IJTIHAD: SCOPES, MODES& LEGISLATIVE VALUE IN ISLAMIC JURISPRUDENCE

Ahmed Abiodun Muhammed-Mikaaeel*
Kamaldeen Olaitan Salman**

ABSTRACT

Ijtihad, as a legislative tool, plays pivotal role in the enhancement of dynamism of Shari'ah to issues not definitely captured by the primary sources. The practice of Ijtihad is dated back to the Prophet (PBUH)era. Ever since then, it has been become useful tool in the expansive interpretation of the primary sources of Shari'ah to solve certain legal problems. Thus, its value and validity is undisputable. However, in the recent time, the geometric emergence of novel issues in the contemporary Islamic world vis-à-vis influx of incompetent scholars (self-acclaimed Mujtahideen) call for serious concerned. This thus informs the reason this paper examines the concept of Ijtihad with particular reference to its scopes, modes, and legislative value as well as qualifications of a Mujtahid. The paper adopts doctrinal method of legal research and as such argues that despite the scopes of Ijtihad being restricted to matters not definitely addressed by the primary sources, it could also be exercised with respect to matters that have been definitely addressed by the primary sources to enhance their careful implementations. The paper argues further that the modes of Ijtihad do not enjoy stereotype application because there are number of modes open to a Mujtahid such as by way of Qiyas, Istihsan, Istislah, Istishab, amongst others, depending on the particular case in point. The paper argues further that Maqaasidus-Shari'ah is the bedrock of Ijtihad and as such the door of Ijtihad is not open to all and sundry except competent and qualified persons based on requisite qualifications. The paper concludes that Ijtihad enjoys continuous relevance in the contemporary Islamic world. The paper recommends, amongst others, the establishment of Fiqh Academy in Nigeria to curb the menace of conflicting legal rulings on matter of requiring collective Ijtihadin the country.

Keywords: *Ijtihad, Maqaasidus-Shari'ah,* Scopes, Modes, Qualifications, Legislative Value

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*Ph.D Candidate in Islamic Law (Unilorin); LL.B; LL.M (Unilorin); BL (Lagos); Notary Public for Nigeria; Lecturer, Islamic Law Department, Faculty of Law, Kwara State University. Tel No.: +234 703 506 4745; E-mail: ahmed.muhammed-mikaaeel@kwasu.edu.ng

**P.D Candidate in Islamic Law (Unilorin); LL.B; LL.M (Ife); BL (Abuja); Lecturer, Islamic Law Department, Faculty of Law, Kwara State University. Tel No.: +234 803 467 3505; E-mail: kamaldeen.salman@kwasu.edu.ng

INTRODUCTION

Shari'ah has been adjudged as a unique legal system not only because of its divinity but also because of its dynamism in all ramifications.[1] The dynamism of Shari'ah is deeply rooted in the practice of *Ijtihad* as evidenced during the time of Prophet Muhammad up till the recent time.[2] Contemporary debates in the recent time from the vestiges of the historical account of the practice of *Ijtihad* seem to advocate extinction of *Ijtihad* practice.[3] This is despite the relevance of *Ijtihad* at this contemporary Islamic world being faced with intermittent novel issues calling for resolutions. It is against the foregoing backdrop that this paper, relying on the doctrinal method of legal research, examine the concept of *Ijtihad* vis-à-vis its scopes, modes and legislative value in Islamic jurisprudence.

CONCEPTUAL ANALYSIS

The word *'Ijtihad '*is derived from Arabic verbal root word: *'JAHADA'* which ordinarily means to struggle.[4]Literally, *Ijtihad* is referred to as the expended effort in a particular activity which effort may be mental or physical in nature.[5]In the metaphorical sense, *Ijtihad* is referred to as an Islamic legal terminology referring to independent reasoning.[6] In

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[1]Foroushani, Z.H., *et al*, 'Dynamism of Islamic Jurisprudence through Objectives of Sharia with a Glance at Imam Khomeini's Views,' Journal of the Research Institute of Imam Khomaini and Islamic Resolution, Vol. 22, Issue 86, Spring (2020), pp. 31-52

[2]Ramadan, T., 'Ijtihad and Maslaha: The Foundation of Governance,' pp. 1-7, available at https://books.google.com.ng/books?hl=&lr=&id=0aSylQ3R9qIC&oi=fnd&pg=PA3&dq=ijtihad+and+sharia+dynamism&iQKIWsmWVI&sig=VMqe6zCj4EmeucnVRIknXbkUJL Q&redir_esc=y#v=onepage&q=ijtihad%20and%20sharia%20ddynamism&f=false accessed on 15/06/2021.

[3]Khan, L.A. and Ramadan, H.M., 'Contemporary Ijtihad: Limits and Controversies' (Edinburgh University Press, 2011), pp.1-264, available at https://www.jstor.org/stable/10.3366/j.ctt1r23xt accessed on 15/06/2021.

[4]Javed, A. and Javed, M. 'The Need of Ijtihad for Sustainable Development in Islam', IIUC Studies, Vol. 9, (December 2011), p.217

[5]Fauzi, S. 'The Principles for Ijtihad in Response to the Contemporary Problems', *MIQOT*, Vol. XLII, No. 2., Juli-December (2018), pp. 281-283.

[6]Ibid p.216

the same vein, it could be defined as the thorough exertion of a jurist's faculty of reasoning in finding a solution to a legal question. *Ijtihad* has also been defined as process of legal reasoning as a result of which a *Mujtahid (Jurist)* derives, rationalizes or infers legal ruling on the basis of the Qur'an and the Sunnah.[7]

Some Islamic jurists, within the sphere of Islamic legal theory, have proffered different definitions to the concept of *Ijtihad*. Some jurists define *Ijtihad* as action and activity to reach a solution.[8] According to Imam Al-Ghazali,*Ijtihad* is viewed as the total expenditure of effort made by a jurist for the purpose of obtaining the religious rulings by way of expansive interpretation of the primary sources of Shari'ah.[9]In the same token, *Ijtihad* has been defined in other quarters as the effort made by a *Mujtahid* in seeking knowledge of the *Aḥkam* (Rulings) of the Shari'ah by way of logical interpretation.[10]The very essence of *Ijtihad* is to make an inference (*Istinbaṭ*) from the primary sources with a view to proffering solution to the questions arising which seems not to have enjoyed clear solution from the primary sources.[11]

Thus, *Ijtihad* is the opposite of *Taqlid* i.e. imitation of the already laid down legal precedent/ruling by the previous scholars.[12]This is because, *Taqlid* is devoid of exertion of faculty of reasoning with a view to finding solutions to legal problems but mere adoption of the juristic ruling(s) already in existence without exercising any form of *Ijtihad*. It is thus not a gain-saying that the concept of *Ijtihad* advocates against the practice of *Taqlid* (Blind Imitation) in Islamic jurisprudence. This is

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[7]Ibid

[8]Abdallahi, T., *et al*, 'Ijtihad: Concept, Requirements, Derivatives, and Issues from Imam Zakariya Al-Sunaiki's Perspective', *Opcion,* A No 36, Especial No. 27 (2020), p. 1199.

[9]Javed, A. and Javed, Op.cit, p.217

[10]Abdallahi, T., et al, 'Ijtihad: Concept, Requirements, Derivatives, and Issues from Imam Zakariya Al-Sunaiki's Perspective', pp. 1201.

[11]Kiljamilawati, H.M., *et al*, 'The Urgency of Ijtihad by Judges in Effort Law Invention at the Religion Court in Indonesia,' International Journal of Scientific & Technology Research, Vol. 5, Issue 03, (March 2016), pp.146-150.

[12]Zubair, I.B., 'The Concept of *Taqlid* or *Ittiba* in Islamic Law', PhD. (Islamic Studies), Unpublished, retrieved from https://ujdigispace.ui.ac.za accessed on 12/06/2021, p. 6.

because, *Taqlid*, as a concept, leads to redundancy in legal application as against dynamism which Shari'ah has enjoyed over the years as result of the practice of *Ijtihad*. The various novel occurrences in Islamic world and continues application of Shari'ah to contemporary issues have irresistibly shown that *Ijtihad* will continuously be relevant. Although, Shari'ah as a Divine Law is undoubtedly not susceptible to amendment, however, the practice of *Ijtihad* has made it to be susceptible to dynamism by accommodating new issues requiring urgent solutions within the purview of Shari'ah.[13]

It must therefore be noted that the purview of *Ijtihad* does not include extraction of a ruling from a clear text (*Qat'i*).[14]That is, in a situation where the provisions of the *Nass* (authoritative texts) have explicitly or definitely addressed a particular problem, *Ijtihad* is not permitted in that circumstance. It is on this basis that classical Sunni theorizes that *Ijtihad* requires expertise in the Arabic language, theology, revealed texts, and principles of jurisprudence (*Usulul-Fiqh*) such that it is not employed where authentic and authoritative texts (Qur'an and Hadith) are considered unambiguous with regard to the question, or where there is an existing scholarly consensus (*Ijma*).[15]

Brief Historical Account

The employment of *Ijtihad* to exert legal rulings where the primary sources of Shari'ah are silent on the matter begging for question

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[13] Although in some quarters, Shari'ah has been criticized as a rigid law. But the dynamism of the Divine Law makes it to be flexible than the man-made law. Because, Ijtihad allows for expansive interpretation and application of Shari'ah to novel matters without the need to amend the law. Whereas under the man-made law, for the law to be application to novel issues or matters, in most cases, amendment of the law or enactment of entirely new law must be done. Thus, Shari'ah continues to be the most flexible law in the world over. See generally, Fauzi, S. 'The Principles for Ijtihad in Response to the Contemporary Problems', *MIQOT,* Vol. XLII, No. 2, Juli-(December 2018), pp. 281-283.

[14]Muhammad, T, 'Ijtihad (Meaning, Application & Scope' (Minhaj-ul-Quran Printing Press/Publication, Pakistan, 2007), pp. 33-39

[15]Ibid

commenced during the time of Prophet Muhammad (PBUH).[16] From this period, the concept of *Ijtihad* began to metamorphose into its modern status. In the early period, *Ijtihad* involved making use of *ra'y* (human wisdom)on the deep understanding of the texts to arrive at a legal ruling.[17]This came to fore in situations or cases where the texts did not provide clear instruction or direction for certain obligations. It then became a duty on the *Mujtahideen* to employ *ra'y* (human wisdom) to a given circumstance with a view to arriving at a just and best solution.[18]

With the passage of time, employment of *ra'y* (human wisdom) to deduce legal rulings failed to stand the test of time because it subsequently proved grossly inadequate to make just and fair rulings from the texts. The reason being that the employment of *Ijtihad* was restricted to a systematic method of interpreting the law on the basis of authoritative texts.[19]

Thus, the continuous practices of *Ijtihad* changed the narrative and portended *Ijtihad* as a delicate religious duty which places enormous trust on a *Mujtahid*[20]to continue to exercise *Ijtihad* in deserving cases for the Muslim Ummah.[21] The legal implication of the duty placed on the *Mujtahid* is to the effect that exercise of *Ijtihad* is *FardKifayah* (communal obligation).[22] And as such, a *Mujtahid* is defined as a Muslim scholar that has possessed certain requirements necessary to exercise *Ijtihad* including a strong knowledge of the primary sources of

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[16]Nur, H., *et al*, 'Ijtihad from Friends of the Prophet Muhammad in Making Justice Law', International Journal of Educational Research & social Science, ISSN: 27774-5406, pp. 111-116

[17]Masood, S. 'The Concept of Ijtihad in the History of Islamic Jurisprudence', available at https://stevenmasood.org/article/concept-ijtihad-history-islamic-jurisprudence accessed on 13/06/2021.

[18]Ibid

[19]Ibid

[20] A Mujtahid under Islamic jurisprudence is seasoned Islamic jurist/scholar who is qualified by all standard to give a legal opinion on Islamic maters or issues.

[21]Tahkim, L., 'Then and Now: A History of Ijtihad Twelver Shi'ism', pp. 1-12, available at http://www.ltahkim.com.ijtih...PDF. accessed on 13/06/2021

[22]Ibid

obligation).[27]Imam Shafi'i also led credence to the all importance and indispensable existence of *Mujtahideen* because they are the faces of the *Deen* especially in the aspect of making it relevant to ever emerging situation.[28]

On their parts, the scholars of *Taqlid* camp placed reliance on the Prophetic Hadiths that states that there would come a period that would witness the disappearance of knowledge in which the ignorant leaders will rule or judge ignorantly thereby misguiding others. They contended further that *Ijtihad* is not a *FardKifaya* because it is possible for one to simply imitate the earlier formulated legal rulings by the past jurists.[29]

On the contrary, some scholars clarified that:[30]

> 'It is unacceptable to Allah, the forcing of people to accept one *Madhhab* and the associated partisanship (*Tahazzub*) in the subsidiary issues of the *Deen* and nothing pushes this fervour and zealously except partisanship and jealousy. If Abu Haneefah, Shafi'i, Malik and Ahmad were alive they would severely censure these people and they would disassociate themselves from them'.

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[27] For instance, the prominent 16th century Shafi'i's Legal Treatise, Fath-ul-Mueen affirmed the existence of *Mujtahideen* and charged them to accept the post of Qadi as *FardKifaya* whenever the need arises. In the same vein, the leading Shafi'i jurist, Al-Suyuti (1445-1505) also stipulated *Ijtihad* as a communal obligation, the abandonment of which would be sinful upon the whole Ummah.

[28]Hallaq, W.B., 'On the Origins of the Controversy about the Existence of Mujtahids and the Gate of Ijtihad', pp. 129-141.

[29]Ibid

[30]Tajud Din al Subki (d. 1370), in his 'KitabMu'id an-Ni'amwa-Mubid an-Niqam', cited in Hallaq, W.B., 'On the Origins of the Controversy about the Existence of Mujtahids and the Gate of Ijtihad', pp. 129-141.

The period of 11th Centurywitnessed the ranking of the Muslim Jurists with respect to their level of qualification and competence for *Ijtihad*. Thus, there were three (3) major ranking, viz:[31]

i. *Mujtahid Muṭlaq* (Absolute *Mujtahid*). This ranking was credited to the founders of *Madhhabs* because they were capable of methodological innovations.
ii. *Mujtahid Muntasim* or *Mujtahidfil-Madhhab*. This ranking is credited to *Mujtahideen* who operated within a particular *Maddhab*. Such *Mujtahideen* followed the methodology of the founders of the *Madhhab* they clinched to but exercise *Ijtihad* with a view to proffering new solutions for novel legal cases.
iii. *Muqallid*. This ranking is credited to the jurist-imitators. This is because, they merely followed, stock and barrel, the rulings already arrived at by the *Mujtahideen* and are less concerned about understanding the principles and methodologies employed by the so-called *Mujtahid* before arriving at such rulings.

It must be noted that between the ranks of *Mujtahideen* and *Muqallids* there were noticeable other ranks of the jurists who combined *Taqlid* with *Ijtihad*.[32]

However, these rankings are not without their criticisms. It has been said that rankings were too rigid and irrational in the sense that apart from the founders of *Madhhabs*, many other distinguished Scholars were adjudged as *MujtahidMutlaqs* even after the deaths of four (4) Imams. More so, the *Madhhabs* were open to transformation, evolution and dynamism in the manners that Imams of the *Madhhabs* could not have imagined.[33] The ranking was further criticized on the ground that the Imams of the four (4)*Madhhab* neither stipulated such

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[31]Calder, N., 'Al-Nawawi's Typology of Muftis and Its significance for a general Theory of Islamic Law', Islamic Law and Society, Vol. 3, No. 2, (1996), pp. 137-164.
[32]Ibid
[33]The reason being that the Imams of the *Madhhabs* themselves did not stipulate many such rankings or classifications. Nor did they obligate strict adherence to a particular scholar or legal theory. In many cases, major parts of the legal theory were in fact developed by the later followers.

rankings or classifications nor sanctioned strict adherence to a particular *Madhhab*, scholar or legal theory.[34]

Female Participations in History

There is no bar to women participation in *Ijtihad* in Islamic jurisprudence. The Islamic history has recorded a number of renowned female *Mujtahidaat*. The first name that readily comes to mind is our mother Aisha, the wife of Prophet Muhammad (PBUH).[35] She was not only famous as scholar of *Hadith* but also a *Mujtahidah*. In the practice of *Ijtihad*, she calved niche for herself which vestiges remain till date. She was adjudged as the most knowledgeable in the science of *Hadith*and *Fiqh* to the extent that she surpassed everyone in the knowledge of medicine due to sound practice of *Ijtihad*.[36]

Apart from our mother Aisha, a study carried out by Al-Zuhri revealed that Amrah bint Abdul Rahman was also a renowned *Mujtahidah*. She was equally adjudged as one of the most knowledgeable people of *Hadith* to such an extent that she was qualified as an *'ocean of knowledge.'*[37]Despite the fact that Madinah was blessed with male jurists, when the judge of Madinah received legal opinion from Amrah over certain matter in controversy before him, he was absolutely satisfied without feeling the need to consider opinion from male jurists.[38]

According to a publication by an Islamic scholar named Akram Nadwi, other famous female *Muhadditha* and jurists include Zaina bbint Kamal, Fatima al-Batayahiyyah, Fatimah bint Muhammad al Samarqandi,

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[34] In fact, in most cases, major parts of the legal theories of the *Madhhab* were subsequently developed by the latter followers.

[35] Faith, H., 'Aisha, Mother of the Faithful: The Prototype of Muslim Women Ulama', Al-Jami'ah: Journal of Islamic Studies, Vol. 53, No. 1, (2015), pp. 159-179

[36] Ibid

[37] Mahfooz, M. and Shabana, R., 'Exploring the Role of Female Successor' Amrah bint Abd al-Rahman" in Narration of Prophetic Traditions,' Journal of Islamic & Religious Studies, Vol. 4, Issue 2, (2019), pp. 2-36

[38] Ibid

etc.[39] More so, Fatima al-Fihiriyya the founder of University of Qarawiyyin[40] in Fez in 859 was also adjudged as renowned female jurist of Shari'ah. Another female scholar such as Umm al-Dardawas famous with her ingenuity especially for sitting and debating with male scholars in the mosque over burning Islamic issues.[41]

Qualifications of a *Mujtahid*

In Islamic jurisprudence, before a *Mujtahid* (male or female) can stand to enjoy the position of evaluating Islamic law by way of *Ijtihad*, he or she must certainly possess certain mandatory qualifications. Thus, Shari'ah is to the effect that a *Mujtahid* must be a competent Muslim of sound mind with intellectual qualifications to undertake *Ijtihad*. The qualifications of a *Mujtahid* is as follows:[42]

a. Having sufficient knowledge of Arabic so that the scholar can read and understand both the Qur'an and the Sunnah.
b. Having adequate and comprehensive knowledge of the Qur'an and the Sunnah. More specifically, the scholar must have a full understanding of the Qur'an's legal contents. In regards to the Sunnah, the scholar must understand and be able to differentiate the specific texts that are legislative from non-legislative ones as well as the incidence of abrogation in the Sunnah.
c. Must be able to confirm the consensus (Ijma') of the Companions, the Successors, and the leading Imams and *Mujtahideen* of the past, in order to prevent making decisions that disregard these honored decisions made in the past.

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[39] This was contained in the 40-volume biographical collection of female Muslim scholars wherein more than 8,000 female scholars were detailed.
[40] This is the world's first academic university that offered a degree.
[41] Farooq, M.O., 'Women Scholars of Islam: They Must Bloom Again' *Monthly Message International*, August-September, 2003, pp. 2-8, available at https://www.researchgate.net/publication/228195321Women_Scholarsof_Islam-They_Must_Bloom_Again/link/5547592a0cf234bdb21dd8bd/download accessed on 14/06/2021.
[42] Tahir, M.K., 'Taqlid: Trusting a Mujtahid,' p. 5, available at <http://newsite.carribbeanmuslims.com>...PDF> accessed on 13/06/2021.

d. Should be able to fully understand the *Maqasidus-Shari'ah* and be dedicated to the protection of the five main objectives of Shari'ah, which include religion, life, property, intellect, and lineage.
e. Be able to distinguish strength and weakness in reasoning, or in other words exercise logic.
f. Must be sincere and a good person.

Muslim jurists also listed the following as the qualifications of a *Mujtahid*:[43]

a. An exemplary command of the Arabic language as both primary sources, the Quran and Sunnah, are in classical Arabic script;
b. A comprehensive understanding of the sciences of Quran and Hadith;
c. Knowledge of all previous *Ijma'* rulings;
d. An understanding of the application of legal devices such as *Qiyas* (Analogical Deduction);
e. An in-depth appreciation of the *Maqaasidus-Shari'ah* as well as legal maxims; and
f. Being a person of upright character with sincere intention.

The essence of the qualifications of a *Mujtahid* orchestrated above boils down to the effect that the position of a *Mujtahid* is not for all carefully reserved for those are qualified by all standards to exercise *Ijtihad*.[44] This is because, *Mujtahideen* are the vice-gerents of Prophet Muhammad (PBUH) and after his demise, Muslim Ummah do not have opportunity of approaching him with view to seeking legal solutions to their problems encountered in Islamic law and religious practices as

[43] Munir, A.M., 'Ijtihad and Mujtahid', pp. 1-69, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1920662 accessed on 13/06/2021.
[44] Abozaid, A., 'Critical Review of the Tools of Ijtihad used in Islamic Finance', Munich Personal RePEc Archive, No. 92538, (2016), pp. 1-19, available at https://mpra.ub.uni.muenchen.de/92538/ accessed on 13/06/ 2021.

enjoyed by the earlier predecessors.[45] If actually, *Mujtahideen* are vice-gerents of the Messenger of Allah, it then mean that they are the drivers or pilots charged with the responsibility of positioning and repositioning Shari'ah in the light of novel issues ensuing after the demise of the Prophet. It will therefore do a great calamity to Islamic nation, Islamic religion and Shari'ah as a whole for incompetent scholars to be permitted to pilot the affairs of the Muslim Ummah. Little wonder some sort of stringent qualifications have been laid for any-would-be *Mujtahid*.[46]

Contrary to the foregoing, *AhluTaqlid* and the Orientalist scholars had contended that the practice of *Ijtihad* has been put to rest since the stipulated qualifications were rigid, strict and stringent such that they were practically impossible to satisfy.[47] This erroneous view led Orientalists to assume that 'the gates of *Ijtihad* were closed' while the *Muqallid* camp outrightly advocated for the extinction of *Mujtahideen*.[48] However, the proponents of *Ijtihad* thus contended that the requirements stipulated for the qualifications of a *Mujtahid* is reasonable and cannot be a clog to the practice of *Ijtihad* since the primary objective is to prevent foreseeable abuses in *Ijtihad* practices from incompetent scholars as the Messenger of Allah rightly warned before his demise.[49]

Notwithstanding the foregoing, a contemporary scholar,[50] in his view, opines that in the light of the current status of Islamic contemporary world, the qualifications of a *Mujtahid* must include the following:

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[45] Muhammed-Mikaaeel, A.A., 'Emergence of *Usulul-Fiqh* under Shari'ah: From Developmental to Standardization Stage' Maiduguri Law Journal (MLJ), Vol. 18, (2020), ISSN 11182717, pp. 404-408.

[46] Muhammad, T., 'Ijtihad (Meaning, Application & Scope)', (Minhaj-ul-Quran Printing Press/Publication, Pakistan, 2007), pp. 42-43.

[47] Hallaq, W.B., 'Was the Gate of Ijtihad Closed?', 'International Journal of Middle East Studies, Vol. 16, No. 1,(1984), pp. 3-41.

[48] Ibid

[49] Shabbar, S., 'Ijtihad and Renewal' (International Institute of Islamic Thought, USA, 2018), pp. 1-34.

[50] Muhammad, T., 'Ijtihad (Meaning, Application & Scope)', (Minhaj-ul-Quran Printing Press/Publication, Pakistan, 2007), pp. 42-43.

i. Faithful and firm in belief and action
ii. Justice, piety and God wariness
iii. Knowledge of the Holy Quran and other necessary matters connected with it
iv. Knowledge of Hadith, principles of Hadith and other related issues
v. Knowledge of jurisprudence, principles of jurisprudence and other relevant matters
vi. Complete grasp of Arabic language and literature
vii. Deep understanding of Islamic laws, commandments, their secrets and mysteries
viii. Inference of commandments, interpretation of texts of the Holy Quran and Sunnah, perfect rules of gnosis of analogical and interpretative reasoning
ix. Perfect understanding of modern problems and their complications
x. Complete familiarity with the contemporary developments and reasonable appraisal of modern exigencies.

Classification of *Mujtahideen*

Islamic jurists have come up with classification of *Mujtahideen* based on their respective capacities and competences in the sphere of *Ijtihad* practice. The classification is to indicate that *Mujtahideen* are not always at the same level in terms of qualifications, expertise and proficiency. To this end, *Mujtahideen* are classified into:[51] (1) *Mujtahid Mutlaq* (Full-fledge/Independent Jurist), (2)*MujtahidMadhhabi* (otherwise known as Dependent Jurist), (3)*MijtahidJa'u,* (4)*Mujtahid Mutakhassis* (Specialized Jurist), *and* (5) *Muqallid* Jurists.[52]

Mujtahid Mutlaq (Full-fledge/Independent Jurist) is a *Mujtahid* at the highest level of expertise, competency and proficiency when it comes

[51] Muhammed-Mikaaeel, A.A., 'Emergence of *UsululFiqh* under Shari'ah: From Developmental to Standardization Stage', Maiduguri Law Journal (MLJ), Vol. 18, ISSN 11182717, (2020), pp. 401-404.
[52] Zubair, H.M., 'Legislation of Islamic Jurisprudence: A Dialogue', Journal of Rotterdam Islamic Social Sciences, Vol. 2, No. 1, (2013), pp. 23-34

to ability to derive legal rulings to solve new matters ensuing in Islamic jurisprudence.[53]The *Mujtahideen* in this category are fully qualified to arrive at legal ruling based on independent *Ijtihad*.

Mujtahid Madhhabi (otherwise known as Dependent Jurist) is the second in the category. As the name implies, this category of *Mujtahid* by virtue of the level of their expertise, competency and proficiency are only qualified to make legal rulings with the employment of the jurisprudential principles officially laid down in the *Madhhab* to which they are affiliated.[54]

Mijtahid Jam'u i.e. the combination of *Mujtahid Mutlaq* and *MujtahidMadhhabi*.[55] This simply means that scholars in this category possess and showcase the qualities of *Mujtahid Mutlaq* as well as that of *Mujtahid Madhhabi* in the way and manner they formulate legal ruling or jurisprudential principles.[56] It must therefore be carefully noted that while most *Mujtahideen* in the category of *Mujtahid Mutlaq* can also function as *Mujtahid Madhhabi,* it is not all *Mujtahid Madhhabi* that can function as *Mujtahid Mutlaq* except and unless such person possesses expertise, competency and proficiency equivalent to that of *Mujtahid Mutlaq* and can also function fully as such.

Mujtahid Mutakhassis (Specialized Jurist) is another category of *Mujtahid* in which such *Mujtahid* by virtue of his expertise, competency and proficiency is only qualified to make legal ruling with respect to certain area of law or area of specialization.[57]Under Shari'ah, specializations abound like banking and finance, family law and inheritance, criminal justice law, medical law and ethics, corporate

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[53]Kesgin, S., 'A Critical Analysis of the Schacht's Argument and Contemporary Debates on Legal Reasoning Throughout the History of Islamic Jurisprudence', 'Journal of International Social Research, Vol. 4, Issue 19, (2011), pp. 159-160.
[54]Ibid
[55] Muhammed-Mikaaeel, A.A., 'Emergence of *UsululFiqh* under Shari'ah: From Developmental to Standardization Stage', Maiduguri Law Journal (MLJ), Vol. 18, ISSN 11182717, (2020), pp. 401-404.
[56]Ibid
[57]Ibid

governance to mention but a few.[58] Thus, the chosen specialization of the category of *Mujtahid* under reference will determine where he continues to channel his or her *Ijtihad* for the application of Islamic law. *Muqallid* Jurists are the last category of *Mujtahid* in Islamic jurisprudence. They are referred to as Lesser *Mujtahid*. The category of these jurists are generally, by virtue of their ability, cannot engage in any *Ijtihad*. These *Muqallid* Jurists are further classified into three, viz:[59]

i. *Muqallid* Jurists in comparative matters who are qualified to make comparism between rulings already formulated or laid down within a particular *Madhhab* through the exercise of selecting and choosing the one that pleases him.[60] It must be noted that such *Muqallid* jurists cannot do more than comparing, selecting and choosing, they cannot not formulate new rulings.

ii. *Muqallid* Jurists in comparative matters who are versed with the Ijtihad of a particular *Madhhab* and has ability to classify the various rulings in that *Madhhab* but he is unable to make independently new ruling.[61]

iii. *Muqallid* Jurists who are only versed with the knowledge of *Ijtihad* of a particular *Madhhab*. The limitation of the category of these Jurists is that despite the knowledge of the *Ijtihad* of their *Madhhab*, they are unable to make classification of the *Ijtihad* rulings emanating from that *Madhhab*.[62]

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[58]Fauzi, S. 'The Principles for Ijtihad in Response to the Contemporary Problems', *MIQOT*, Vol. XLII, No. 2., (July-December 2018), pp. 281-283..

[59]Fauzih, M., 'The Place of Ijtihad in Islamic Law and the Necessary Conditions to be Qualified a Mujtahid',paper submitted as part of the Master of Islamic Studies Degree for the Subject of Usul al-Fiqh, 2015, p. 5, available at <https://www.academia.edu>The-place-of-iitihad-in-islamic-law-and-the-necessary-conditions-to-be-qualified-a-mujtahid> accessed on 13/06/ 2021.

[60]Ibid

[61]Ibid

[62]Ibid

Maqasidus-Shariah as Bedrock of *Ijtihad*

Maqasidus-Shari'ah technically refers to objectives of Shari'ah in Islamic legal parlance.[63] *Maqasidus-Shari'ah* is used to determine the objective of the Law Giver which must be born in mind in interpreting the primary sources of Shari'ah.[64] *Maqasidus-Shari'ah* have been principally categorized into five (5) namely: Protection of Religion, Protection of Life, Protection of Property, Protection of Lineage, and Protection of intellect.[65] Each of and every aspect of *Maqasidus-Shari'ah* serves one particular purpose or the other. Thus, a full grasp of the essence of *Maqasidus-Shari'ah* cannot be over emphasized. The term (i.e. *Maqasidus-Shari'ah*) is indispensable when applying the clear *Nass* (authoritative texts) to unambiguous life situation.[66] It becomes much more inevitable when attempting to derive legal ruling to matters in which the primary sources are silent over or matters that have not been definitely addressed by the primary sources.[67] To this end, it is not gain-said that *Maqasidus-Shari'ah* is the bedrock of Ijtihad. In fact, the Sunni has stipulated it as one of the requirements to be met by a *Mujtahid* in order for him to qualify as such.[68] In formulating legal rulings to novel issues which the primary sources are silent upon, adequate knowledge and application of *Maqasidus-Shari'ah* would enable a *Mujtahid* to arrive at a just ruling pleasing to and *in tandem* to the intention of the Law Giver. The law importantly states that a *Mujtahid* must be very careful in making or formulating legal ruling to issues and this carefulness can only be achieved by taking cognizance of the essence of *Maqasidus-Shari'ah*.[69]

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[63] Ahmad, R., 'Objectives of Islamic Law and their Implementation', Al-Idah -Bi-Annual Research Journal, Vol. 37, Issue 1, (2019), pp. 1-28.

[64] Ibid

[65] Siddiqi, M.N., 'Maqasid-e Shari'at (Objectives of the Shariah)', J.KAU: Islamic Economics, Vol. 23, No. 2, pp. 235-244.

[66] Ahmad, R., Op.cit

[67] Ibid

[68] Tahir, M.K., 'Taqlid: Trusting a Mujtahid,' p. 5, available at <http://newsite.carribbeanmuslims.com>...PDF> accessed on 13/06/2021.

[69] Ahmad, R., 'Objectives of Islamic Law and their Implementation', Al-Idah -Bi-Annual Research Journal, Vol. 37, Issue 1, (2019), pp. 1-28. pp. 1-28.

Scopes and Modes of *Ijtihad*

Scopes here refers to the territory of *Ijtihad* as far as Islamic jurisprudence is concerned. By virtue of the nature of Shari'ah, legal matters are principally classified into two (2).[70] That is, matters that are fixed, unchangeable, immutable and universally agreed upon by Islamic jurists and matters that are not fixed in which scholars do not enjoy unanimous position over.[71] The former refers to primary matters that have been laid to rest by the clear provisions of the Qur'an and Sunnah and by extension the *Ijma'* of the Muslim jurists.[72] These types of matters are matters that *Ijtihad* cannot be performed with respect of. When a jurist is faced with a problem having to do with any of the matters/problems that fall under this category, all he needs do is to directly apply the provisions of the *Nass* (authoritative texts) to the matter in issue. However, if a jurist is faced with matters/problems in which the primary sources are silent upon, this is when the jurist is entitled to exercise *Ijtihad* with a view to finding solutions to such matter.[73] These situations are typically referred to as secondary matters in which the primary sources are silent upon or that in which the primary sources have not definitely addressed.[74] They are characterized as matters that are changeable and vary from one juristic interpretations or the other. Novel issues ensuing in the contemporary Islamic world also fall under the ambit of these secondary matters to which *Ijtihad* can be performed.[75]

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[70]Zachariah, M., 'The Place of Ijtihad in Islamic Law and the Necessary Conditions to be Qualified a Mujtahid', paper submitted as part of the Master of Islamic Studies Degree for the Subject of Usul al-Fiqh, (2015), p. 6, available at <https://www.academia.edu>The-place-of-ijtihad-in-islamic-law-and-the-necessary-conditions-to-be-qualified-a-mujtahid> accessed on 13/06/2021.

[71]Ibid

[72]Ibid

[73]Ibid, p. 3.

[74]Muhammad, T., 'Ijtihad (Meaning, Application & Scope)', (Minhaj-ul-Quran Printing Press/Publication, Pakistan, 2007), p. 29.

[75]Fauzi, S. 'The Principles for Ijtihad in Response to the Contemporary Problems', *MIQOT*, Vol. XLII, No. 2., (July-December 2018), pp. 281-283.

The essence of the foregoing discussion is to showcase the scopes of *Ijtihad* in Islamic jurisprudence. To this end, Muslim jurists are unanimous that the purview or territory of *Ijtihad* does not go beyond matters which have not been definitely dealt with by the Qur'an and Sunnah. In the same vein, matters that have been definitely addressed by *Ijma'* are also not within the scopes of *Ijtihad*. Thus, it could be said that scopes of *Ijtihad* are limited to matters not definitely addressed by the Holy Qur'an, Tradition of the Prophet and *Ijma'*. The apposite legal maxim in the circumstance therefore is that *'Ijtihad does not apply in the presence of Nass (clear authoritative texts).'*[76] Any other matters outside that which the Qur'an, Sunnah and *Ijma'* have definitely dealt with or catered for are matters within the scopes of *Ijtihad*.

Some Islamic scholars are of the view that notwithstanding the unanimous positions of the jurists that *Ijtihad* is permitted with respect to authoritative texts that are categorized as *Zanni* (speculative in meaning) with a view to deriving legal ruling from them, it may also be permitted in certain authoritative texts categorized as *Qat'i*(definite in meaning). To this end, Amanullah posits that *Ijtihad* may be required with respect to existence of a definite text (*Qat'i*) on certain as summarized as follows:[77]

i. Establishment of the rule by a text which is *Qat'i* in which *Ijtihad* is necessary to find out whether all the conditions for implementation of the rule are present. The rule may not be made binding if by Ijtihad, it is found that the conditions for implementation are absent.

ii. Establishment of the rule by a text which is *Qat'i* in which *Ijtihad* is necessary to determine whether the person to whom the rule is addressed has *Rukhsah* or not. To this end, such rule which is *Waajib* may, by way of *Ijtihad,* be changed to *Mandub*

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[76]Kamali, M.H., 'Issues in the Understanding of Jihad and Ijtihad,' Islamic Studies, Vol. 41, No. 4 (Winter 2002), pp. 617-634.

[77]Amanullah, M., 'Misunderstanding about the Usuli Maxim: No Ijtihad in the Presence of a Text,' Proceeding-Kuala Lumpur International Business, Economic and Law Conference, held between December, 17-18, (2016) at Banji, Malaysia, pp. 483-489.

or the rule may remain *Waajib* but the amount of work required of the subject of the Law may be reduced.

iii. Establishment of the rule by a text which is *Qat'i* in which *Ijtihad* is required to determine whether the subject of the Law faces necessity (*Daruuraat*). In this circumstance, the rule may be changed by way of *Ijtihad* from *Haram* to *Halal* for such circumstance alone.

iv. Establishment of the *Hudud* offence by a text which is *Qat'i* in which *Ijtihad* is necessary to ascertain whether there exist doubt in the course of proof of the offence. The *Hadd* punishment may be changed to *Ta'azir*if by way of *Ijtihad*, the existence of doubt is established.

Examples of the foregoing are evidenced in the practice of Khalif Umar bn Khattab (R.A).[78]When the case of theft was reported to him during his reign, upon discovery of doubt in the course of the proving the offence in favour of the culprits by way of *Ijtihad*, he gave the verdict of *Ta'azir* instead of the supposed *Hadd* punishment. This was done despite the fact that Quran Chapter 5 verse 38 that establishes the offence and its punishment is *Qat'i.*[79]More so, on implementation of the provision of Quran [80] (*Qat'i*) which prescribes *Al-Mu'allafat Qulubuhum* (those whose heart are reconciled) as one of those entitled to receive Zakat (compulsory charity).Despite the fact that the verse is undoubtedly *Qat'i* and the agreement of the companions on its authenticity and obligatory nature, Khalif Umar used to exercise *Ijtihad* to consider the weakness of Muslim as condition precedent to the implementation of the verse. Thus, the Khalif used to withhold payment of Zakat to them when they are adjudged strong.[81]

It must therefore be noted that the *Ijtihad* exercised by the Khalif does not in any way amount to nullification of the aforementioned verses or

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[78]Ibid

[79]Ibid

[80] Qur'an 9 verse 60

[81]Amanullah, M., 'Misunderstanding about the Usuli Maxim: No Ijtihad in the Presence of a Text,' Proceeding-Kuala Lumpur International Business, Economic and Law Conference, held between December, 17-18,2016 at Banji, Malaysia, pp. 483-489.

perpetual postponement of the implementation of the verses. The verses remain valid, authoritative and binding for all intent and purposes.[82]

With respect to the modes of *Ijtihad*, there seems to be no particular mode. Thus, apart from *Ijma'* which is classically considered as a collective *Ijtihad*, other recognized secondary sources of Shari'ah have been argued by scholars as useful tools for exercising independent *Ijtihad*.[83] Thus, secondary sources of Shariah such as *Qiyas* (Analogical Deduction), *Istihsan* (Juristic Preference), *Istishab* (Presumption of Continuity), *Istislah* (welfare), *Urf* and *Adaat* (Custom and Usages) are useful tools for the exercise of *Ijtihad*.[84]

Depending on the convenience of the *Mujtahid* and the nature of the matters in question, a *Mujtahid* can engage in valid *Ijtihad* by way of the instrumentality of any of the aforementioned secondary sources of *Shari'ah* bearing in mind the salient *Maqaasidus-Shari'ah*.[85]

More so, in classical Islamic jurisprudence, the modes or procedures which a *Mujtahid* employs to derive legal ruling is typical called *Al-Usulu al-'Amaliyyah*, which are of four (4) types, viz: *Ijtihad'l-istishab,Ijtihad 'l-ihtiyat, Ijtihad 'l-bara'ah, and Ijtihad 't-takhyir*.[86]

Ijtihad'l-Istishab relates to the general the principle or rule of presumption of continuity. This is resorted to a situation in which a *Mujtahid* has a previous certainty and a present doubt about the same

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[82]Ibid

[83]Zachariah, M., 'The Place of Ijtihad in Islamic Law and the Necessary Conditions to be Qualified a Mujtahid', paper submitted as part of the Master of Islamic Studies Degree for the Subject of Usul al-Fiqh, (2015), pp. 3-7, available at <https://www.academia.edu>The-place-of-ijtihad-in-islamic-law-and-the-necessary-conditions-to-be-qualified-a-mujtahid> accessed on 13/06/2021.

[84]Ibid

[85]Kholish, N., *et al*, 'The Significance of Maqasid Syariah Principles in Improving Islamic Economics and Finance,' International Journal of Innovation, Creativity and Change, Vol. 13, Issue 3, (2020), pp. 1342-1350.

[86]Rizvi, S.M., 'An Introduction to the Islamic Shari'ah,' available at https://ww.al-islam.org/introudction-islamic-shariah-sayyid-muhammad-rizvi/system-ijtihad accessed on 14/06/2021.

thing.[87] For example, there is a glass of water on a table which one was sure that it was ritually pure (Tahir) in the morning, but now there is doubt in its ritual purity at the evening time. The principle of *Istishab* says that act on your previous certainty and ignore your present doubt because doubt cannot over-ride certainty.[88]

Ijtihad 'l-Ihtiyat refers to the principle of exercise of precaution. This is resorted to by a *Mujtahid*in a situation where the *Mujtahid* is faced with only partial knowledge about the law.[89] For instance, in case of al-'ilmu 'l-ijmali i.e. where there is a semi-doubt and a semi-certainty, in this circumstance, the law places utmost obligation on the *Mujtahid* to exercise with due precaution.[90] A most familiar example where this principle is applied is the case of Friday prayer during the major occultation of the Present Imam. We know that on Fridays, one of the two prayers -either Friday prayer or noon prayer- is definitely *wajib* (compulsory), but we do not know which one. Application of *Asalatu'l-ihtiyat* in this case would mean that it is precautionary better to pray both prayers to ensure that we have performed what was expected of us.[91]

Ijtihad 'l-Bara'ah refers to the principle of exoneration. This is resorted to by a *Mujtahid* in cases or matters which have not been expressly mentioned inexplicitly or implicitly, in the sources of the *Shari'ah*.[92]*Ijtihad 'l-Bara'ah* is to the effect that since the *Shari'ah* has no clear cut opinion in this issue, the Muslims are free to do whatever they like. For example, when dealing with the question of smoking, the

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[87]Ibid

[88]This mode of *Ijtihad* is deeply rooted in the Hadith of Imam Ja'far as-Sadiq (a.s.) who said in the answer to Zurarah that "doubt cannot over-ride certainty; it can be over-ridden only by another certainty." See generally, Rizvi, S.M., 'An Introduction to the Islamic Shari'ah,' available at https://ww.al-islam.org/introudction-islamic-shariah-sayyid-muhammad-rizvi/system-ijtihad accessed on 14/06/2021.

[89]Ibid

[90]Ibid

[91]Rizvi, S.M., 'An Introduction to the Islamic Shari'ah,' available at https://ww.al-islam.org/introudction-islamic-shariah-sayyid-muhammad-rizvi/system-ijtihad accessed on 14/06/2021.

[92]Ibid

Mujtahid does not find any direct opinion about it in the sources of *Shari'ah*. In such a case, he would apply the principle of exoneration and rule that Smoking is not *Haram* (forbidden) but can be made termed *Makruh* (dislike) to discourage its consumption.
Ijtihad't-Takhyir refers to the principle of making choice. This is resorted to in cases similar to that of *Ijtihad 'l-ihtiyat*, that is, semi-doubt and semi certainty.[93] However, the principle of choice is applicable where it is not possible to act on both sides of the issue.[94] For example, when dealing with the noon or Friday prayer issue, some *Mujtahid* may conclude that observing both prayers is not practical and specifying one without clear evidence is not correct. Therefore, they can apply the principle of choice and rule that one can observe either Friday prayer or noon prayer.

Muhammad Tahir-ul-Qadri is of the view that the appropriate methods of *Ijtihad* are basically three (3). That is, *Ijtihad Bayani* (interpretative reasoning), *Ijtihad Qiyasi* (analogical reasoning) and *Ijtihad Istislahi* (conciliatory reasoning).[95] Thus, *Ijtihad Bayani* (interpretative reasoning) is recommended when trying to deduce legal ruling from the primary sources which contain definite position on the issue at hand. This is done by paying adequate attention to the explicit explanation of the texts (*Qat'i*). The essence therefore is to ensure that the ruling extracted by the *Mujtahid* does not contravene the original intendment of the Law Giver. However, for interpretation of the texts that are not definite in nature, the other two methods i.e. *Ijtihad Qiyasi* (analogical reasoning) and *Ijtihad Istislahi* (conciliatory reasoning) are recommended depending on the nature of the problem begging for juristic solution.[96]*Ijtihad Qiyasi* is used to derive legal ruling by analogically interpreting and drawing inference from a particular situation with clear *Nass* to similar situation that lacks such *Nass.Ijtihad Istislahi* is a method of *Ijtihad* that put in consideration

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[93]Ibid
[94]Ibid
[95] Muhammad, T., 'Ijtihad (Meaning, Application & Scope)', (Minhaj-ul-Quran Printing Press/Publication, Pakistan, 2007), p. 43-44
[96]Ibid

during derivation of legal ruling the public interest within the purview of*Maqaasidus-Shari'ah.*[97]

Value and Validity of *Mujtahid* based Ruling

The practice of *Ijtihad,* as a means of deriving legal rulings from the primary sources of Shari'ah, has been firmly validated or established in the Holy Quran and Traditions of Prophet Muhammad (PBUH). Inferences to this effect can be drawn from the provisions of Quran Chapter 2 verse 149 and Quran Chapter 9 verse 122 which are reproduced below.

> 'So, from wherever you go out (for prayer, O Muhammad) turn your face towards al-Masjid al-Haram, and indeed, it is the truth from your Lord. And Allah is not unaware of what you do.[98]
> And it is not for the believers to go forth (to battle) all at once, for there should separate from every division of them a group (remaining) to obtain understanding in the religion and warn their people when they return to them that they might be cautious.[99]

The above quoted verses led credence to validity of *Ijtihad* in Islamic jurisprudence in the sense that the verses recognize the need to have certain set of the Muslim Ummah who would specialise in the practice of *Ijtihad* for proper explanation of the religion to the people and for better understanding and application of the law to emerging issues within the fulcrum of Islamic Community and the world at large.[100] Apart from the verses testifying to the validity of *Ijtihad* under Shari'ah,

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[97] Ibid
[98] Qur'an 2 verse 149
[99] Qur'an 9 verse 122
[100] Javed, A. and Javed, M. 'The Need of *Ijtihad* for Sustainable Development in Islam', *IIUC Studies*, Vol. 9, December (2011), pp. 215-226.

the traditions of the Messenger of Allah (SWT) are explicit in validating *Ijtihad*.

To this end, the Prophet during his life time encouraged his companions to exercise *Ijtihad* in deserving situations which they exercised with approval of the Messenger of Allah.[101] After his demise, majority of the *Sahabah* (Companions of the Prophet) exercised *Ijtihad* individually or collectively in matters in which the Quran and Sunnah of the Prophet have not definitely addressed.[102] The collective *Ijtihad* is what metamorphosed into *Ijma'* after the demise of the Messenger of Allah.[103]

Thus, *Ijtihad* is a valid and recognized legal instrument of formulation of legal ruling under *Shari'ah*. The value of *Ijtihad* lies in the fact that it must not go contrary to the tenets of *Shari'ah* enunciated in the Quran, Sunnah and *Ijma'* as well as the established *Maqaasidus-Shari'ah*. [104] Thus, any *Ijtihad* exercised in conformity with the *Maqaasidus-Shari'ah* is valid, credible and can be relied upon for the matter or problem which it solved.[105]It is therefore not gain-said that any ruling that is based on *Ijtihad* of a competent *Mujtahid,* be he a *Mujtahid Mutlaq*, *Mujtahid Madhhabi* or *Mujtahid Mutakhassis,* is valid, credible and reliable in Islamic jurisprudence.[106]

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[101]Muhammed-Mikaaeel, A.A., 'Emergence of Usulul Fiqh under Shari'ah: From Developmental to Standardization Stage' Maiduguri Law Journal (MLJ),Vol. 18, ISSN 11182717 (2020), , pp. 404-408.

[102]Ibid

[103]Ibid

[104]Kholish, N., *et al*, 'The Significance of MaqasidShariah Principles in Improving Islamic Economics and Finance,' International Journal of Innovation, Creativity and Change, Vol. 13, Issue 3, (2020), pp.1342-1350.

[105]Ibid

[106]Shahzadi, P. and Farha, F., 'Ijtihad as a Legislative functions: Role of Ijtihad, Ifta and Taqleed in Legislative Process,' Journal of Islamic & Religious Studies, Vol. 1, No. 1, (January-June, 2016), pp.33-43.

Relevance of *Ijtihad* in the Contemporary Islamic World

The practice of *Ijtihad* is very much relevant in the contemporary Islamic world. For example, Islamic world needs experts in medical sciences, in physics and chemistry, in engineering, education, banking and finance, international relations state governance, corporate governance.[107]Even though, the legal implication of the practice of *Ijtihad* is said to be *FardKifayah*, as long as there is a lack of expertise in these aforementioned areas, it definitely becomes *FardAyn* (compulsory) on the whole community as far as those areas of law are concerned.[108] This means that a group of Muslims must continue to devote themselves to *Ijtihad* so as to benefit the Islamic contemporary world. Similarly, an Islamic society without experts in the *Shari'ah* cannot properly consider itself Islamic, and so it is an obligation for a group of persons from this society to devote themselves to the study of the religious sciences to provide proper guidance to all Muslims.[109] This becomes inevitable when Islamic world continues to change and new issues evolving thereby calling for Shari'ah positions for their validity or otherwise.

Challenges to the Contemporary *Ijtihad* Practice

Certain obstacles have surfaced in form of challenges to the exercise of *Ijtihad* in the contemporary Islamic world. Most of the obstacles come from Muslim attitudes towards religious obligations. Those who are not qualified as *Mujtahideen* have continued to parade themselves as such thereby causing serious obstacle to the exercise of *Ijtihad* in the recent time.[110]Most people who claim to be *Mujtahideen* do not exercise *Ijtihad* with sincerity and good intention but as a result of the

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[107]Karcic, F., 'Applying the Shariah in Modern Societies: Main Developments and Issues,' Islamic Studies, Vol. 4, No. 2, Summer (2001), pp. 207-226

[108]Wiktorowicz, Q., 'A Genealogy of Radical Islam,' Studies in Conflict & Terrorism, Studies in Conflict and Terrorism, Vol. 28, (2005), pp. 75-97.

[109]Javed, A. and Javed, M. 'The Need of Ijtihad for Sustainable Development in Islam', IIUC Studies, Vol. 9, (December 2011), p.215-223.

[110]Ibid

sought mundane goals.[111] Some of the obstacles have been summarized to include anti-Islamic practices gaining prominence, continuous innovations in religious practices, abandonment of the essentials of Islamic teachings, effect of secularization on religious practice, influx of unqualified *Mujtahideen*, influence of worldly benefit as the basis of the recent *Ijtihad*, disconnection of Muslims from the tenets, pristine Islam, *Maqaasidus-Shari'ah*, and government interference, pressure and control over *Mujtahideen*.[112] Another obstacle also comes in form of contradictory legal rulings certain scholars especially on the issues that appear to enjoy majority support Muslim jurists. This is usually done in the name of gaining popularity, relevance and superiority contest among Scholars' camps.[113]

In Nigeria, the major challenges to contemporary *Ijtihad* practice are the menace of incessant reopening of the issues already laid to rest by the earliest scholars and absence of *Fiqh* Academy (*Ijtihad Jam'i*).With respect to reopening of issues settled by previous scholars, it has become an avenue of great confusion in the country. One of the conditions which a *Mujtahid* must satisfy to be qualify as such is the in-depth knowledge and application of *Ijma'* and previous rulings.[114] The essence of this is for *Mujtahideen* to be able distinguish fresh issues from already settled issues by way of previous rulings of the scholars. The clear provisions of the Holy Qur'an, the Sunnah of Prophet

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[111] Zachariah, M., 'The Place of Ijtihad in Islamic Law and the Necessary Conditions to be Qualified a Mujtahid', paper submitted as part of the Master of Islamic Studies Degree for the Subject of Usul al-Fiqh, (2015), pp. 7-9, available at <https://www.academia.edu>The-place-of-ijtihad-in-islamic-law-and-the-necessary-conditions-to-be-qualified-a-mujtahid> accessed on 13/06/2021.

[112] Ibid

[113] A case in point is the issue of *Hijab* which scholar has twisted as not obligatory in the face of well-established rulings of the scholars on its obligatory nature. Also, speaking ill of the Companions of the Prophet (PBUH) despite the clear *Nass* (texts) that have established their status of honours in Islamic jurisprudence. See generally, Balogun, I. and Aefaka, B., "Scholars War: It's Habeeb VS Others,' available at https://www.vanguardngr.com/2016/06/scholars-war-habeeb-vs-others/?amp=1 accessed on 14/06/2021.

[114] Munir, A.M., 'Ijtihad and Mujtahid', pp. 1-69, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1920662 accessed on 13/06/2021.

Muhammad (PBUH), practices of *Sahabah*, their *Ijma'* as well as *Ijma'* of scholars of each generation continue to bind Muslims in those generations and the generations after them till the Day of Judgment. Thus, if there ensues any matter relating to the earlier decided ones, what a *Mujtahid* needs to do is to employ the instrumentality of *Qiyas* with a view to applying the previous rulings to the similar latter situations. Rather than following the foregoing basic principle of Islamic jurisprudence, some contemporary scholars in Nigeria are absolutely indifferent and continue to reopen issues earlier settled by the predecessors.[115] The aftermath of this is influx of conflicting rulings of the latter situations with the earlier similar situations. This no doubt throws Muslim Ummah into confusion and unnecessary sectarianism.

Absence of *Fiqh* Academy (*IjtihadJam'i*) in Nigeria gives all and sundry opportunity to pass individual conflicting resolutions especially on matter of public interests.[116] Though, individual resolution is trite in Islamic jurisprudence as *Sahabah* during their time did had some occasions where they passed individual rulings aside their *Ijma'*.[117] The point here is that, it is not all matters that can be subject of individual resolution. Matters that affect generality of people are better treated vide *Ijtihad Jam'i*. The essence of the foregoing is to enable scholars of different backgrounds, ethnics, professions, etc. to come together and extensively deliberate on such matter of public interests with a view to coming up with unanimous ruling that will be applicable to everyone. The reason being that, before such *Ijtihad Jam'i* comes up with any resolution, the prior deliberation would have taken cognizance of certain peculiarities of the public vis-à-vis the position of *Shari'ah*. In

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[115] It is on this basis that the controversies amongst scholars over issues like MawlidNabiyy, ceremony during *Janazah*, birth day celebration, invalid interpretation of legal implication of Hijab as being voluntary, etc. continue to persist till date. A close study of the Sunnah of Prophet Muhammad (PBUH), practices and *Ijma'* of the predecessors irresistibly points to the clear position of pristine Shari'ah on them but the contemporary scholars are ready to abide according thereby purportedly resorting to overruling the previous valid and binding rulings.

[116] What is obtainable is Ulama system that spread across various Muslim populated states in Nigeria. See generally, Bunza, M.U. 'The New Role of Ulama in Nigeria' Al-Jamiah: Journal of Islamic Studies, Vol. 52, No. 2, (2014), pp. 391-415

[117] Muhammed-Mikaaeel, A.A., 'Emergence of Usulul Fiqh under Shari'ah: From Developmental to Standardization Stage', Maiduguri Law Journal (MLJ), Vol. 18, ISSN 11182717, (2020), p. 407

this wise, the gate of conflicting individual rulings would be closed. It is therefore sad that as of today, development of *Fiqh* in Nigeria has not metamorphosed into establishment of *Fiqh* Academy as obtainable other jurisdictions like Makkah, Sudan, Egypt, and even in Europe (America) to mention but a view.[118]

CONCLUSION

The practice of *Ijtihad* is an age long practice dated back to the period of Prophet Muhammad (PBUH). Its importance, legal value and validity cannot be overemphasized in Islamic jurisprudence. Although, the majority scholars contend that the scopes of *Ijtihad* is restricted to the matters which do not enjoy definite provisions in the primary sources of Shari'ah, other scholars opine that it could still be exercised in the matters that enjoy definite provisions from the primary sources of Shari'ah with a view to enhance their careful implementation within the *Maqaasidus-Shari'ah*.

The modes of *Ijtihad* do not enjoy stereotype application in practice amongst the *Mujtahideen*. While some contend that other secondary sources of Shari'ah apart from *Ijma'* i.e. *Qiyas, Istihsan, Istislah, Istishab*, can be used as useful tools to exercise meaningful *Ijtihad*; others prefer *Ijtihad Bayani, Ijtihad Qiyasi and Ijtihad Istislahi*, amongst others recommended modes. The bottom line is that the particular case in question will determine the mode to be adopted bearing in mind the *Maqaasidus-Shari'ah;* the reason being that, *Maqaasidus-Shari'ah* is the bedrock of *Ijtihad*. This therefore irresistibly points to the fact that the gate of *Ijtihad* is not open to all and sundry. It is exclusively preserved for the *Mujtahideen* who are qualified as such. This is geared towards preventing the abuse in the practice of *Ijtihad* as it is being gradually witnessed in the recent time. Thus, the conditions stipulated for qualifications of a *Mujtahid* are not calculated at closing

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[118]Ghaly, M. 'Sharia Scholars and Modern Biomedical Advancements: What Role for Religious Ethics in the Genomic Era?' Part 1, Collective Ijtihad and Genomics, pp. 17-43, available at https://brill.com/downloadpdf/book/edcoll/9789004392137/BP000003.pdf accessed on 15/11/2021.

the gate of *Ijtihad* but to regulate the practice. This is because, the fact still remains that *Ijtihad* will continue to be relevant as long as humanity exists within the Islamic world. It is therefore recommended that the Muslim Ummah has onerous duty on them to continue to censor the acclaimed Scholars and their *Ijtihad* rulings with a view to avoiding misguidance as envisaged by Prophet Muhammad (PBUH). Particularly in Nigeria, to avoid the menace of conflicting rulings by various scholars on matters requiring collective *Ijtihad*, it is high time the country established *Fiqh* Academy to take care of such matters as being practiced in other climes like Makkah, Sudan, Egypt, etc.