

Al-Subkī's *Jam' al-Jawāmi'*: A Critical Appraisal of Its Structure and Contents

M. Jabir Ali Hudawī*, Hikmatullah Babu Sahib**

Abstract:

This article analyses the structure and content of al-Subkī's *Jam' al-Jawāmi'*, a widely accepted work in *uṣūl al-fiqh*. The book consists seven chapters, aside from the introduction and a conclusion. Thus, he follows one of the methods of chapterisation that prevailed at that time. The researcher classified his contents into three areas: the subject matter of *uṣūl*, issues related to *uṣūl* and issues other than *uṣūl*. These three areas are elaborated and further classified in the study. This article concludes that, although it is a very precise text, *Jam' al-Jawāmi'* contains all major discussions in *uṣūl*, including those from other disciplines. In addition, he accommodates theology and briefly treats the behavioural aspects. This gives his work a unique form.

Tāj al-Dīn al-Subkī was an 8th-century Shāfi'ī scholar who made an enormous contribution to various sciences. *Jam' al-Jawāmi'*, widely described as his *magnum opus*, is a very popular *matn* in *uṣūl al-fiqh* that has been attracting immense scholarly attention. Since the author's own time, it has been one of the main texts in the *uṣūl* on which students and scholars have relied heavily. It is a comprehensive work discussing all major topics in *uṣūl* by recording scholarly opinions on them. As a classical text, its structure, content, method of expression are all entirely different from the contemporary style. Thus a critical study on the structure and content of *Jam' al-Jawāmi'* will help to understand the nature of classical works in *uṣūl al-fiqh*. The study is all the more relevant given the fact that there has been hardly any attempt in English to analyse this work.

1.1 Al-Subkī: A Brief Biography

Tāj al-Dīn 'Abd al-Wahhāb al-Subkī¹ was born in 728 A.H in Cairo, Egypt, where he stayed for about 12 years, learning from the eminent scholars there. In 739 he moved

* Lecturer, Department of Fiqh and Usul al-Fiqh, Darul Huda Islamic University, Kerala, India. Email: mkjabi@gmail.com.

** Assistant Professor, Department of General Studies, International Islamic University Malaysia. Email: hikmatullah@iiu.edu.my.

¹ For his biography see, Aḥmad ibn 'Alī Ibn Ḥajar al-'Asqalānī, *Al-Durar al-Kāminah fī A'yan al-Mī'ah al-Thāminah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1997), 2: 258; Muḥammad ibn 'Alī al-Shawkānī, *Al-Badr al-Ṭālī bi Maḥāsīn man ba'da al-Qarn al-Sābi'*, ed. Khalīl al-Manṣūr (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998), 1: 283.

to Damascus with his father, Taqī al-Dīn al-Subkī (683-756 A.H), who had been appointed the supreme judge (*qāḍī al-quḍāt*) of Shāfi'ites there. Al-Subkī mastered different branches of knowledge from experts in those subjects like his father Taqī al-Dīn, al-Mizzī (654-742 A.H.), Ibn al-Naqīb (662-745 A.H.), Abū Ḥayyān (654-745 A.H.) and al-Dhahabī (673-747 A.H.). The biographers unanimously acknowledge his extraordinary ability in compiling scholarly works. As a member of an influential scholarly family during the Mamlūk dynasty,¹ al-Subkī was appointed to many prestigious posts, including lecturer in higher learning institutes, *muftī*, *khaṭīb* and most remarkably as a supreme judge of Shāfi'ites.

Al-Subkī is known for expressing his views on various issues of social importance, as evident from his work entitled *Mu'īd al-Ni'am*,² which in turn attracted many controversies. As a result, he was repeatedly ousted from whatever post he held at the time on baseless charges and was even jailed once for eighty days. In the end his innocence was proved and he was reinstated. In a short but energetic period of 44 years he contributed some fifty remarkable works to various Islamic sciences.³ His huge biographical work on Shāfi'ite scholars called *al-Ṭabaqāt* is a good source and has been popular among the contemporary writers, especially in the West. In Islamic circles, however, his *Jam' al-Jawāmi'* is a more familiar work that is widely referred to. Let us now look at its importance.

1.2 Significance of *Jam' al-Jawāmi'*

This was the author's fourth work on Islamic jurisprudence. The first was *Ibhāj*, a commentary on *Minhāj* by al-Bayḍāwī (d. 685 A.H) and the other two were commentaries on *Mukhtaṣar* by Ibn al-Ḥājjib (d. 570 A.H), called *al-Ta'līqah* and *Raf' al-Ḥājjib* re-

¹ On his family and its role during Mamlūk rule, see Muḥammad al-Ṣādiq Ḥusayn, *Al-Bayṭ al-Subkī: Bayt 'Ilmin fī Dawlatay al-Mamālīk* (Al-Qāhirah: Dār al-Kātib al-Miṣriyyah, 1948).

² On the significance of the work, see David W. Myhrman, "Introduction and Notes," in Tāj al-Dīn 'Abd al-Wahhāb al-Subkī, *Mu'īd al-Ni'am wa Mubīd al-Niqam* (London: Luzac & Co., 1978); Al-Naḥlāwī, 'Abd al-Raḥmān, *Al-Iṣlāḥ al-Tarbawī wa al-Ijtīmā'ī wa al-Siyāsī min Khilāl al-Mabādi' wa al-Ittijāhāt al-Tarbawiyah 'inda al-Tāj al-Subkī* (Beirut: Al-Maktab al-Islāmī, 1988).

³ For his major works, see Carl Brockelmann, *Tārīkh al-Adab al-'Arabī*, Trans. Maḥmūd Fahmī Ḥijāzī (Miṣr: al-Hay'at al-Miṣriyyah al-'Āmmah li al-Kitāb, 1995), vol. 6, pp. 354-360; Mohamed Jabir Ali Hudawi, *Al-Subkī's Jam' al-Jawāmi': A Conceptual Critical Analysis of its Significance, Methodology And Terminology*, (Master's Thesis, International Islamic University Malaysia, 2013), 43-47.

spectively. The former seems to be lost. Both *Minhāj* and *Mukhtaṣar* represent two writing styles among the *mutakallimūn* from which al-Subkī benefited and developed his own style through *Jam' al-Jawāmi'*. Upon its compilation, *Jam' al-Jawāmi'* was widely discussed in academic circles. Many of his colleagues and students raised critical questions on its theme. Thus, al-Subkī wrote a commentary on it called *Man' al-Mawānī'*, which is his last and fifth major *uṣūlī* work. Interestingly, *Jam' al-Jawāmi'* emerged as a textbook for higher studies on the subject. Throughout history, many scholars have studied and given lectures on it. It has been part of the syllabus in many leading Islamic universities such as al-Azhar.

The text became popular since it combines all major topics¹ discussed in *uṣūl al-fiqh* in concise language and is arranged cohesively so that it can be memorized easily. It is a compendium of significant scholarly opinions on key issues of the field that are arranged logically, because of which the reader can understand their historical development. Moreover, the author successfully incorporates various related branches of knowledge into his work, including in it examples from *fiqh*, theological issues (*kalām*), fundamentals of dialectic (*jadal*) and a conclusion regarding spiritual aspects (*taṣawwuf*). Still, it is devoid of the dialectical and logical argumentation as found in other works of its genre. It preserves many scholarly opinions, especially those of his father, which would otherwise not have reached the present generation. As a result, it was well received among scholars and has generated, surprisingly, more than a hundred works such as commentaries, marginalia, and works on versification. Unfortunately, this marvelous work is quite unfamiliar to English readers, which makes this study relevant and timely.

1.3 Structure of the Text

Al-Subkī divides his *Jam' al-Jawāmi'*, as he explains in the preface of the book,² into an introduction, seven chapters and a conclusion. The seven chapters are: [1] *al-Kitāb wa mabāḥith al-aqwāl* (the Book, i.e., Qur'ān and discussions of the statements), [2] *al-Sunnah* (tradition), [3] *al-Ijmā'* (consensus), [4] *al-Qiyās* (analogy), [5] *al-Istidlāl* (inference), [6] *al-Ta'ādul wa al-Tarājīḥ* (contradiction and preferences) and [7] *al-Ijtihād*

¹ Al-'Aṭṭār records the custom of scholars of his time to consider any *uṣūlī* issue that was not discussed in *Jam' al-Jawāmi'* as baseless. Al-'Allāmah Ḥasan al-'Aṭṭār, *Ḥāshiyat al-'Aṭṭār 'alā Jam' al-Jawāmi'* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1999), 2: 247.

² Tāj al-Dīn 'Abd al-Wahhāb al-Subkī, *Jam' al-Jawāmi'* in *Majmū' Muḥimmāt al-Mutūn* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1994), 129.

(intellectual exertion) respectively. He uses the term '*al-kitāb*' for chapter, a term that also means the book and is thus more comprehensive than its synonyms like *al-bāb* (chapter) and *al-faṣl* (section), which are the contemporary terms for chapter. His chapter headings are as follows: *al-Kitāb al-Awwal fī al-Kitāb* (the first chapter on the Book). This shows that he is discussing all related issues and relevant topics in each chapter of the book.

According to al-Subkī, the concise proofs (*al-adillah al-ijmāliyyah*) of *fiqh* constitute the subject matter of *uṣūl al-fiqh*, while the conflict and preferences that are concerned with the ways of applying those proofs, and the *ijtihād* that discusses the conditions of one who applies them are discussed in *uṣūlī* texts because of their indispensibility for a jurisperdent (*uṣūlī*).¹ The arrangement of these chapters is based on their importance. The first two chapters deal with the Qur'ān and *Sunnah* respectively, which are considered the *bone fide* sources of Islamic law on which the other proofs are based. Then he discusses *ijmā'*, which is considered an authentic source by all scholars though they differ on its definition and details. This is followed by *qiyās*, since only the majority accepted it as evidence whereas the Zāhirites rejected it. The fifth chapter on *al-Istidlāl* discusses all other proofs on which the four *madhāhib* differ. The sixth chapter explains the mechanism of reconciling conflicts and contradictions among the aforementioned sources. One who thoroughly studies these chapters is expected to have acquired the essential skills to deduce laws from the Qur'ān, *ḥadīth* and other sources and be able to exercise his intellectual ability through the process of *ijtihād*. Thus, the last chapter deliberates on matters pertaining to *ijtihād* and *mujtahid*.

Another feature to be noted is his extensive use of the term '*mas'alah*' (literally, issue or note), under which he discusses the related issues of a respective chapter. The introduction of *Jam' al-Jawāmi'* alone includes eleven such *masā'il* (pl. *mas'alah*). This use of *mas'alah* to discuss a new but related topic is a typical method frequently found in works of *fiqh* and *uṣūl al-fiqh* written during the classical and medieval periods. Under such *mas'alah* in *Jam' al-Jawāmi'*, the author usually discusses the *fiqhī* and theological issues that have some bearing on *uṣūl al-fiqh*. For instance, under the seventh *mas'alah*,² in the introduction, he says, in contrast to the view of the Ḥanafites, that an absolute command (*muṭlaq al-amr*) does not include the *makrūh* (detestable). Then he

¹ Jalāl al-Dīn Abū 'Abd Allāh Muḥammad ibn Aḥmad al-Maḥallī, *Al-Badr al-Ṭālī fī Ḥall Jam' al-Jawāmi'*, ed. Abū al-Fidā' Murtaḍā 'Alī (Beirut: Mu'assasat al-Risālah Nāshirūn, 2005), 1: 78-82; Ṣāliḥ al-Zankī, *Ma'ālim al-Turāthī al-Uṣūlī: Kitāb Jam' al-Jawāmi' li al-Imām Ibn al-Subkī Namūdhajan* (Kuala Lumpur: Dār al-Tajdīd, 2007), 88.

² Al-Subkī, *Jam' al-Jawāmi'*, 88.

introduces related *fiqhī* issues, including [a] the non-validity of performing *ṣalāh* during the detestable time, [b] the legality and rewardability of performing *ṣalāh* in a usurped land, [c] the status of one who leaves the usurped land after having repented on whether he is committing a sin or performing an obligation, and [d] the situation of one who causes the accidental death of someone when he falls on an injured person. Likewise, in the eighth *mas'alah* of the introduction,¹ he discusses the possibility (*jawāz*) and actual occurrence (*wuqū'*) of *taklīf* (imposition) to do an impossible thing. This is, in fact, a theological debate between the Mu'tazilites and Ash'arites.

Interestingly, al-Subkī provides a conclusion (*khātimah*) to most of the chapters (see figure 1). His method differs, however, from the normal practice of summarising or highlighting the major themes of the chapter in the conclusion. Instead, he usually discusses a new issue in the conclusion without summarising the earlier issues. This may be an issue similar to one he discusses under the *mas'alah*. For instance, in the conclusion of the second chapter *al-Sunnah*,² the author talks about the methods of transmission among people other than the companions. This includes [a] hearing a *ḥadīth* from the *shaykh* or others in the presence of the *shaykh*, and [b] giving *ijāzah* (permission) for reporting a *ḥadīth*. This is simply preceded by a similar *mas'alah*, in which the author discusses those terms employed by the companions in reporting a *ḥadīth*. At times the *khātimah* may be something related to the whole chapter, like the conclusion to the third chapter³ in which he discusses the legal status of one who denies *ijmā'*. In some cases, it may be related to the last topic discussed and not to the whole chapter, like the conclusion to the first chapter in which the conclusion talks only about *naskh* (abrogation), which is the last part of that chapter.⁴ The final conclusion of the work is not related to any of his discussions in *Jam' al-Jawāmi'* nor to the *uṣūl al-fiqh per se*; rather, it is devoted to discussion on *taṣawwuf* and piety.⁵

¹ *Ibid.*, 89.

² *Ibid.*, 107.

³ *Ibid.*, 109.

⁴ *Ibid.*, 102.

⁵ *Ibid.*, 128.

Figure 1

Chapter Division of the text

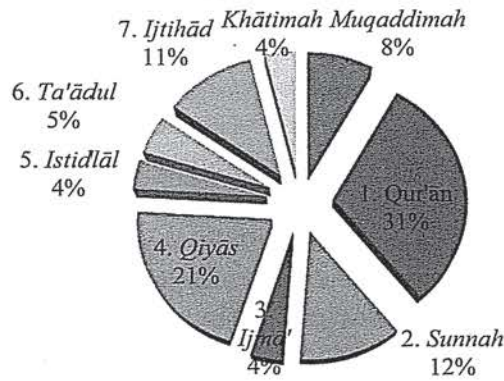
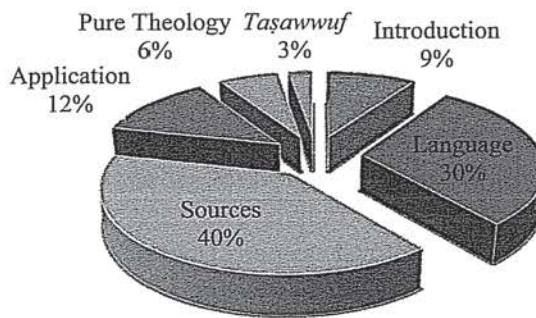


Figure 2

Space Allocated to Each Topic



Note: The topics mentioned are as follows: source (Qur'ān, Sunnah, qiyās, ijmā' and istidlāl), application (ta'ādul, tarjīh and ijtiḥād).

Table 1
Synoptic analysis of the content of Jam' al-Jawami'

No	Chapter	No. of Pages	%	Mas'alah	K hāti-mah
1	Introduction				
	Preface	0.24	8.2	0	1
	Prefatory discussions	3.02		11	
	Conclusion	0.04		0	
2	Book				
	Qur'ān	0.32	31.00	0	2
	Language	10.96			
	<i>mandūq</i> and <i>mafḥūm</i>	0.96		3	
	Introduction to language	0.64		3	
	Classification of words	0.89		5	
	<i>ḥaḳīqah</i> , <i>majāz</i> , etc	1.05		4	
	Particles (26)	1.56		0	
	<i>Amr</i> and <i>Nahy</i>	1.62		5	
	<i>'Āmm</i> , <i>Khāṣṣ</i> , etc	3.24		4	
	<i>Zāhir</i> , <i>mujmal</i> , etc	1.00		1	
	Abrogation	0.76		1	
	Conclusion	0.16		0	
3	Sunnah				
	<i>Hadīth</i>	3.80	12.00	10	1
	Language	0.75		0	
Conclusion	0.20	0			
4	Ijmā'				
	<i>Ijmā'</i>	1.40	3.80	1	1
Conclusion	0.10	0			
5	Qiyās				
	Definitions and Constituents	2.50	21.00	0	1
	Methods of identifying 'illah (10)	2.00		1	
	Conclusion 1	0.05		0	
	Impediments of the 'illah (13)	3.50		0	
Conclusion 2	0.20	0			
6	Istidlāl				
	Other sources of law	1.40		8	8

	General principles of <i>fiqh</i>	0.10	3.8 0	0	
	<i>Ta'ādul wa al-Tarajih</i>				
7	Equality and its solutions	0.50	5.0	0	1
	Criteria for <i>tarjih</i>	1.50	0	1	
	<i>Ijtihād</i>				
8	<i>Ijtihād</i>	2.00	11.	7	8
	Theology	2.50	40	1	
	Conclusion				
9	<i>Taşawwuf</i>	1.00	3.8	0	0
	Final Remarks	0.50	0	0	
	Total	39.50	10 0.00	67	6 7

Note: All calculations are based on the text printed in *Majmū' Muhimmāt al-Mutūn*.

1.4 Synoptic Analysis of the Text

Contemporary scholars consider *Jam' al-Jawāmi'* a work basically written for *uṣūl al-fiqh*. The author, however, claims categorically¹ that it includes both fields of *uṣūl* (*fannay al-uṣūl*), namely *uṣūl al-fiqh* and *uṣūl al-dīn*. As the name of the book suggests, he attempts to integrate many branches of knowledge to strengthen his discussion on *uṣūl*. He is preoccupied with providing clear ideas on differing opinions on most of the issues he discusses. Here he rarely provides details of and evidence for each and every argument. As a matter of policy, he has chosen to mention proofs that were either not properly treated in the other books or were very obscure.²

The whole content of *Jam' al-Jawāmi'* can be broadly classified into three categories, each of which we will discuss in detail. They are:

1. the subject matter of *uṣūl al-fiqh* per se,
2. *uṣūl*-related issues and
3. non-*uṣūlī* issues.

¹ *Ibid.*, 86.

² *Ibid.*, 129.

1.5 Subject Matter of *Uṣūl al-Fiqh*

The author has restricted the subject matter of *uṣūl al-fiqh* to the sources of law. As for the issues of application and the conditions of the applier, the author assumes that all *uṣūlis* must be aware of them, and thus he has adequately addressed them in this work, which we shall discuss under the following framework.

1.5.1 Sources of Law

The discussion on the sources of law takes up the major portion of *Jam' al-Jawāmi'*. They include the Qur'ān and Sunnah, the *ijmā'* and *qiyās* and other disputed sources.

1.5.1.1 The Qur'ān

Of the four sources of the law, the discussion on the Qur'ān is the shortest.¹ One may wonder why the author did not delve deeply into discussions on this important source of law. Perhaps a plausible reason could be that there is no discussion on the authenticity of the Qur'ān, or its significance in determining law is not doubted. Moreover, the Qur'ān and its legal significance have been treated separately in a number of disciplines, including the science of the Qur'ān and the science of its recitation. What the author provides is the definition of the Qur'ān with an explanation of what it includes and what it excludes. He also discusses the authenticity of different styles of recitations, after which he digresses on linguistic issues that are important for understanding the transmitted evidence, including the Qur'ān and the *Sunnah*. He concludes the first chapter with elucidating the concept of abrogation (*naskh*) in a great variety of ways, embracing all shades of abrogation that are disputed by many contemporary scholars.

1.5.1.2 Sunnah

Sunnah is treated in a four-page discussion following the conclusion of the first chapter. al-Subkī limits the definition of the term to both the sayings and deeds of Prophet Muḥammad, on whom be the regard and salutation of Allah, excluding thereby his tacit approval (*taqrīr*), which completes the normal definition of the term *Sunnah*.² Explaining this, al-Subkī says that he has included it as part of his deeds and, as such,

¹ *Ibid.*, 90.

² *Ibid.*, 103.

there is no need to treat it separately. In classifying the Prophet's acts he has distinguished them according to [a] that which pertains to the Prophet's acts as an individual, [b] that which is part of human nature and [c] that which implies legislation. When the Prophet's actions and words are incongruent or his statements on a particular issue differ according to the situation, then al-Subkī gives some candid solutions. Even though he has defined and explained the solitary (*khābar wāḥid*) and *mutawātir ḥadīths*, al-Subkī provides a wide range of opinions pertaining to what constitutes *mutawātir*. He has included some brief discussions on the *mawqūf* and the *mursal* as to their status as *ḥujjah* (evidence). In some significant ways, he has also emphasized the issues pertaining to the art and science of narration, both in terms of the conditions of narrators and the narrated messages, and leaves the rest to the *muḥaddithūn*.

1.5.1.3 *Ijmā'*

Though *ijmā'* (consensus) is generally accepted as an authentic source, scholars have disputed its definition and details. Nevertheless, al-Subkī defines it as "the agreement of the *mujtahids* of the *ummah* after the demise of Prophet Muḥammad, on whom be the regard and salutation of Allah, in any time upon any issue."¹ Then al-Subkī proudly says that he developed the whole discussion on his definition by explaining what is understood from it.² In a discussion spanning one and a half pages, the author sheds light on all major issues covered by the term.³ Though he rejects all other types of *ijmā'*, he is optimistic that the above-mentioned *ijmā'* can be achieved.

1.5.1.4 *Qiyās*

Qiyās is the fourth and last source of the law that is commonly accepted by all four *madhhabs*. As a Shāfi'ite scholar, al-Subkī finds *qiyās* more significant because Imam al-Shāfi'ī equated it with the *ijtihād* and denies most of the other sources put forward by other schools.⁴ Thus, al-Subkī spends about eight pages on *qiyās*, his longest treatment of any source, in which he elaborates on each one of the four components of *qiyās*: the principle case (*aṣl*), its *ḥukm*, the novel case (*far'*), and the '*illah* (the occasioning factor). The discussion on '*illah* takes up the lion's share of the chapter, seven out of eight pages,

¹ *Ibid.*, 108.

² Al-Subkī, *Man' al-Mawānī'*, 331.

³ *Ibid.*, 108-09.

⁴ Muḥammad ibn Idrīs al-Shāfi'ī, *Al-Risālah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2006), 413.

in which the author provides ten conditions of *'illah* for transferring the *ḥukm* of the earlier case to the new case, while he rejects other conditions assumed by some scholars.

Here he begins discussing the methods of discovering the cause (*masālik al-'illah*). Again, he provides ten such methods, the first of which is *ijmā'*, followed by the textual and rational methods. Then he looks into the criticisms and objections that could hinder the process of the identification of the *'illah*. In al-Subkī's account, there are thirteen such obstacles, known as *qawādiḥ* (legal impediments), that outnumber the methods of identifications. Many scholars do not discuss this in *uṣūlī* works, for it has developed into an independent discipline, *'ilm al-jadal* (the science of dialectics).¹ Al-Subkī concludes this chapter by affirming that the analogy is part of Islam (*dīn*) and one subject of *uṣūl al-fiqh*. Moreover, he takes *qiyās* as a community obligation (*farḍ kifāyah*), which may become a personal obligation for a *mujtahid* who requires it. He ends the discussion of *qiyās* by classifying them into various categories such as analogy of superior order (*qiyās al-awlā*) and analogy of inferior order (*qiyās al-adwān*).

1.5.1.5 Al-Istidlāl

Istidlāl is a residual category that designates, as al-Subkī defines it, any indicator that does not fall under the four major sources.² Thus, the term serves as a suitable pigeonhole into which an author can place all other indicators than the four he assumes to have a role in the process of formulating the law. Thus, what could fall under this heading varies from scholar to scholar. Al-Subkī mentions, without any further elaboration, that it includes [a] a conditional syllogism (*istithnā'ī*), [b] a categorical syllogism (*iqtirānī*) and [c] an inferred analogy (*qiyās al-'aks*) among other examples. Then he elaborates, under different *masā'il*, [a] the inductive reasoning (*istiqrā'*), [b] the principle known as the presumption of continuity (*istiṣḥāb al-ḥāl*), [c] the *Shar'* of earlier generations that is revealed through other prophets, [d] the theory of *istiḥsān* (juristic preference), [e] the doctrine of a companion (*qawl al-ṣaḥābī*) and [f] the *sūfī* concept of *ilhām* (inspiration). In a discussion of less than two pages, he gives only the basic details

¹ Larry Benjamin Miller has studied the science of dialectics developed by the Muslim scholars in his PhD Dissertation. See Larry Benjamin Miller, "Islamic Disputation Theory: A Study of the Development of Dialectic in Islam from the Tenth through Fourteenth Centuries" (Ph.D thesis, Princeton University, 1984).

² Al-Subkī defined it as an indicator other than the text (*naṣṣ*), *ijmā'* and *qiyās*. Al-Subkī, *Jam' al-Jawāmi'*, 119.

of these principles in two lines to one paragraph.¹ It should be noted that the author does not mention the commonly discussed principle of *maṣāliḥ mursalah* (public interest) in the category of *istidlāl* since it was already covered in the fourth chapter when he dealt with the fifth method of discovering the '*illah*.² Moreover, the principles such as *sadd al-dharā'ī'* (blocking the means) and *al-'urf* (customary practices) are not mentioned in the text. This signifies that he also followed the methods of Shāfi'ite scholars, who only mention the principles accepted by their school with a reply to Ḥanafites on the issue of *istiḥsān*.

1.6 Issues Related to Application

1.6.1 Equality between Indicators and its Solutions

After having detailed the indicators of the law, the author examines the problems one may encounter during their application and its solutions in the sixth chapter, *al-ta'ādul wa al-tarājīḥ*.³ It seems he deliberately avoids the commonly used terms *ta'āruḍ* and *tanāquḍ*, which may possess negative connotations, and prefers to use a safer term, *ta'ādul*, which only denotes equality between some indicators. In such situations, the author states that one can either choose one of the indicators (*takhyīr*), consider them invalid (*tasāquṭ*), suspend his judgment (*waqf*) until he gets some clues or considers the first as abrogated by the later. The same is true with respect to the opinions of a *mujtahid* who may have expressed different opinions on a single issue. The author cites the example of al-Shāfi'ī, who had changed his mind on more than ten issues.

Reconciliation (*jam'*) by applying each indicator in some particular context on conflict of proofs and giving it preponderance (*tarjīḥ*) are the two major ways of solving a contradiction or conflict between proofs. For al-Subkī, reconciliation is the best and first choice while *tarjīḥ* is the broadest way, thus representing the entire method of solving this problem. He provides a detailed account of some criteria for giving preponderance, which constitutes nearly two-thirds of the entire chapter,⁴ taking up is approximately two pages. There is no discussion of *tarjīḥ* in respect of the Qur'ān because its authenticity is beyond doubt,⁵ but the chain of narration should be scrutinized and qualified

¹ *Ibid.*, 119-20.

² *Ibid.*, 113.

³ *Ibid.*, 121-23.

⁴ *Ibid.*, 121-23.

⁵ *Ibid.*, 121.

with respect to the *Sunnah*.¹ In case of *ijmā'*, its more acceptable form is given preference over a less accepted one.² For analogy, there are unlimited possibilities for giving preponderance that are applicable to the analogy as a whole or to any of its constituents or even the methodology of identifying the '*illah*.³ Al-Subkī hints at some and ends the discussion by saying: "The matters that give preponderance are not limited, however, and their criteria are the strong probability."⁴

1.6.2 *Ijtihād and Mujtahid*

Al-Subkī defines the *ijtihād* as "a total expenditure of effort by a jurist (*faqīh*) to gain the assumption of a *ḥukm*."⁵ This can be done by scholars who meet some requirements, the *mujtahid*, whom al-Subkī equates with the *faqīh*. The discussion proceeds through a fairly broad range of issues: [a] the qualifications the *faqīh* must have, [b] the knowledge he must acquire, [c] the limits under which he can work, [d] the duty of commoners who do not meet these qualifications and so forth. The *uṣūl*-related discussion of *ijtihād* covers two pages, after which he turns his attention to the *uṣūl al-dīn*. Unlike the popular five-fold and seven-fold classifications of *mujtahid*, the author gives only three categories: [a] first, the absolute *mujtahid* (*al-mujtahid al-muṭlaq*), [b] a *mujtahid* under a school (*mujtahid al-madhab*) and [c] a *mujtahid* who can issue a *fatwā* (*mujtahid al-futyā*).⁶ This presupposes the possibility of a partial ability to do *ijtihād* in some areas but not others, which is known as partition (*tajzi'ah*) of *ijtihād*. Al-Subkī does not give any details. Later, he discusses the possibility of a particular time being empty (*khuluw al-zamān*) of *mujtahids*. For him, this may occur, but he affirms that it has not yet happened thus far.⁷ From these two issues it is understood that the process of *ijtihād* is always alive in one form or another and has never died.

Al-Subkī devotes one paragraph, a *mas'alah*, to use his jargon, for discussing the fallibility and infallibility of *ijtihād*. He is among the majority who held to the possibility of error in *ijtihād* and thought that there is only one correct one because Allah has prejudged the *ḥukm* of all issues and the duty of *mujtahid* is to do his best to extract it.

¹ *Ibid.*, 121-22.

² *Ibid.*, 122.

³ *Ibid.*, 122-23.

⁴ *Ibid.*, 123.

⁵ *Ibid.*, 124.

⁶ *Ibid.*

⁷ *Ibid.*, 126.

Similarly, he devotes two *masā'il* to the issue of imitation (*taqlīd*), which is unavoidable for anyone other than the *mujtahid*. He defines it as the acceptance of another's opinion without knowing its proofs.¹ Surprisingly, the issue of *fatwā* gets less attention. According to him, one who knows the opinions of a *mujtahid* can issue *fatwā*. But people should only consult one who is pious and capable.

1.6.3 *Maqāṣid al-Sharī'ah*

The concept of higher objectives (*maqāṣid*) of the *sharī'ah* is attributed to scholars like Imam al-Ḥaramayn and al-Ghazālī. Yet it was only discussed in some relevant places in *uṣūlī* texts until it emerged as a general principle found throughout the *uṣūlī* discussions, due to the efforts of al-Shāṭibī and others. Al-Subkī treats it in his discussion of the fifth method of discovering *'illah* under the rubric of suitability (*munāsabah*). One of the many classifications of suitability is its categorization into three levels: [1] *ḍarūrī* (inevitability), [2] *ḥājī* (necessities), and [3] *tahsīnī* (embellishment). He defines and elaborates each one of them. The *ḍarūrī* is, for example, the preservation of [a] religion (*dīn*), [b] life (*naḥs*), [c] intellect (*'aql*), [d] progeny (*nasab*), and then [e] property (*māl*) and [f] dignity (*'ird*).² His use of the particle *'fā'* (then) to combine the first five examples implies their sequential order in the degree of their strength, whereas the fifth and the sixth are combined with *'wa'* (and), indicating their equality in respect of their importance.³ The majority of scholars, however, take the first five as the broad categories in which other particulars are incorporated, whereas the author adds the sixth, dignity, following scholars like al-Ṭūfī.⁴ Understanding these objectives is very important and thus, according to al-Subkī, a condition of the *mujtahid*.⁵ Elsewhere, al-Shāṭibī considers this the most important condition of a *mujtahid*.⁶

¹ *Ibid.*, 125.

² *Ibid.*, 113.

³ Badr al-Dīn Muḥammad ibn Bahādur al-Zarkashī, *Tashnīf al-Masāmi' bi Jam' al-Jawāmi'*, ed. Abū 'Amr al-Ḥusayn (Beirut: Dār al-Kutub al-'Ilmiyyah, 2000), vol. 2, p. 86; al-Maḥallī, Vol. 2, p. 240-242; 'Abd al-Raḥmān ibn Jād Allāh al-Bannānī, *Ḥāshiyat al-Bannānī 'alā Sharḥ al-Maḥallī* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998), 2: 432-33.

⁴ See al-Zarkashī, Vol. 2, p. 86; al-Maḥallī, 2: 241.

⁵ Al-Subkī, *Jam' al-Jawāmi'*, 124.

⁶ Abū Ishāq Ibrāhīm ibn Mūsā al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, ed. 'Abd Allāh Darrāz, (Beirut: Dār al-Kutub al-'Ilmiyyah, 2005), 4: 76.

1.7 Uṣūl-Related Issues

1.7.1 Linguistic Issues

Linguistic issues cover about twelve pages, more than one fourth of *Jam' al-Jawāmi'*, forming its longest discussion. *Uṣūl'* is concerned with the meanings of the words and not the grammar. As tools for understanding the Qur'ān and *Sunnah*, the majority of linguistic issues are discussed in the first chapter and the rest in the second. He begins with the definition and classifications of *mandūq* (expressed meaning) and *mafhūm* (intended meaning).¹ Then he enters into the discussions on the *lafz* (word) and its signification, categorization into, for example, *mutabāyin* (antonym), *mutarādif* (synonym), *mushtarak* (homonym), *ḥaqīqah* and *majāz*. Each one of these has been discussed under *mas'alah*. The author then elaborates in detail on 26 particles with their possible meanings.² For the particle *al-bā'* he proffers 14 meanings and for *min* he gives 13. Perhaps some of the meanings of a particle may not be found in the Qur'ān or the *Sunnah*. These are the concern of jurists, and thus he is forced to cite external examples.

Then the author runs through the commands (*amr*)³ and prohibitions (*nahy*)⁴ that are the basic concern of jurists. For the imperative form *if'al*, al-Subkī establishes 26 meanings, while he sees seven possible meanings of *nahy*. The other linguistic issues he discusses include *'āmm* (general)⁵ and the issues of *takhṣīs* (particularization),⁶ along with a brief discussion on the *muṭlaq* (absolute) and *muqayyad* (restricted)⁷ that are related to each other. This is followed by the definition of the *zāhir* (apparent meaning) and *ta'wīl* (interpretation) where he cites seven examples of inappropriate interpretation mostly given by the Ḥanafīte scholars.⁸ The linguistic issues of the first chapter end with a discussion on the *mujmal* (ambiguous) and the *bayān* (explication) which is the way to remove these ambiguities.⁹ The second chapter also contains some linguistic issues, including the definition of the *kalām* (mode of expression) and its classification

¹ Al-Subkī, *Jam' al-Jawāmi'*, 90-91.

² *Ibid.*, 94-95.

³ *Ibid.*, 95-96.

⁴ *Ibid.*, 96-97.

⁵ *Ibid.*, 97-98.

⁶ *Ibid.*, 98-100.

⁷ *Ibid.*, 100.

⁸ *Ibid.*, 100.

⁹ *Ibid.*, 100-01.

it into *istifhām* (interrogation), *amr, nahy, inshā'* (origination) and *khābar* (predication).¹ Moreover, al-Subkī also brings some theoretical discussions such as the inventor of the languages,² the possibility of analogy in language³ and the issue of *kalām al-nafsī* (speech of the self) that the Ash'arites supported whereas the Mu'tazilite denied it.⁴

1.7.2 Theological Postulates

Al-Subkī belongs to the genre of *mutakallimūn* to whom theology has a logical priority over *uṣūl al-fiqh*, for the latter deals with articulation of the divine law, whereas the former deals with the fundamentals of faith, the first of which is belief in God. Some later and contemporary scholars have criticised this way of infusing the theological issues into the *uṣūlī* texts. Such issues included in *Jam' al-Jawāmi'* can be classified into: [a] those that are related to *uṣūl al-fiqh* either directly or indirectly and [b] those that are not linked to *uṣūl al-fiqh* at all, which we will examine below. Issues of the first category are scattered throughout the book, beginning with the Introduction. Most of these issues are commonly found in the works of other *mutakallimūns* as well. After defining *uṣūl al-fiqh* and related terms at the very outset of the book, al-Subkī turns his attention to the much debated issues of *ḥusn* (good) and *qubḥ* (bad) and its related topics. The author differentiates between two aspects of judging something as good or bad, one is agreeably rational while the other is disputed.

In the introduction, however, he is primarily concerned with defining certain terms that are considered theological but do play a crucial role in *uṣūl al-fiqh* as well, such as *dalīl* (indicator), *ḥadd* (definition), *naẓr* (reasoning), *taṣawwur* (concept), *taṣdīq* (judgement), *'ilm* (knowledge), *ẓann* (conjuncture) and *jahl* (ignorance). As Bernard G. Weiss observes,⁵ these issues fall under the heading of epistemology and methodology and yet Muslims scholars have included them as components of theology. Al-Subkī goes beyond defining such terms in theoretical discussions, which fall within the purview of substantive theology.

Though al-Subkī openly states his affinity with the Ash'arite school of theology,⁶

¹ *Ibid.*, 103-04.

² *Ibid.*, 91-92.

³ *Ibid.*, 93.

⁴ *Ibid.*, 95.

⁵ Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī* (Salt Lake City: University of Utah Press, 1992), 34.

⁶ Al-Subkī, *Mu'īd*, 75.

whom he designates *ahl al-ḥaqq* (people of truth), he is nevertheless not biased; rather he is ready to accept other views if evidence is proffered. For instance, the author endorses Mu'tazilah's opinion that *taklīf* is impossible in respect of a compelled person (*mukrah*).¹ The discussions of theological matters of this genre are, however, very brief in comparison to the works of other scholars, such as al-Āmidī's *al-Iḥkām*.

1.8 Fiqhī Discussions

Since *uṣūl al-fiqh* is the principle for extrapolating the law from the source, the *uṣūlī* works also discuss some *fiqh* issues. But the scope of such issues and the manner of their discussion vary according to the method of al-Subkī follows in his work. Unlike the jurists' method (*ṭarīqat al-fuqahā'*), the theologians method (*ṭarīqah al-mutakallimīn*), which al-Subkī follows, was more concerned with laying down the principles for the formulation of legal rules, and thus their works include the *fiqhī* issues in a minimal way by necessity, containing them mostly as examples. Still, the coverage of *fiqhī* issues is comparatively more than some,² given its methodology as a combined one.

Ṣāliḥ Zankī identifies al-Subkī's two methods in citing the *fiqh* related issues.³ The first is to deduce the law based on the principles he established. For instance, he affirms the premise:⁴ a doable act (*maqḍūr*), without which an absolutely obligatory act will not be completed, is [itself] a *wājib*. After discussing some disagreements concerning this maxim, he begins to deduce some applications:

1. If the omission of a prohibitory act is not feasible without omitting another act then such an omission is obligatory.
2. If a [man becomes confused between his] wife and a strange woman [due to the] commingling [of both their qualities] then both of them are prohibited [for him].
3. If he divorces one wife and then forgets whom he has divorced [then all his wives are prohibited for him].

The second method is to implement the accepted maxim on the subsidiaries.⁵ For instance, he defines *ta'wīl* (interpretation) as the application of the manifest (*zāhir*) on

¹ Al-Subkī, *Jam' al-Jawāmi'*, 89; Tāj al-Dīn 'Abd al-Wahhāb al-Subkī, *Man' al-Mawānī' 'an Jam' al-Jawāmi'*, ed. Sa'īd ibn 'Alī Muḥammad al-Ḥumayrī (Beirut: Dār al-Bashā'ir, 1999), 98-105.

² Al-Subkī, 165.

³ Al-Subkī, *Jam' al-Jawāmi'*, 166.

⁴ *Ibid.*, 88.

⁵ Al-Subkī, 167.

the probable but not preferable [meaning]. Then he puts forth the principle that if it is applied to such a meaning on account of any evidence, then it is valid. However, if it is applied on the basis of something assumed to be evidence, then it is void, and if done without any basis, then it is merely a game. Further, he implemented this criterion on nine interpretations given by the Ḥanafite scholars for some phrases of the Qur'ān or *ḥadīth* and found them to be improper. One of them is the interpretation of "sixty needy people" (*sittīnah miskīn*) as the sixty *mudd* (a measure of both hand scooping) in the Qur'ānic verse (*Sūrat al-Mujādalah* 4), which means: "and if he is unable, then [the redemption shall be] the feeding of sixty needy persons" with reference to the penalty for one who wants to retract from his *ẓihār*.

Al-Subkī is, no doubt, a Shāfi'ite scholar. Moreover, like his father Taqī al-Dīn, he was one of the leading figures of the Shāfi'ite school in his time. Naturally his approach to *fiqh* must be in accordance with Shāfi'ite methodology. Most of his examples are aimed at establishing the Shāfi'ite view on the issue or to refute the other views, usually the Ḥanafites. Al-Subkī, however, has enough scholarly acumen to accommodate disagreement in subsidiary issues, and he acknowledges that scholars of all authentic *madh-habs*,¹ including Imam Dāwūd,² the founder of Zāhirī school, were guided by Allah.³

1.9 General Maxims of Fiqh

Scholars have developed some general maxims of *fiqh* (*al-qawā'id al-fiqhiyyah*)

¹ Al-Subkī (p. 127) says: "Indeed al-Shāfi'ī, Mālik, Abū Ḥanīfah, two Sufyāns [i.e., Sufyān al-Thawrī and Sufyān ibn 'Uyaynah], Aḥmad, al-Awzā'ī, Ishāq [ibn Rāhwayh] Dāwūd and all other leaders of Muslim *ummah* are under the guidance of Allah." All these scholars were founders of their own methodology in *ijtihād*. Though there were followers for all these schools, however, eventually only the first four emerged as well established.

² All scholars named by al-Subkī here are generally accepted among the Sunnī scholars. There are slight disagreements, however, in respect of Imam Dāwūd, as he is the founder of the Zāhirī school, which is rejected by Sunnī scholars. Al-Subkī records three opinions in respect of his and his followers' opinions in consolidating an *ijmā'*: [1] al-Usthād Abū Manṣūr al-Baghdādī holds that it should be considered absolutely, [2] Abū Ishāq al-Isfarāyīnī opines that it is not considerable at all, and [3] Ibn al-Ṣalāḥ argues that it is considered unless it contradicts an obvious analogy. Al-Subkī prefers the third position, i.e., that their agreement and disagreement are taken into consideration. Moreover, al-Subkī endorses the view of al-Bāqillānī and Imam al-Ḥaramayn that the Zāhirites are not regarded as scholars and their opinions have no value as referring to later scholars like Ibn Ḥazm and not Dāwūd who was a pious scholar. See Tāj al-Dīn 'Abd al-Wahhāb al-Subkī, *Ṭabaqāt al-Shāfi'iyyah al-Kubrā*, ed., Maḥmūd Muḥammad al-Ṭanāḥī and Abd al-Fattāḥ (Beirut: Dār Iḥyā' al-Kutub al-'Arabiyyah, 1992), 2: 289-93.

³ Al-Subkī, *Jam' al-Jawāmi'*, 127.

through a thorough analysis of the entire corpus of the law, which gave rise to an independent discipline known popularly as *al-ashbāh wa al-naẓā'ir*. Al-Subkī has some works on it as well. In fact, he sheds light on this in *Jam' al-Jawāmi'* without elaborating further on it. He simply quotes al-Qāḍī al-Ḥusayn on the fact that the foundation of jurisprudence is built on four principles or maxims: [1] the certainty will not be lifted by doubt, [2] the hardship should be removed, [3] the harm will bring ease and [4] the custom will be legislated. He adds a fifth: matters are judged according to their intentions.¹

1.10 Logical Issues

Mutakallimūn are thought to have been influenced by logic. From the successful inclusion of formal logic in the *uṣūlī* works by al-Ghazālī, this practice has been adopted by successive theologians. Some scholars like Ibn Taymiyyah criticise this and call for *uṣūl* to be rescued from Greek logic. Though al-Subkī is one of the greatest theologians, *Jam' al-Jawāmi'* does not treat the formal logic significantly, thanks to his policy of avoiding argumentation and evidence for each opinion. Moreover, he did not cover the formal logic in his introduction as his predecessors like Ibn al-Ḥājjib did. He only gives the definition of some terms that are also discussed in theology, such as *ḥadd* (definition) and *dalīl* (evidence). Al-Subkī makes use of some logical methods in the fifth chapter as indicators of law, such as the inductive method and reversed analogy. But his main concern was to arrange his works in a logical manner with respect to his organisation, definitions and classification of the issues, rather than logic *per se*.

1.11 Other Disciplines

Besides the subject matter of *uṣūl al-fiqh* and related discussions, the author incorporates a few other discussions into *Jam' al-Jawāmi'*. They are as follows.

1.11.1 Theological Issues

Al-Subkī reserved the last part of the seventh chapter for the basic theme of *uṣūl al-dīn*, which is discussed under a *mas'alah* in which all fundamental issues of theology are briefly listed.² After explaining the *ḥukm* of imitation (*taqlīd*) with respect to *uṣūl*

¹ *Ibid.*, 120.

² *Ibid.*, 126-27.

al-dīn, the author examines the statement of Imām al-Ash‘arī that the faith (*īmān*) of an imitator is not valid, whose real significance his followers disputed. Al-Subkī explains it as the faith of one who imitates others while in a state of doubt. Thus, he advises his readers to believe firmly in the fundamentals of theology and enumerates them. Like his fellow theologians, he starts with the universe as *muḥdath* (originated) and thus requiring an originator who can be none other than the only One, Allah. The author has ably chartered the highly contested issues in theology such as the Essence (*ḥaqīqah*) of Allah, His attributes, the causation (*ta‘līl*) of His acts, the created or uncreated status of the Qur‘an, the prophets, and their *mu‘jizah* (miracle).

After completing what he describes as “things that must be firmly believed in,” he extends his discussion to other philosophical issues that he describes as “matters whose ignorance does not harm but whose knowledge will benefit.”¹ He discusses the question whether the existence of something is the thing itself. What is the reality of a nonexistent thing? Is the name (*ism*) other than the *nominatum* (*musammā*)? Etcetera. He also defined the *jawhar* (atom), *‘arḍ* (accident) and other terms that are considered hallmarks of *mutakallimūn* theology. He further explains the nature of space (*makān*), time (*zamān*), dimension (*bu‘d*), vacuum (*khalā*), joy (*ladhdhah*) and pain (*alam*), to name but a few topics. Unlike the *uṣūlī* part, where he exhausts all prevailing opinions, the methodology he follows here is different. He firmly states what he believes to be the truth and mostly avoids other opinions. It should be noted that he mostly uses the term ‘*ḥaqq*’ (truth) to denote his chosen opinion here since theology is concerned with fundamental beliefs where no disagreement is tolerated, as their premise “the correct (*ṣawāb*) in respect of rational things is only one” suggests.

1.11.2 *Taṣawwuf or Spiritual Aspects*

Al-Subkī, biographers tell us, was a man of piety, honesty and integrity and clearly states his affinity with the *ṣūfī* path of Junayd al-Baghdādī.² Thus, he wishes to give his readers some advice in the conclusion of *Jam‘ al-Jawāmi‘*. Here he is more eloquent and makes his work attractive by weaving artistically from one point to another. He does not treat *taṣawwuf* as a discipline; rather, he treats it as a behavioural science by directly interacting with his readers to leave them with no option other than to be pious.

¹ *Ibid.*, 127-28.

² *Ibid.*, 127.

1.12 Conclusion

As a result of analysing the structure and content of al-Subkī's *Jam' al-Jawāmi'*, the following observations can be made. The structure of *Jam' al-Jawāmi'* follows one of the intellectual and literary trends and styles of al-Subkī's time; dividing the book into seven chapters with an introduction and conclusion. The chapters are: the Qur'an, *Sunnah*, *Ijmā'*, *Qiyās*, *Istidlāl*, *Ta'ādul wa Tarājīḥ* and *Ijtihad*. The major terms used in *uṣūl* and related disciplines are defined in the introduction. Some *uṣūlī* premises are also discussed there. The entire content can be classified into three categories; *uṣūlī* issues per se, issues related to *uṣūl* and other non-related and non-*uṣūlī* issues. The first category includes the major indicators of the law, which are discussed in the first four chapters, and all other indicators mentioned are in the fifth. The higher objectives of Sharī'ah are mentioned briefly. As a recognized theologian, al-Subkī allows room for discussing the *uṣūl*-related theological issues wherever it is relevant to do so. Examples from *fiqh* are cited in order to clarify the *uṣūlī* discussions. Moreover, the five general maxims of *fiqh* are simply recorded in the *fifth* chapter. In the third category, the researcher included the content of *Jam' al-Jawāmi'* that does not have any relation to *uṣūl*. He provides a section for discussing purely theological issues and the conclusion of the book is to give some advice to the readers. Nonetheless, the primary concern of *Jam' al-Jawāmi'* is *uṣūl al-fiqh*.