al-Zāhidī, *Qunyatul-Munyah li Tatmīm al-Ghunyah*, 1st ed., (Calcutta: al-Matbaʿatul-Mahānandiyya, 1830), 64.

ghusl is invalid, the *salah* based on it is invalid by its effect too. In this case, Abū Yūsuf followed the Mālikī madhhab by the validity of *ghusl* and performed *salah* according to the Hanafi madhhab. In fact, neither the Hanafi nor the Mālikī madhhab considers this *salah* to be valid. When the impurity of the water became clear, the *ghusl*, which is a requirement of *salah* according to the Hanafi madhhab, disappeared. As a result, the prayer became invalid. Although the Mālikī madhhab accepts this *ghuls* as a valid one, it does not consider this *salah* valid because *Surah al-Fātiha* was not recited in the prayer performed according to the Hanafi madhhab. Both madhhabs do not consider *salah* performed in the above form to be valid. Some methodical scholars have assessed this situation as *taqlīd baʿdal-ʿamal*. Nevertheless, it can be said that although *taqlīd baʿdal-ʿamal* occurs in two independent events, if the validity of the second depends on the validity of first, then this situation is called *talfīq* . Although this incident of Abū Yūsuf is an example of *talfīq*, this incident only indicates that *talfīq* has occurred, not that it is permissible. Firstly, when we put together the narrations of this incident, it is clear that Abū Yūsuf repeated that *salah*. If Abū Yūsuf had thought that this *salah* was valid, he would not have prayed it again.[233] Secondly, if we look at the word "*qullatayn*" in this narration, this ruling is related to the Shāfiʿī madhhab, not the Mālikī madhhab. Therefore, there is some confusion in this narration.[234] Until this misunderstanding is cleared up, we cannot use this narration as an argument for either the permissibility or the impermissibility of *talfīq*. Third, as mentioned above, Abū Yūsuf is a *mujtahid muntasib*, which is equivalent to the rank of *mujtahid mutlaq*. Such *mujtahids* are not obliged to follow any madhhab.[235] However, *talfīq* in *taqlīd* is only performed by *muqallids*, not *mujtahids*. As long as Abū Yūsuf remains a *mujtahid*, it is not possible for him to be *mulaffiq*. Fourthly, Abū Yūsuf initially performed *ghusl* and *salah* according to the Hanafi madhhab, whereas he did not perform *ghusl* according to the Hanafi madhhab and *salah* according to the Mālikī madhhab. It can be said that he did not combine two madhhabs in one issue initially.

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[233] al-Zāhidī, *Qunyatul-Munyah li Tatmīm al-Ghunyah*, 64.
[234] ʿUthmānī, *Usūl al-Iftā wa Ādābuhu*, 212.
[235] ʿUthmānī, *Usūl al-Iftā wa Ādābuhu*, 96-97.

CHAPTER IV

CONCLUSIONS

The conclusion that can be drawn from the first chapter is that the feature of "combining" is hidden in the lexical meaning of the term *talfīq*. In short, as long as there is *talfīq* somewhere, there is also the meaning of "combining" between two or more things. This is due to "*masdar*," from which the word "*talfīq*" is derived. By specifying this dictionary meaning from different aspects, the technical meaning of the word *talfīq* is derived. It is known that the technical meaning of this *talfīq* was not formed in a short time but over several centuries. Some scholars say that *talfīq* is coming up with a form that is not said by a *mujtahid*. While others say that it is a combination of a form based on the views of schools of law but none of them accept this form as their view or to form the judgement of an issue by using elements selected from more than one madhhab. From these definitions, it can be said that *talfīq* is an invalid combination (of views) of different schools of law in parts of the same issue.

Differentiating between related terms facilitates a more comprehensive understanding of the subject matter. There are some terms that have similar meanings to *talfīq*. It is thus appropriate to begin discussing these terms with *tatabbuʿ al-rukhos*; that is, choosing the one that is easier for himself from the madhhabs in the issues that he faces. However, some scholars argue that there is no difference between these two terms. However, there are notable differences between the two in terms of their historical occurrence, knowledge, and the practice of *tashahhī*. Another term that is similar to *talfīq* is *al-taqlīd al-mutlaq*. This term is defined as not following a certain *mujtahid*, but following one of the *mujtahid*s when he faces a special issue. *Al-taqlīd al-mutlaq* was a common practice during the time of the Companions. Individuals who lacked the time or capacity to gain enough knowledge or engage in *istinbāt* would seek guidance from the jurist Companions and act in accordance with their sayings. Scholars subsequently prohibited this practice on account of the disappearance of the jurisprudence views of other *mujtahids*. It is also

noteworthy that there are considerable differences between the two terms concerning the historical emergence and combination of contradictory views. It is very difficult to say that *talfīq* is the part of *taqlīd*. Similarly, *murāʿātul-khilāf* is characterized by analogous features, such as *talfīq*. *Murāʿātul-khilāf* to follow weak evidence or give credit to it for a *sharʿī* necessity. The two concepts are distinguished from one another in terms of their respective characteristics and defining features. These include some aspects such as validity, preference, and incompleteness. The *al-intiqāl* between madhhabs alikes *talfīq* in certain aspects. It is, therefore, beneficial to highlight the dissimilarities between them. One of the most significant differences between the two concepts is in their approach to combination. In *talfīq*, it is common practice to combine a number of different jurisprudential views on a single issue to obtain a new jurisprudential *hukm*. This is not the case in *intiqāl*, where a new ruling is not reached.

The concept of *talfīq* was not unfamiliar to the society of scholars at that time, as Ibn al-Humām's mention this issue indicates. Nevertheless, the initial scholar to address this topic was from the Mālikī madhhab. According to the available sources, Yahya al-Zānātī presented the first discussion on this subject in the 7th century AH. Nevertheless, it is not possible to claim that the practice of *talfīq* emerged in the 7th century AH, given that terms are typically formed after they have been used in practice. In any case, the earliest known occurrence of this term in the Hanafi madhhab was in the 8th century. According to available resources, Tarasūsī is acknowledged as the first scholar to issue a *fatwā* using the *talfīq* as an independent type of legal reasoning within the Hanafi madhhab. However, his application of *talfīq* as a form of legal reasoning was critiqued by scholars of the Hanafi madhhab. As a result, the scientific environment in which Ibn al-Humam was situated during that period had discussed this issue because of its importance. It was for this reason that Ibn al-Humam also addressed this issue in his books.

This research has identified two places in Ibn al-Humām's works where ambiguous phrases have been referenced. The first instance can be found in *Tahrīr*, while the second is located in *Fath al-Qadīr*. Furthermore, there are some other phrases that have enabled us to gain a comprehensive understanding of the concept of *talfīq* as presented by Ibn al-Humām. It is noteworthy that these phrases were also found in

the aforementioned books. It is unnecessary to cite them again, given that they have already been referenced numerous times in the thesis.

We have analyzed Ibn al-Humām's ambiguous statements regarding *talfīq* with the assistance of the comments and interpretations provided by *usūlī* scholars in various books and contexts. The aforementioned scholars can be divided into two groups: those who are disciples of Ibn al-Humām and those who are not. Nevertheless, our research has revealed a significant number of overlooked points in their works. Firstly, the uncertainty about the type of *talfīq* in Ibn al-Humām's statements was not sufficiently addressed in these works. Nevertheless, this uncertainty represents one of the most significant factors contributing to the ambiguity surrounding the topic. Secondly, numerous scholars interpreted Ibn al-Humām's statements at face meaning, failing to comprehensively examine their real meaning. However, through the examination of other relevant passages in his writings, we have identified additional helpful phrases that shed light on his intentions. Thirdly, we tried to search for whom Ibn al-Humām's phrases were mentioned. In other words, who is the addressee of Ibn al-Humām's statements? As a result it has been obvious that the phrases are not adressed on an ordinary audience; rather, they are aimed at scholars. The application of the provided comments and interpretations has enabled us to achieve the following results. Firstly, it is inaccurate to attribute the concept of *talfīq* to Ibn al-Humām in an absolute sense. In reality, there are numerous types of *talfīq*, including *talfīq* in *taqlīd* or *talfīq* in *ijtihād*. Ibn al-Humām has explicitly addressed his approach to *talfīq* in *ijtihād*, thereby removing any ambiguity regarding his position on *talfīq* in *ijtihād*. However, the ambiguity remains concerning *talfīq* in *taqlīd*. Secondly, the complex analysis of these sentences has shown that Ibn al-Humām supports the view that people should follow a particular madhhab. Thirdly, numerous scholars have derived the permissibility of *talfīq* from *fatwās* issued by *muftīs*. However, the permissibility of these *fatwās* has been questioned by a considerable number of scholars based on their contradiction with the principles of the Hanafi madhhab. In conclusion, if it were established that Ibn al-Humām was a proponent of *talfīq*, it would be necessary to limit this permissibility only to scholars, as previously mentioned, in light of the addressee of his statements.

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