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Contemporary Ijtihad in Islamic Jurisprudence: An Analytical Study

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Abstract

The topic of Ijtihād is considered one of the most prominent subjects that has enjoyed a distinguished status among the scholars of uṣūl al-fiqh (Islamic legal theory), as hardly any work on legal theory is devoid of it, due to its essential role in deriving Islamic legal rulings and keeping pace with newly emerging events and issues. The early scholars of the Muslim nation exerted great scholarly efforts in establishing this subject, discussing the concept of ijtiḥād, explaining its legitimacy, its conditions, its rulings, and the qualities that a mujtahid should possess. They also discussed the issue of the closure of the gate of ijtiḥād after the fourth Islamic century and the scholarly and jurisprudential effects that resulted from it.

However, this research does not undertake an exhaustive examination of all those issues that the books of uṣūl al-fiqh have discussed in detail. Rather, it is limited to the study of an issue that is considered one of the most pressing issues in our contemporary reality, namely ijtiḥād in contemporary issues, or what is known as ijtiḥād in the modern era, because of the scholarly and practical problems it raises that require clarification and proper grounding.

Keywords: Contemporary Ijtihad- Issues – Islamic Jurisprudence – Types Of Ijtihad – Desired Ijtihad.

Introduction:

To achieve this objective, the research has been divided into three main sections. The first section is devoted to explaining the concept of ijtiḥād, the evidence for its legitimacy, its categories, and its fields. The second section, which constitutes the core of the study, examines ijtiḥād in the modern era in terms of the reasons for the need for it, its place in the juristic heritage, the possibility of its realization in our time, and the major trends and schools of contemporary ijtiḥād. The third section is devoted to presenting practical models and applications of ijtiḥād in



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contemporary issues, highlighting the importance of this subject and its effectiveness in addressing newly emerging issues and developments.

I ask Allah, the Exalted, to grant me success in attaining the truth, to make this work sincerely for His Noble Countenance, and to make it beneficial to researchers and students. Indeed, He is the Guardian of that and is All-Powerful over it. "My success is only through Allah. Upon Him I have relied, and to Him I return." (Qur'an 11:88)

The First Section: Ijtihād in the Theory of Uṣūl al-Fiqh (Its Meaning, Legitimacy, and Types)

The First Subsection: The Meaning of Ijtihād

First: Ijtihād in the Linguistic Sense:

The origin of the term *ijtihād* in the Arabic language goes back to the root (*jahd*), pronounced with either a *fathāh* or a *ḍammah* on the letter *jīm*. This root denotes capacity, ability, and the exertion of hardship. It is stated in *Lisān al-‘Arab*: "*Ajhada* and *ijtahada*" mean that a person exerted his utmost ability and effort. *Ijtihād* means exerting one's utmost effort in seeking or accomplishing a matter, and it is a derived form (*ifti‘āl*) from the root *jahd*"¹.

From this linguistic meaning, it is understood that *ijtihād* refers to expending one's full capacity and exerting the utmost effort to achieve a particular objective. The term is used only in matters that involve difficulty and hardship. Therefore, it is said: "He exerted himself in carrying a rock," but it is not said: "He exerted himself in carrying a date stone,"² because the latter does not involve hardship.

Second: Ijtihād in the Terminology of Uṣūl al-Fiqh Scholars.

The definitions of *ijtihād* among scholars of *uṣūl al-fiqh* have varied according to their differing views regarding its true nature³. The majority defined it as a verbal noun denoting an act, describing it as the exertion of effort and the utmost striving to arrive at a legal ruling. Another group, however, regarded it as an attribute inherent in the *mujtahid*, defining it as the scholarly faculty by which a *mujtahid* is able to derive *Sharī‘ah* rulings from their detailed evidences.

The wording of these definitions also differed due to their disagreement over the nature of the ruling established through *ijtihād*—whether it is definitive (*qaṭ‘ī*) or speculative (*ẓannī*)—and the *uṣūlī* implications arising from this distinction. However, a detailed discussion of this issue falls beyond the scope of the present study. Therefore, it is sufficient here to refer the reader to the

¹ *Lisān al-‘Arab*: by Ibn Manẓūr, 1st ed., Dār Ṣādir for Publishing (Beirut).3/133

² *Aḍwā’ Hawla Qaḍīyyat al-Ijtihād*: by al-Sayyid ‘Abd al-Ṭarf Qassāṣī, 1st ed., 1404 AH / 1984 CE, Dār al-Tawfīq al-Namūdhajīyyah for Printing and Automated Typesetting (al-Azhar). P9

³ *Irshād al-Fuḥūl*: by al-Shawkānī, Dār al-Hudā, ‘Ayn M’līlah (Algeria) p478-479.

book *Aḍwā' Ḥawla Qaḍiyyat al-Ijtihād fī al-Sharī'ah al-Islāmiyyah*⁴ (Lights on the Issue of Ijtihād in Islamic Sharī'ah), where this subject is examined in detail.

Based on the foregoing, the definition of ijtihād adopted in this study is: "The exertion of effort and the utmost endeavor in deriving practical Sharī'ah rulings from their detailed legal evidences in a manner that requires the effort and intellectual capacity of the mujtahid"⁵

The Second Subsection: Evidence for the Legitimacy of Ijtihād.

The legitimacy of ijtihād is established by the evidence of the Qur'an, the Sunnah, consensus (ijmā'), and reason (ma'qūl). These are complementary proofs that affirm the status of ijtihād in Islamic Sharī'ah, as well as its necessity for deriving legal rulings and keeping pace with newly arising events and unprecedented cases.

First: Evidence from the Qur'an.

Among the evidences indicating the legitimacy of ijtihād is the statement of Allah, the Exalted:

"O you who believe! Obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger." (Qur'an annisa 4:59).

The intended meaning of obeying Allah and His Messenger is compliance with what has been established in the texts of the Qur'an and the Sunnah. As for the command to refer disputed matters to Allah and His Messenger, it signifies the obligation to return to what Allah and His Messenger have prescribed and to investigate the Sharī'ah evidences concerning matters that may be hidden or not explicitly addressed in the revealed texts, or through the application of general legal principles, analogical reasoning (qiyās), or consideration of the objectives of the Sharī'ah (maqāṣid al-sharī'ah) in deriving legal rulings⁶. All of this can only be achieved through the exercise of ijtihād.

Among the evidences is also the statement of Allah, the Exalted:

"Indeed, We have sent down to you the Book in truth so that you may judge between the people by what Allah has shown you." (Qur'an nisaa 4:105).

⁴ *Aḍwā' Ḥawla Qaḍiyyat al-Ijtihād*: by al-Sayyid 'Abd al-Ṭarf Qassāsī, 1st ed., 1404 AH / 1984 CE, Dār al-Tawfīq al-Namūdhajīyyah for Printing and Automated Typesetting (al-Azhar). (from p10 to 16)

⁵ *Al-Ijtihād: Ḥājah wa-Farīdah wa-Manhaj fī al-Sharī'ah al-Islāmiyyah*: by Aḥmad 'Alī al-Jazā'irī, 1st ed., 1414 AH / 1994 CE, Dār al-Ṣaḥwah for Publishing and Distribution (Cairo).p13

⁶ *Aḍwā' Ḥawla Qaḍiyyat al-Ijtihād*: p17.

Scholars have cited this verse as evidence for the legitimacy of *ijtihād*, particularly *ijtihād* based on analogical reasoning (*qiyās*) and the derivation of legal rulings in matters for which no explicit textual evidence exists⁷.

Second: Evidence from the Sunnah.

The legitimacy of *ijtihād* is also established by a number of Prophetic traditions. Among them is the narration reported by *Imām al-Shāfiʿī*, in which *ʿAmr ibn al-ʿĀṣ* (may Allah be pleased with him) narrated that he heard the Messenger of Allah (peace and blessings be upon him) say:

"If a judge exercises *ijtihād* and reaches the correct judgment, he will receive two rewards; but if he exercises *ijtihād* and errs, he will receive one reward."⁸

This *ḥadīth* constitutes clear evidence of the Lawgiver's approval of *ijtihād* and demonstrates its recognized status, regardless of whether the *mujtahid* reaches the correct conclusion or errs after exerting his utmost effort.

Another proof is the *ḥadīth* of *Muʿādh ibn Jabal* (may Allah be pleased with him). When the Messenger of Allah (peace and blessings be upon him) intended to send him to Yemen, he asked him:

"How will you judge if a case is brought before you?" He replied, "I will judge according to the Book of Allah." The Prophet asked, "And if you do not find it in the Book of Allah?" He replied, "Then according to the Sunnah of the Messenger of Allah." He asked, "And if you do not find it in the Sunnah of the Messenger of Allah?" He replied, "I will exercise my own reasoning (*ajtahidu bi-raʾyī*) without hesitation." Thereupon, the Messenger of Allah (peace and blessings be upon him) struck him on the chest and said: ***"Praise be to Allah, Who has guided the messenger of the Messenger of Allah to that which pleases the Messenger of Allah."⁹

This *ḥadīth* is regarded as one of the most significant evidences cited by the scholars of *uṣūl al-fiqh* in affirming the legitimacy of *ijtihād*, since it reflects the Prophet's approval of *Muʿādh*'s methodology of exercising *ijtihād* whenever no explicit textual evidence is available.

Third: Consensus (*Ijmāʿ*).

The Companions (may Allah be pleased with them) unanimously agreed on the legitimacy of *ijtihād* and acting upon it. Whenever they were confronted with a new incident or a legal issue concerning what is lawful (*ḥalāl*) or unlawful (*ḥarām*), they would first refer to the Book of Allah, the Exalted. If they found no explicit text therein, they would then refer to the Sunnah of the

⁷ *Aḥkām al-Qurʾān* by *al-Jaṣṣāṣ*: published in 1405 AH by *Dār Ihyāʾ al-Turāth al-ʿArabī* (Beirut), edited by *Muḥammad al-Ṣādiq Qamḥāwī*. 3/265.

⁸ *Ṣaḥīḥ al-Bukhārī*: 3rd ed., 1409 AH / 1989 CE, *Dār Ibn Kathīr* – *al-Yamāmah* (Beirut), edited by *Fuʿād ʿAbd al-Bāqī*. 6/2676.

⁹ *Sunan al-Tirmidhī*: *Dār Ihyāʾ al-Turāth al-ʿArabī* (Beirut), edited by *Aḥmad Muḥammad Shākir*. 1/72.

Messenger of Allah (peace and blessings be upon him). If they found no ruling there either, they would exercise *ijtihād* in deriving the *Sharīʿah* ruling in accordance with the principles and legal foundations of the *Sharīʿah*.¹⁰

Ibn al-Qayyim (may Allah have mercy on him) pointed to this by stating:

"The Companions of the Messenger of Allah (peace and blessings be upon him) used to exercise *ijtihād* regarding new occurrences, apply analogical reasoning (*qiyās*) to some rulings on the basis of others, and consider analogous cases alike."¹¹

Fourth: Rational Evidence (al-Maʿqūl).

Rational consideration likewise supports the legitimacy of *ijtihād*. Allah, the Exalted, has made Islam the final of all divine messages, and its *Sharīʿah* suitable for every time and place. Since the texts of the *Sharīʿah* are finite while events and emerging issues are continually renewed and inexhaustible, *ijtihād* becomes an indispensable *Sharīʿah* necessity for realizing the objectives of the *Sharīʿah* and for clarifying the rulings of newly arising matters in light of its principles and universal legal foundations.¹²

The Third Subsection: Types of *Ijtihād* and Its Scope.

First: Types of *Ijtihād*.

Ijtihād is classified into several categories based on different considerations. Among the most important classifications is the following:

1. According to the Method Adopted by the Mujtahid.

Dr. Maʿrūf al-Dawālībī maintains that *ijtihād* is divided into three principal types:¹³

A. Exegetical (Bayānī) *Ijtihād*.

This refers to the mujtahid's exertion of his utmost effort in deriving *Sharīʿah* rulings from the texts of the Qur'an and the Sunnah by referring to the revealed texts while observing the principles of legal interpretation. These include distinguishing between the general and the specific (*ʿāmm* and *khāṣṣ*), the absolute and the qualified (*muṭlaq* and *muqayyad*), the abrogating and the abrogated (*nāsikh* and *mansūkh*), understanding the implications of textual expressions, and reconciling evidences that appear to be contradictory, until the correct *Sharīʿah* ruling is reached.

¹⁰ AL Milal wa al Nihal by al Shahrastawi, 1973 edition, edited by Taha Abd al rauf. 1/198.

¹¹ I'lām al-Muwaqqi'īn by Ibn al-Qayyim: 1973 CE edition, Dār al-Jil (Beirut), edited by Tāhā 'Abd al-Ra'ūf Sa'd. 1/203.

¹² Aḍwā' Hawla Qaḍīyyat al-Ijtihād: p19.

¹³ Madkhal li-Dirāsāt al-Sharīʿah al-Islāmiyyah: by Dr. Yūsuf al-Qaraḍāwī, 2nd ed., 1417 AH / 1997 CE, Mu'assasat al-Risālah (Beirut).p75 and Uṣūl al-Fiqh al-Islāmī: by Wahbah al-Zuhaylī, 2nd ed., 1418 AH / 1989 CE, Dār al-Fikr al-Mu'āṣir (Beirut, Lebanon). 2 /1069.

B. Analogical (Qiyāsī) Ijtihād.

This type of ijtihād is based on identifying the effective cause (‘illah) underlying Sharī‘ah rulings, whether that cause is explicitly stated in the revealed texts or inferred through ijtihād. This enables the mujtahid to extend the ruling of a matter for which there is no explicit textual evidence to another matter for which a textual ruling exists, on the basis that both share the same effective cause.

C. Reformative (Iṣlāḥī) Ijtihād.

This refers to addressing newly emerging issues for which no specific textual ruling has been revealed by relying on the universal legal principles and general objectives derived from the purposes of the Islamic Sharī‘ah. These include the realization of public interests (maṣāliḥ), prevention of harm (sadd al-dharā‘i’), as well as istiḥsān (juristic preference), al-maṣāliḥ al-mursalah (unrestricted public interests), and other recognized sources of ijtihād.

2. According to the Degree of Effort Exerted

Some scholars of uṣūl al-fiqh classify ijtihād, in terms of the extent of effort exerted by the mujtahid, into two categories:

A. Complete (Tāmm) Ijtihād.

This refers to the mujtahid's exertion of his utmost effort, ability, and intellectual capacity in research and deliberation until he becomes convinced that he is no longer capable of exerting any further effort. This is the type of ijtihād that is recognized in the Sharī‘ah.

b. Incomplete (Nāqis) Ijtihād.

This occurs when the mujtahid ceases his inquiry at a certain point despite being capable of further investigation and continued deliberation. Consequently, this type is not regarded as valid ijtihād in the Sharī‘ah.

.3 According to the Legal Ruling Governing Ijtihād

From this perspective, ijtihād is divided into four categories:¹⁴

A. Ijtihād that is Individually Obligatory (Farḍ ‘Ayn).

This occurs when there is only one mujtahid in a given era. In such a case, it becomes obligatory upon him to examine new occurrences and derive their legal rulings, whether concerning newly arising incidents or issues presented to him. If he neglects to do so despite being capable, he is

¹⁴ Irshād al-Fuḥūl: by al-Shawkānī, Dār al-Hudā, ‘Ayn M’lilah (Algeria). P483.

considered sinful. Likewise, he is required to exercise *ijtihād* for his own affairs, according to the view that a *mujtahid* is not permitted to imitate (*taqlīd*) another *mujtahid*.

B. Collectively Obligatory (*Farq Kifāyah*) *Ijtihād*.

This type is realized when there are multiple *mujtahids*. If some of them undertake *ijtihād*, the obligation is lifted from the others. However, if they all abandon it, they all incur sin.

C. Recommended (*Mandūb*) *Ijtihād*.

This refers to the exercise of *ijtihād* concerning issues before they actually occur, by anticipating potential future cases and studying their *Sharīʿah* rulings in advance. This approach became well known among the *Ḥanafī* jurists with respect to hypothetical legal questions.

D. Prohibited (*Muḥarram*) *Ijtihād*.

This is *ijtihād* that contradicts definitive textual evidence in its authenticity and indication, or that conflicts with a definitive consensus (*ijmāʿ*). Accordingly, no *ijtihād* is permissible where there exists a definitive text or an established consensus.

Second: The Scope of *Ijtihād*.

Al-Āmidī (may Allah have mercy on him) stated: "The proper domain of *ijtihād* comprises those *Sharīʿah* rulings whose evidence is speculative (*ẓannī*)."¹⁵

Sharīʿah evidences, in terms of the certainty of transmission (*thubūt*) and textual indication (*dalālah*), are classified into four categories: evidence that is definitive in both transmission and indication; evidence that is definitive in transmission but speculative in indication; evidence that is speculative in transmission but definitive in indication; and evidence that is speculative in both transmission and indication.

In light of this classification, it becomes possible to determine the matters in which *ijtihād* is permissible and those in which it is not.

First: Matters in Which *Ijtihād* Is Applicable.

Ijtihād is exercised in relation to evidences that are speculative (*ẓannī*) in their transmission (*thubūt*), speculative in their indication (*dalālah*), or speculative in both. It is also exercised with respect to cases for which there is neither a textual provision (*naṣṣ*) nor a consensus (*ijmāʿ*).

Where the text is speculative in its transmission, *ijtihād* is directed toward examining its chain of transmission and verifying its authenticity, acceptance, and reliability.

¹⁵ Al-Aḥkām fī Uṣūl al-Aḥkām by al-Āmidī: published in 1317 AH, Maṭbaʿat Ṣubayḥ.3/206.

Where the text is speculative in its indication, *ijtihād* is directed toward determining its intended meaning by examining its generality and specificity (*‘umūm* and *khuṣūṣ*), its unrestricted and restricted forms (*iṭlāq* and *taqyīd*), the implications of commands and prohibitions, and the meanings conveyed through explicit expression (*‘ibārah*), indication (*ishārah*), and other recognized modes of textual interpretation. All of these constitute legitimate fields for the exercise of *ijtihād*.

As for cases concerning which there is neither a textual provision nor a consensus, *ijtihād* is exercised by deriving their legal rulings through reliance on the recognized juristic sources, such as *qiyās* (analogical reasoning), *al-maṣāliḥ al-mursalah* (unrestricted public interests), *‘urf* (custom), and other accepted sources of Islamic legislation.

Secondly: Matters in Which *Ijtihād* Is Not Applicable.

There is no scope for *ijtihād* in rulings established by evidence that is definitive in both authenticity and textual indication, such as the pillars of Islam, the prohibition of adultery (*zinā*), usury (*ribā*), murder, theft, and other rulings that are necessarily known to be part of the religion. Accordingly, *ijtihād* is not permissible in matters established by definitive evidence that admits no interpretation.

Likewise, *ijtihād* does not apply to the prescribed *ḥudūd* punishments, such as the punishments for adultery, theft, and false accusation (*qadf*), since they are established by definitive evidence and are therefore not subject to *ijtihād*, whether with respect to their legal validity or their prescribed measure.

Similarly, *ijtihād* is not permissible with regard to rulings established by a valid consensus (*ijmā‘*) transmitted through *mutawātir* reports, because *ijmā‘* constitutes a binding legal proof, and it is impermissible to oppose or depart from it.¹⁶

The Second Section: Contemporary *Ijtihād*

After explaining the concept of *Ijtihād*, its *Sharī‘ah* proofs, its classifications, and elucidating its fields as well as what is and is not subject to *Ijtihād*, I now turn to contemporary *Ijtihād*, as it constitutes one of the most significant issues that has attracted the attention of scholars and researchers in the modern era. This is due to the questions it raises concerning the extent of its ability to keep pace with contemporary developments and innovations, and its relationship with the juristic legacy left by the early generations of Muslim scholars.

The importance of this chapter lies in clarifying the reality of *Ijtihād* in the contemporary era, the need for it, and its connection to the Islamic juristic heritage. It also examines whether its role is

¹⁶ *Uṣūl al-Fiqh al-Islāmī*: by Wahbah al-Zuhaylī, 2/1080,1081.and *Aḍwā‘ Hawla Qaḍīyyat al-Ijtihād*:p30,31.

confined to addressing newly emerging issues alone, or whether it extends to reconsidering certain earlier juristic *Ijtihāds* in a manner that realizes the *Maqāṣid al-Sharī'ah* and keeps pace with changing circumstances and conditions. Accordingly, this chapter has been divided into two sections.

The First Subsection: *Ijtihād* in the Modern Era: The Need for It, Its Relationship with the Classical Juristic Heritage, and the Possibility of Its Practice.

First: The Need for *Ijtihād* in Our Contemporary Age.

It is well established among scholars that Islam is a universal religion, sent as guidance for all humankind. It was not sent exclusively to a particular people to the exclusion of others, nor was it confined to a particular era. Allah, the Exalted, says:

“And We have not sent you except comprehensively to all mankind as a bearer of good tidings and a warner.” (Saba’ 34:28)

Moreover, the Islamic *Sharī'ah* is a comprehensive legal system distinguished by its universality and flexibility. It is founded upon comprehensive principles and universal maxims that render it applicable across different times and places, enabling it to realize people's welfare and establish life upon the foundations of justice and righteousness.¹⁷

Since human life is in a state of continuous development, and unprecedented cases and events emerge with the changing circumstances of people, while the texts of the *Sharī'ah* are finite, *Ijtihād* has remained the legitimate means through which rulings are extended to newly arising issues, thereby ensuring the continued applicability of the *Sharī'ah* to every time and place. Consequently, *Ijtihād* has become more necessary in our present age than ever before, owing to the rapid developments occurring in various aspects of life and the unprecedented issues they generate—issues that were unknown to the early jurists. This necessitates an *Ijtihād* that remains firmly grounded in the principles and objectives of the *Sharī'ah*.

Dr. ‘Abd al-Raḥmān ibn Ḥasan Ḥabannakah al-Maydānī states in this regard:

“Man is the fundamental element in life. By the very nature of his existence, he is confronted with its crises, problems, and challenges. He therefore faces two alternatives: either to confront these problems, deal with them, and overcome them in accordance with the foundations and principles of his civilization, or to fail to confront them, thereby leading to the destruction of his civilization and the erosion of its foundations. History bears abundant witness to this. If unprecedented cases

¹⁷ Madkhal li-Dirāsāt al-Sharī'ah al-Islāmiyyah: by Dr. Yūsuf al-Qaraḍāwī, 2nd ed., 1417 AH / 1997 CE, Mu'assasat al-Risālah (Beirut), p137 to 203.

and challenges were of such a nature in the past, they are undoubtedly more severe and complex in the present age.”¹⁸

Dr. Yūsuf al-Qaraḍāwī further emphasizes this point by stating:

“The changes taking place in our world have become enormous. We have entered what is known as the ‘Second Industrial Age.’ Whereas the hallmark of the ‘First Industrial Age’ was that machines provided physical labor for human beings, the distinguishing feature of the second age is that electronic minds provide intellectual labor. This continuous development necessitates the emergence of new realities in people’s lives, each of which requires a Sharī‘ah ruling, so long as it falls within the sphere of the actions of legally accountable persons (mukallafīn). Such rulings can only be attained through Ijtihād.”¹⁹

From this, it becomes evident that Ijtihād is not merely an abstract juristic option; rather, it is a Sharī‘ah and civilizational necessity imposed by the very nature of the Islamic Sharī‘ah on the one hand, and by the continuous development and renewal of human life on the other. Through it, responsiveness to contemporary developments is realized, and Sharī‘ah rulings are applied to newly emerging realities in a manner that fulfills the Maqāṣid al-Sharī‘ah and preserves the welfare of society.

Second: The Position of Contemporary Ijtihād Toward the Classical Juristic Heritage.

Contemporary Ijtihād is not confined solely to addressing newly emerging issues and unprecedented cases. Rather, its scope extends to reexamining many of the juristic opinions and Ijtihāds established by the earlier jurists, which were closely connected to the circumstances, customs, and practices of their own times. Such reexamination is undertaken through weighing and evaluating those Ijtihāds, affirming what best realizes the Maqāṣid al-Sharī‘ah, and more effectively serves the welfare of people in light of contemporary developments, while being guided by the well-established juristic maxim that legal verdicts (fatāwā) change with changes in time, place, and circumstances.

Furthermore, the scope of contemporary Ijtihād does not end there. It also encompasses reconsidering rulings derived from texts that are Ṣannī in terms of Thubūt or Dalālah, or both. Contemporary Ijtihād may arrive at a renewed understanding of certain Sharī‘ah texts that differs from earlier understandings, or it may revive a juristic opinion previously held by some scholars but neglected in practice because the people’s circumstances at that time did not require it, or because it preceded its age, or because it differed from what had become the prevailing practice,

¹⁸ Majallat al-Buḥūth al-Fiqhiyyah al-Mu‘āṣirah: Issue No. 16, dated 4 Ramaḍān 1413 AH. P175.

¹⁹ Madkhal li-Dirāsāt al-Sharī‘ah al-Islāmiyyah: by Dr. Yūsuf al-Qaraḍāwī, 2nd ed., 1417 AH / 1997 CE, Mu‘assasat al-Risālah (Beirut). P244.

or from the views of the majority of juristic schools, or due to political or social considerations, or for other reasons.²⁰

However, reexamining the juristic heritage and selecting from the various schools of thought and scholarly opinions those that are suitable for legislation and judicial practice in the present age does not mean adopting opinions on the basis of personal preference or arbitrary selection. Nor does it imply following views that merely accord with personal inclinations and desires, seeking out legal concessions (rukhaṣ) among scholars, or searching for justifications for existing circumstances without due regard for the Sharī'ah evidence. Rather, such selection is governed by precise scholarly criteria, regulated by the principles of Ijtihād and the methodology of legal deduction, while taking into consideration the strength of the evidence and the conformity of the ruling with the Maqāṣid al-Sharī'ah.

This is because the rulings contained within the juristic heritage are not all of equal authority and evidentiary strength. Some are founded upon explicit Sharī'ah texts (Nuṣūṣ), others upon Ijmā', while others are based on Qiyās, Al-Maṣāliḥ al-Mursalah, 'Urf, or other sources of Ijtihād regarding whose evidentiary authority scholars have differed, ranging from broad acceptance to restrictive acceptance or complete rejection.

Likewise, the Sharī'ah texts themselves are not all of the same rank. Some are Qaṭ'i in both Thubūt and Dalālah; some are Qaṭ'i in Thubūt but Ḍannī in Dalālah; while others are Ḍannī in Thubūt or Ḍannī in Dalālah. This opens the door to Ijtihād within the sphere of Ḍannī texts, in accordance with the established principles set forth by the scholars of Uṣūl al-Fiqh.

Likewise, the same applies to Ijmā'. It may consist of the consensus of the Companions (may Allah be pleased with them), or of those who came after them. It may be explicit (ṣarīḥ) or tacit (sukūṭī). Indeed, the very establishment of some claims of Ijmā' has been disputed. Furthermore, Ijmā' may, with respect to its basis, rest upon Al-Maṣāliḥ al-Mursalah or 'Urf that prevailed during a particular period and subsequently changed with changing circumstances. This makes it appropriate to reexamine such issues and subject them to renewed Ijtihād.

Accordingly, it has become imperative for the Mujtahid in the present age to examine the juristic heritage through a critical and scholarly approach, studying the opinions and evidences of the jurists independently while taking the Qur'an and the Sunnah as his primary guides, for Allah, the Exalted, has made them the criterion of truth. He should then adopt from among those opinions that which is strongest in evidence, closest to the Maqāṣid al-Sharī'ah, and most capable of realizing the welfare of people, in accordance with the established Sharī'ah principles and standards, free from sectarian partisanship or the pursuit of personal desires.²¹

²⁰ Contemporary Ijtihad between Discipline and Laxity: Dr Yusuf al Qaradawi. P16.

²¹ Madkhal li-Dirāsāt al-Sharī'ah al-Islāmiyyah: p243.

Third: The Possibility of Ijtihād in the Present Age

If it is established that Ijtihād in the present age has become a Sharī'ah necessity from which the Ummah cannot dispense, and that it constitutes a collective obligation (farḍ kifāyah) that must be fulfilled, then this raises an important question: Is Ijtihād still possible in our present time? And are the scholars of this age capable of fulfilling the conditions laid down by the scholars of Uṣūl al-Fiqh for the Mujtahid?

A number of contemporary scholars have answered this question in the affirmative. Among them is Dr. Yūsuf al-Qaraḍāwī, who states:

"These conditions that the scholars of Uṣūl al-Fiqh stipulated for the Mujtahid in deriving Sharī'ah rulings from their detailed evidences are by no means unattainable. Likewise, I do not share the view of those who claim that the gate of Ijtihād has been closed and that there is no room for Ijtihād today. This is a notion held by some of the scholars of our age."²²

It is evident from this statement that the conditions established by the scholars of Uṣūl al-Fiqh for Ijtihād were not intended to make Ijtihād impossible or to restrict it to a particular generation. Rather, their purpose was to regulate the process of legal deduction and to safeguard Sharī'ah rulings from being issued without knowledge. Therefore, the claim that the gate of Ijtihād has been closed is inconsistent with the nature of the Islamic Sharī'ah and with the renewed needs of the Ummah, so long as Ijtihād remains one of the principal means of deriving rulings regarding matters for which there is no Naṣṣ.

It is well known that the Islamic Sharī'ah is an everlasting Sharī'ah, revealed as guidance for people in every time and place. This can only be achieved through the continuous practice of Ijtihād based on its recognized principles, so that the rulings of the Sharī'ah remain capable of keeping pace with the development of human life and with newly arising issues and unprecedented cases.

Accordingly, the gate of Ijtihād has not been closed and will never be closed. In every age there emerge those who are qualified to exercise Ijtihād, and no age is devoid of those who fulfill its recognized conditions. This is because knowledge of Sharī'ah rulings is attained through Ijtihād, while events and occurrences do not come to an end; rather, they continue to arise. The need to know the rulings of the Islamic Sharī'ah therefore continues in every time and place with the continuation and development of people's lives. Allah, the Exalted, says:

"So ask the people of knowledge if you do not know." (Al-Naḥl 16:43)

²² Contemporary Ijtihad between Discipline and Laxity: Dr Yusuf al Qaradawi. P18.

If it is established that the Ummah can never be devoid of qualified practitioners of Ijtihād who clarify for people the rulings of their religion, then this indicates that Ijtihād remains attainable in every age. Indeed, the existence of such Mujtahids is among the requirements for preserving the Sharī'ah and ensuring its continuity²³.

Moreover, the well-established principle of Uṣūl al-Fiqh, "Whatever is necessary for the fulfillment of an obligation is itself obligatory," affirms that preparing and qualifying Mujtahids is obligatory to the extent necessary for the establishment of the rulings of the Sharī'ah and for providing legal guidance (fatwā) to the people.

Perhaps the reality of the present age makes attaining the rank of Ijtihād easier than it was in many previous eras, owing to the availability of means that were not previously accessible. The Prophetic Sunnah has been compiled, the books of Fiqh and Uṣūl al-Fiqh have been thoroughly verified, and modern means have facilitated access to primary sources and references. Furthermore, juristic councils and international scholarly academies have been established, bringing together leading scholars and researchers. In addition, the remarkable development in communication and information technology has made the world resemble a single village, thereby creating a scholarly environment that is more conducive to the practice of both collective and individual Ijtihād, in accordance with the established Sharī'ah principles.

Subsection Two: Trends of Contemporary Ijtihād and Its Schools²⁴.

The trends of contemporary Ijtihād may be classified, according to their approaches to the Sharī'ah texts and contemporary developments, into three main trends, each of which has its own methodology and principles of legal reasoning and deduction.

First: The Trend of Restriction and Rigidity

This trend is based on restricting the scope of Ijtihād and, in most cases, limiting it to the opinions established by the early jurists. It is represented by two schools:

1. The Madhhab-Based School.

This school maintains that adherence to a particular juristic madhhab is obligatory, and that Ijtihād should be exercised only within the framework of that madhhab, by deriving rulings for newly arising issues according to its principles and legal foundations, and by referring to the opinions of its scholars, especially the later authorities among them.

Accordingly, when the adherents of this trend are confronted with a newly arising issue, they first search for a similar ruling in the authoritative books of the recognized madhāhib. If they find one,

²³ Al-Ijtihād: Hājah wa-Farīdah wa-Manhaj fī al-Sharī'ah al-Islāmiyyah: by Aḥmad 'Alī al-Jazā'irī, 1st ed., 1414 AH / 1994 CE, Dār al-Ṣaḥwah for Publishing and Distribution (Cairo). P21.

²⁴ Contemporary Ijtihad between Discipline and Laxity: Dr Yusuf al Qaradawi. P94 to 97.

they analogize the new issue to it. If they do not find a similar case, they generally conclude that it is prohibited.

.2The Literalist School.

This school is also known as the textualist school. Its adherents are generally characterized by their preoccupation with the science of Hadith, while paying relatively little attention to jurisprudence (fiqh) and its principles (uṣūl al-fiqh). Moreover, they often lack sufficient familiarity with the juristic disagreements among scholars and the methodologies they employ in legal reasoning. Consequently, they tend to confine themselves to the apparent meanings of the legal texts and do not give adequate consideration to the objectives of the Shari‘ah (maqāṣid al-shari‘ah), the reasoning behind legal rulings, the consideration of public interests (maṣāliḥ), or the effect of changing times, places, and circumstances on legal rulings.

Second: The Trend Toward Expansion.

In contrast to the previous trend, another tendency advocates a broad expansion of the scope of ijtihād, to the extent that, in some of its applications, it goes beyond the limits set by the definitive legal texts and established Shari‘ah rulings. Dr. Yūsuf al-Qaraḍāwī pointed out in his book *Ijtihād in Islamic Shari‘ah* that this trend is represented by two schools.

1. The School of Giving Priority to Public Interest over the Text.

This trend advocates giving precedence to what it considers to be public interest (maṣlaḥah) over certain Shari‘ah texts, relying on arguments that are presented as evidence but which—according to scholars—cannot withstand scholarly scrutiny. Among the most prominent examples cited by the proponents of this trend are some of the ijtihāds of Caliph ‘Umar ibn al-Khaṭṭāb (may Allah be pleased with him), such as the issue of those whose hearts are to be reconciled (al-mu‘allafah qulūbuhum) and the valuation of the Sawād lands of Iraq, although those incidents had their own specific circumstances and underlying reasons.

It is also observed that many who subscribe to this trend are not specialists in the Islamic sciences. Rather, many of them belong to the fields of law, history, literature, philosophy, or other humanities, a factor that may have influenced their methodology in understanding the religious texts and deriving legal rulings.

.2The School of Justifying Reality.

This school seeks to confer legitimacy upon the existing reality, whether it is something desired by the general public or adopted by the ruling authority. It does so by searching for

interpretations (ta'wīlāt) or juristic justifications (takhrījāt fiqhiyyah) that would lend such a reality the appearance of legitimacy.

The motives for adopting this approach vary from one individual to another. Some embrace it out of a sense of defeat or inferiority before Western civilization, while others are driven by a desire to achieve personal interests, gain favor with those in power, seek fame, or pursue other motives stemming from personal desire or fear.

Third: The Balanced Approach.

This approach represents the methodology of moderation and balance. It combines adherence to the Sharī'ah texts with due consideration for the objectives (maqāṣid) of the Sharī'ah, without excess or negligence. It neither gives precedence to particulars over universals nor allows speculative evidence to override definitive texts. At the same time, it takes into account the public interests and needs of the people, provided that they do not conflict with a text that is authentic in transmission and explicit in meaning, or with a principle upon which there is scholarly consensus.

This approach is distinguished by its ability to strike a balance between the immutable principles of the Sharī'ah and the requirements of the contemporary age. It combines adherence to the definitive rulings of the Sharī'ah with responsiveness to newly emerging issues and developments, in accordance with the recognized principles governing Islamic legal reasoning.

Accordingly, this methodology is regarded as the closest of all approaches to the spirit and objectives of the Sharī'ah. It is the method that should be adopted by those engaged in issuing legal opinions (fatwā) and exercising ijtihād, as it requires extensive knowledge, profound understanding, piety, and moderation in legal reasoning and deduction.

The Third section: Forms of Contemporary Ijtihad and the Envisaged Ijtihad.

The First Subsection: Forms of Contemporary Ijtihad²⁵

Ijtihad in the modern era is manifested in a number of practical forms that reflect its presence in the reality of scholarly and legislative life. This ijtihad has taken three principal forms: ijtihad in the form of codification, ijtihad in the form of issuing fatwas, and ijtihad in the form of research and study.

First: Ijtihad in the Form of Codification:

Codification is considered one of the most prominent forms of contemporary ijtihad, as the efforts of jurists have been manifested in formulating the Sharī'ah rulings in the form of organized laws that take into consideration the requirements of reality and serve the interests of people.

²⁵ Contemporary Ijtihad between Discipline and Laxity: Dr Yusuf al Qaradawi. P46 to 50.

This form of *ijtihād* initially took the form of selecting the preponderant opinion from within the Ḥanafī school of jurisprudence. Its scope then expanded to include selection from among the four Sunni schools of jurisprudence. Indeed, in some issues, it went beyond this to constructive *ijtihād* concerning newly emerging issues that jurists had not previously examined.

The *Majallat al-Aḥkām al-‘Adliyyah* is regarded as the first pioneering experience in the field of codifying juristic rulings, as it based most of its provisions on the school of Imam Abū Ḥanīfah, may Allah have mercy upon him, and on what had been established as the relied-upon position in Ḥanafī fatwa practice, while departing from the relied-upon position in some matters in order to achieve a prevailing benefit or avert an apparent harm.

It is well known that the schools of Islamic jurisprudence, despite the scholarly richness they possess, each contain matters whose adoption may result in some degree of hardship or difficulty. In other schools, there may be an opinion supported by stronger evidence, more consistent with the objectives of the Sharī‘ah, or more capable of achieving people’s interests. Hence, the richness of Islamic jurisprudence is not confined to any particular school; rather, it is represented in the totality of the juristic efforts and views of its leading Imams.

Based on this understanding, the adoption of the principle of selecting from the various schools of Islamic jurisprudence formally began when personal status laws were formulated toward the end of the Ottoman era. The Ottoman government enacted the Ottoman Family Rights Law, drawing therein upon the rulings of the Mālikī school concerning the separation of spouses through arbitration, as prescribed in the Qur’an in cases of discord between them. It also broadened the scope of application of this ruling in a manner that served the interests of the family and enabled the wife to seek the removal of harm inflicted upon her, in a way that balanced the husband’s right to divorce with the wife’s right to seek judicial separation. In addition, a number of reform-oriented rulings derived from different schools of Islamic jurisprudence were adopted.

Second: *Ijtihād* in the Form of Fatwas:

Fatwa-giving is regarded as one of the most important fields of *ijtihād* in the modern era, and its forms and means have multiplied in accordance with the development of scholarly institutions and means of communication.

Fatwas may be issued by specialized official bodies, such as scholarly councils, the role of the Grand Mufti, and fiqh academies. They may also be disseminated through the scholarly journals of specialized institutions supervised by specialists in the Sharī‘ah sciences, or issued by scholars known for their knowledge and expertise, to whom people refer regarding their questions and legal matters. Their fatwas are compiled in scholarly works or disseminated through their official

websites and scholarly platforms on the Internet, thereby contributing to the transmission of Shari'ah rulings to a wider audience of beneficiaries.

Third: Ijtihad in the Form of Research or Study:

One of the most prominent forms of contemporary ijtihad is also represented in the specialized scholarly research and studies undertaken by researchers in the field of Islamic jurisprudence and its principles, whether in the form of peer-reviewed scholarly works, research papers presented to academic conferences and scholarly forums, university theses submitted for the degrees of Master's and Doctorate, scholarly research prepared by researchers for academic promotion, or studies published in peer-reviewed scholarly journals.

These scholarly efforts constitute a broad field for ijtihad whenever they are undertaken by someone who possesses the qualifications for ijtihad and has a well-established juristic aptitude, together with accumulated scholarly experience in research, study, and teaching. This is particularly so when the ijtihad is of the type known as partial ijtihad, which is ijtihad concerned with a specific issue among the issues of Islamic jurisprudence. In such a case, it is not required that the researcher have comprehensive knowledge of all chapters and branches of jurisprudence; rather, it is sufficient for him to have thorough knowledge of the issue under investigation, study its evidence, discuss it, and examine the views of the scholars concerning it, in order to arrive at the opinion that is supported by the stronger evidence or is closer to the objectives of the Shari'ah. The researcher may ultimately prefer the view of one of the early Imams, or arrive at a new ijtihad supported by the evidence and Shari'ah principles.

The Second Subsection: The Envisaged Ijtihad.

First: The Character and Nature of Ijtihad in the Past.

In order to identify the form that ijtihad ought to take in the contemporary era, it is appropriate to examine its nature during the early stages of Islamic history, given the significance of this in drawing upon the optimal methodology for resuming the movement of ijtihad in our contemporary context.

Ijtihad during the era of the Rightly Guided Caliphate, following the death of the Prophet, peace and blessings be upon him, was characterized by a collective nature based on the principle of consultation (shūrā). Whenever the Rightly Guided Caliphs encountered a new case concerning which there was no explicit textual ruling, they would gather the senior Companions who were knowledgeable in religious sciences and jurisprudence, and consult with them in order to arrive at the appropriate Shari'ah ruling, whether the matter concerned political affairs or juridical issues. In doing so, they relied upon the evidence of the Shari'ah texts establishing the legitimacy of consultation, as the command to engage in consultation was stated in unrestricted terms,

thereby encompassing the various affairs of the Muslim community concerning which there was no definitive text.

In this context, Ibn Qudāmah, may Allah have mercy upon him, stated in *Rawḍat al-Nāẓir*: “The Messenger of Allah, peace and blessings be upon him, taught them how to deal with matters concerning which there was no textual ruling, by means of *ijtihād* and the exchange of views among people of knowledge and righteousness. Sa‘īd ibn al-Musayyab narrated from ‘Alī, may Allah be pleased with him, who said: I said, ‘O Messenger of Allah, a matter arises concerning us for which no Qur’ānic revelation has been sent down, nor has there been an established practice of yours concerning it.’ He, peace and blessings be upon him, said: ‘Gather the scholars for it’—or he said, ‘the worshippers among the believers’—‘and make it a matter of consultation among yourselves, and do not decide it on the basis of the opinion of one person alone.’²⁶

The Companions, may Allah be pleased with them, adhered to this methodology. They would therefore present newly arising cases to those possessing knowledge and sound judgment, and discuss them among themselves until they arrived at what was closer to the truth and more consistent with the objectives of the *Sharī‘ah*. This contributed to establishing the principle of collective *ijtihād* during that early stage of the history of Islamic legislation.

However, this collective character did not continue in the same form after the era of the Rightly Guided Caliphate. The expansion of the Islamic state and the dispersal of the Companions, may Allah be pleased with them, throughout different regions made it difficult for them to assemble for consultation whenever a new case arose. Consequently, *ijtihād* gradually acquired an individual character, and each mujtahid came to independently examine the issues presented to him, relying on the knowledge of the proofs and principles of the *Sharī‘ah* available to him.

Sheikh ‘Abd al-Wahhāb Khallāf described this stage by saying: “After Allah had opened many lands to the Muslims, and the leading Companions had dispersed throughout the various regions, it became difficult for the Caliph in Medina to gather these leading figures from Kūfah, Baṣrah, Syria, Egypt, and elsewhere whenever a case arose for which there was no textual ruling in the Qur’an or Sunnah. Consequently, the Companions who were engaged in legislation began to exercise their legislative authority either individually or collectively. In each of the Muslim territories, there was one or more among them who issued fatwas concerning matters for which there was no text, and who provided elucidation and interpretation of the texts.”²⁷

This development was consistent with the nature of that stage, as people were still close in time to the Prophetic era, and the effects of Prophetic education remained present within them. The

²⁶ *Rawḍat al nazir wa Junnat al Manazir fi usul al fiqh ala madhab al umam ahmed ibn hanbal, Ibn Qudamah al maqdisi, al Rayyan Foundation for Printing, Publishing and Distribution, 2nd, ed, 2002. 1\10.*

²⁷ *Ilm usul al Fiqu wa Khulasat al Tashri, Abd al Wahhab Khallaf, al Madani Press, the Saudi Fondation in Egypt. P236.*

Prophetic Sunnah was transmitted through direct narration alongside what had been authenticated from it, and there was a strong interest in learning the Noble Qur'an, Prophetic Hadith, the Arabic language, and the sciences of the Shari'ah. The sciences of the Shari'ah were also receiving broad attention, which allowed a large number of scholars qualified for ijtihad to emerge, distinguished by knowledge, justice, and piety. Thus, it was not easy for the discerning person to distinguish among them and others.

With the passage of time and people's increasing distance from the Prophetic era, those advantages gradually weakened, and the number of those who fulfilled the conditions of ijtihad decreased. The status of scholars became confused with that of others, and some began to claim the ability to exercise ijtihad without possessing the requisite scholarly qualifications. This raised the scholars' concerns that personal inclinations and innovations might infiltrate Islamic jurisprudence, and that the rulings of the Shari'ah might be tampered with under the guise of ijtihad.

For this reason, many jurists of the schools of Islamic jurisprudence in the fourth century AH came to believe that the established juristic opinions of the schools were sufficient for people. They therefore inclined toward the view that the gate of ijtihad should be closed, as a preventive measure against disorder and in order to preserve the stability of juristic rulings.

Through this presentation, it can be said that individual ijtihad had a profound impact on the formation and enrichment of Islamic jurisprudence in its early stages, as it contributed to establishing the juristic schools and laying down the principles and foundations upon which the rich heritage of Islamic jurisprudence was built. However, the problem did not lie in individual ijtihad itself, but rather in closing the gate of ijtihad completely, without establishing scholarly regulations governing its practice. This led to the spread of taqlid and intellectual stagnation during long periods of the history of Islamic jurisprudence.

The need, therefore, was not to prohibit ijtihad, but rather to regulate it and subject it to the Shari'ah and scholarly standards that prevent disorder and ensure the continuity of the movement of ijtihad within its proper framework, in a manner that achieves the objectives of the Shari'ah and keeps pace with the development of life and its emerging realities.²⁸

Second: The Envisaged Approach to Resuming the Movement of Ijtihad in the Present and Future:

After examining the reasons that led to the closure of the gate of ijtihad during a certain period in the history of Islam, and the consequences that this had for the course of Islamic jurisprudence, it becomes evident that the need today has become more pressing than ever to resume the

²⁸ Majallat al-Ḥaḍārah al-Islāmiyyah: Issue No. 06, Ramaḍān 1420 AH / December 1999 CE. P160.

movement of *ijtihād* according to a sound scholarly methodology that takes into consideration the constants of the *Sharīʿah* and the changing realities.

There is no doubt that individual *ijtihād* was necessary during the early stages of the history of Islamic legislation, and that it made a significant contribution to the development and enrichment of Islamic jurisprudence. However, given the nature of the contemporary era and the complexity of the issues and cases it presents, restricting oneself to individual *ijtihād* is no longer sufficient to address emerging developments; rather, it may be harmful if it is separated from scholarly controls, leading to confusion in fatwas and differences in rulings, and opening the door to those who undertake *ijtihād* without possessing its requisite tools and conditions.

Moreover, the need to regulate *ijtihād* is reinforced by the warnings that led some scholars in the fourth century AH to call for closing the gate of *ijtihād*, a call that has become more pertinent today, given the proliferation of claims to *ijtihād* and the emergence of individuals who speak about the rulings of the *Sharīʿah* without knowledge or who allow their personal inclinations and desires to serve as a criterion in deriving rulings, in addition to attempts to employ fatwas in the service of particular ideological orientations or interests. This necessitates establishing a scholarly methodology that regulates the process of *ijtihād* and safeguards it from deviation.

Furthermore, restoring vitality to Islamic jurisprudence does not consist merely in calling for the reopening of the gate of *ijtihād*; rather, it requires establishing a sound scholarly system that ensures the validity of its outcomes, combines authentic *Sharīʿah* grounding with a comprehensive understanding of reality, and fulfils the established conditions of *ijtihād*. The objective is not to multiply opinions, but rather to arrive at rulings that are closer to the objectives of the *Sharīʿah*, more conducive to achieving people's interests, and further removed from the influence of personal inclinations or various pressures.

Hence, collective *ijtihād* emerges as the most appropriate form of *ijtihād* in the modern era, as it allows specialists to come together, exchange views, and complete the various aspects of examining contemporary issues, so that rulings are issued following collective study in which expertise in *fiqh*, *uṣūl al-fiqh*, and other relevant fields is integrated.

Therefore, the envisaged approach to resuming the movement of *ijtihād* in the present and future lies in activating collective *ijtihād* through *fiqh* academies and specialized scholarly bodies that bring together a select group of scholars and *mujtahids*, thereby ensuring the attainment of a more precise *ijtihād*, one that is closer to what is correct and more capable of addressing newly arising issues and contemporary cases in accordance with the recognized *Sharīʿah* principles.²⁹

²⁹ *Majallat al-Ḥadārah al-Islāmiyyah*: Issue No. 06, Ramaḍān 1420 AH / December 1999 CE. P161,162.

The call for this type of *ijtihād* is not a product of the present age; rather, a number of scholars of the modern era advocated it from an early period, recognizing the scholarly advantages it offers and the guarantees it provides for the soundness of *ijtihād* and the validity of its outcomes. Accordingly, it is appropriate to present some of their statements in order to affirm the importance of collective *ijtihād* and clarify its position within contemporary *fiqh* thought.

The Third Subsection: Statements of Some Contemporary Scholars on the Necessity of the Envisaged Collective *Ijtihād*.

Having demonstrated the importance of collective *ijtihād* and its being the optimal means of resuming the movement of *ijtihād* in the present age, it is appropriate to consider the statements of a number of contemporary scholars who affirmed this fact and called for adopting collective *ijtihād* as the means best able to address contemporary emerging issues, regulate the process of legal deduction, and curb disorder in issuing *fatwās*.

Among the most prominent of these scholars is Shaykh ‘Abd al-Wahhāb Khallāf, who stated in his book *Maṣādir al-Tashrī‘ fīmā lā Naṣṣa fīhi* that *ijtihād* based on personal legal reasoning should not be undertaken by a single individual, regardless of the extent of his knowledge and breadth of learning. Rather, it is the responsibility of a group of scholars, each of whom has fulfilled the conditions of *ijtihād*. This ensures sound consideration, the validity of legal deduction, and the integration of different views. In this sense, he states, may Allah have mercy on him:

“Those qualified to exercise *ijtihād* based on personal legal reasoning are the legislative body whose individual members possess the qualifications for *ijtihād* established by the scholars of Islamic law. Thus, *ijtihād* based on personal legal reasoning cannot be undertaken by an individual, regardless of the talents he may have been endowed with or the qualifications he may have acquired. This is because history has demonstrated that individual *ijtihād* is among the major causes of legislative disorder in Islamic jurisprudence.”³⁰

Shaykh Aḥmad Shākir, may Allah have mercy upon him, likewise called for adopting the methodology of collective *ijtihād* when formulating legislation, while rejecting rigid adherence to the statements of earlier scholars or following them in matters for which there is no evidence. He explained that legal reform can only be achieved through the exchange of views and the gathering of specialists. He states in his book *al-Shar‘ wa-al-Lughah*:

“Do not think that when I call you to Islamic legislation, I am calling you to adhere, for example, to what Ibn ‘Ābidīn or Ibn Nujaym stated, nor am I calling you to imitate the jurists in their subsidiary rulings which they derived without textual basis in the Qur’ān and Sunnah, many of which involve considerable hardship. No, I reject imitation altogether, whether it is imitation of

³⁰ *Masadir al Tadhri Fima la nassa Fih: Abd Wahhab khallaf; Dar al Qalam for Printing; Publishing and Distribution; Beirut, 5th ed, 1982: p13:*

the earlier scholars or of the later ones. Furthermore, individual *ijtihād* is not productive in the formulation of laws; indeed, it is almost impossible for an individual or individuals to undertake it. The proper and productive course is collective work. When ideas are exchanged and opinions are deliberated, the correct view becomes manifest, God willing.”³¹

Among the scholars who likewise affirmed this point is Dr. Yūsuf al-Qaraḏāwī, who holds that the nature and complexity of contemporary issues require *ijtihād* to be based on institutional work, through scholarly academies that bring together those possessing competence and expertise, while not eliminating the role of individual *ijtihād*; rather, it should complement and prepare the way for collective *ijtihād*. He states, may Allah have mercy upon him, in his book *al-Ijtihād al-Mu‘āṣir bayna al-Indibāṭ wa-al-Infilāt*:

“*Ijtihād* in our age should be collective, in the form of a scholarly council comprising highly qualified jurists, which issues its rulings with courage and freedom, far removed from all social and political influences and pressures. Nevertheless, individual *ijtihād* remains indispensable, for it paves the way for collective *ijtihād* through the profound studies and original, in-depth research that it provides. Indeed, the process of *ijtihād* itself is, first and foremost, an individual process.”³²

These statements, despite the differences among their proponents, affirm one fundamental truth: collective *ijtihād* has become, in the contemporary era, a scholarly and Sharia-based necessity, given the integration of expertise, greater precision in analysis, and the stronger assurance it provides of reaching rulings that fulfill the objectives of the Sharia and respond to the requirements of reality, while individual *ijtihād* remains an important source that enriches collective *ijtihād* with sound research, studies, and well-grounded scholarly opinions.

Conclusion

In conclusion, this study, which addressed the issue of *ijtihād* in contemporary matters, demonstrates that *ijtihād* represents one of the fundamental pillars upon which the Islamic Sharī‘ah is based, as it enables it to keep pace with evolving realities and respond to the new circumstances and issues arising in people’s lives, within the framework of adherence to the rulings of the Qur’an and Sunnah and the objectives of the Islamic Sharī‘ah.

Through the foregoing discussion and analysis, a number of conclusions may be drawn, the most important of which are as follows:

Ijtihād is a religious obligation, a scholarly necessity, and an established methodology in Islamic jurisprudence. The legitimacy of *ijtihād* is established by the texts of the Qur’an and Sunnah, and the scholars of the Muslim community have reached consensus on it. It is also supported by

³¹ *al-Shar‘ wa-al-Lughah*, Shaykh Aḥmad Shākir, Dar al Ma‘ārif, Egypt, p95.

³² *Contemporary Ijtihad between Discipline and Laxity: Dr yusuf al Qaradawi*. P16.

sound human nature. This demonstrates that the Islamic Sharī'ah is a final and comprehensive law, valid for every time and place, since circumstances and events neither cease nor come to an end. Consequently, ijtihād constitutes the legitimate means of ensuring the continued applicability of the rulings of the Sharī'ah and their accommodation of the developments of life.

The need for ijtihād in the contemporary age is greater than ever before, in view of the rapid developments witnessed by the world in various fields of life and the resulting emergence of contemporary issues and new legal cases that require clarification of their Sharī'ah rulings in accordance with the recognized principles of legal deduction.

The scope of Ijtihād is not confined to definitive legal rulings, whether established by definitive evidence or by evidence whose indication is definitive, or to cases in which both aspects are present. Likewise, it does not extend to facts concerning which there is neither a textual proof nor scholarly consensus. As for definitive texts, whether definitive in terms of their authenticity or their indication, and matters established by definitive consensus, they are not subject to ijtihād, since ijtihād is not exercised in the presence of a definitive text or a sound definitive consensus.

Contemporary ijtihād is not limited to addressing newly emerging issues; rather, it also extends to re-examining the juristic heritage and balancing the different jurists' opinions, and to preferring the view that best realizes the objectives of the Sharī'ah and serves people's interests in light of the recognized Sharī'ah principles.

Ijtihād in our contemporary age is both possible and feasible; indeed, it has become easier than in many previous periods, owing to the availability of scholarly research tools, the collection of sources, the verification of works of the juristic heritage, the establishment of juristic academies, and the development of means of communication that have facilitated scholarly cooperation among specialists.

Individual ijtihād has played a significant role in the development of Islamic jurisprudence and its evolution throughout the ages, and it continues to retain its importance in the preparation of academic studies and scholarly research. However, given the nature of contemporary developments and their complexity and interaction with various fields of knowledge, collective ijtihād is better suited to achieving the intended purpose of ijtihād, as it allows for the integration of expertise and the exchange of opinions, ensures greater precision in legal deduction, contributes to limiting arbitrariness in issuing legal opinions, and closes the door to those who are unqualified to engage in ijtihād.

In conclusion, the future of ijtihād within the Muslim community depends on reviving its sound methodology, which is based on reconciling the authenticity of the Sharī'ah texts with a proper understanding of their objectives, taking into account the realities of people's lives and the changes of the age, within an organized institutional framework in which the efforts of scholars

and specialists complement one another. This will enable Islamic jurisprudence to continue fulfilling its role in guiding people, achieving their interests, and demonstrating the universality and applicability of the Sharī'ah in every time and place.

We ask Almighty Allah to make this work sincerely devoted to His Noble Countenance, to make it beneficial through His Book and Sunnah, and to grant us sound understanding of His religion and insight into its rulings. Indeed, He is the One who possesses power over all things. May Allah's blessings and peace be upon our master Muḥammad, and upon his family and all his Companions.

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