



Objective Jurisprudential Research Papers

'Amal al- 'Iftā'
(The Practice of Issuing Legal Verdicts)

**A group of lectures presented and prepared by
Dr. Khālid Naṣr
Director of the International Institute
for Islamic Studies**

**Translated by
'Aḥmad Khālid Eid**

**In the Name of Allāh,
the Most Merciful, the Most Compassionate**

**All praise is due to Allāh and blessings and peace upon the
Messenger of Allāh (peace and blessings be upon him). Since then:**

Part One:

Al-Ijtihād (Advanced Jurisprudential Reasoning)

First: al-Ijtihād in Language and Terminology:

Linguistically, *ijtihād* means exerting effort and energy in a matter.

Terminologically, it refers to a jurist exerting his utmost effort to derive *'ahkām shar'iyyah* (legal rulings) from their general and detailed evidences.

The conditions for a *mujtahid* (one qualified to practice *ijtihād*) are:

1. That he is a *faqīh* (jurist) who fulfills the conditions of *ijtihād*.
2. That he exerts effort by surveying all relevant evidences and performing detailed analysis.
3. That the result is reached through research and reflection.
4. That this reflection is upon *'adillah shar'iyyah* (legal evidences from Islamic sources).

Accordingly, excluded from this definition is one who merely memorizes *matn* (legal texts) and transmits them, as well as one who simply conveys the *fatwā* of another *mufī*.

Second: The Ruling on *Ijtihād*:

Ijtihād in matters of *shar'ī* rulings and related issues is a *farḍ kifāyah* (communal obligation). It must be fulfilled by some members of the Muslim community in every era; otherwise, the entire *'ummah* would be held sinful. Allāh said: “But why should not a group from every section of them go forth to become learned in religion and warn their people when they return to them that they may beware?” [Al-Tawbah 9:122].

And He said: “And had they referred it to the Messenger and to those of authority among them, then those who can draw correct conclusions from it would have known it.” [Al-Nisā' 4:83].

The Prophet Muḥammad (peace and blessings be upon him) said: “The scholars are the inheritors of the Prophets.” The duty of the Prophets was to convey the message from Allāh, thus the responsibility is transferred to the scholars.

Moreover, since new occurrences and events are endless while textual sources are finite, it is necessary to have individuals who can practice *ijtihād* on behalf of the people.

Third: Making Mistakes in *Ijtihād*:

If *ijtihād* is carried out with its proper conditions, the *mujtahid* is not blameworthy if he errs in his conclusion, provided his intent was sincere and for the benefit of the people.

The Prophet Muḥammad (peace and blessings be upon him) said: “If a judge makes *ijtihād* and reaches the correct ruling, he will receive two rewards. And if he makes *ijtihād* and errs, he will still receive one reward.”

Fourth: Scope of *Ijtihād*:

What is subject to *ijtihād*:

1. Matters regarding which the textual evidence is speculative—

This includes:

Ḍannī al-thubūt (speculative in transmission)—this pertains to the field of *riwāyah* (*ḥadīth* transmission).

- *Ḍannī al-dalālah* (speculative in indication)—this pertains to the field of *fiqh*.

2. Matters for which there is no textual evidence.

In such cases, tools like *qiyās* (analogical reasoning), *maṣāliḥ mursalah* (unrestricted public interest), and *istiṣḥāb* (presumption of continuity) are employed.

What is not subject to *ijtihād*:

1. *‘Aqā’id* (matters of creed):

These are clear-cut and must be *tawqīfiyyah* (based on revealed knowledge). The *mujtahid* may not independently derive names for Allāh through speculative reasoning—e.g., deriving *al-Sākhiṭ* (The Displeased) from *al-sakhaṭ* (anger), or *al-Mut'ajjib* (The Amazed) from *al-'ajab* (wonder), or *al-Mākir* (The Schemer) from *al-makr* (scheming).

Likewise, analogical reasoning in relation to Allāh's attributes is impermissible.

For instance, one may not argue that Allāh has two eyes based on the narration that the Dajjāl is one-eyed and “your Lord is not one-eyed.” It is impermissible to claim that this previous text indicates that Allah has two eyes, contrary to the one-eyed Dajjāl. Such attributes can only be affirmed through authentic textual evidence.

2. *Al-ma'lūm min al-dīn bi al-ḍarūrah* (matters known as essential elements of the religion):

This includes obligations such as the five daily prayers, Friday prayer being on Friday, *zakāh*, *ḥajj*, the prohibition of *ribā* (usury), and the permissibility of *bay'* (trade).

3. Matters of *farā'id* (obligations) and *jināyāt* (penal laws):

This includes fixed inheritance shares, legal penalties like the prescribed number of lashes in the case of *qadhf* (false accusation of chastity), etc.

Fifth: Conditions of the *Mujtahid*:

1. Knowledge of Arabic:

This includes mastery of *naḥw* (grammar), *ṣarf* (morphology), *balāghah* (rhetoric), *ḥurūf al-ma'ānī* (prepositions and particles), and the principles of *dalālah* (semantic interpretation).

2. Knowledge of the Qur'ān:

While memorization is not a requirement, the *mujtahid* must have knowledge of: The *'aḥkām* verses (estimated to be around 500), *'asbāb al-nuzūl* (occasions of revelation), *nāsikh wa al-mansūkh* (abrogation), and *qirā'āt* (the variant modes of recitation), and *tafsīr* (Qur'ānic exegesis).

3. Knowledge of the Sunnah:

This includes *'Ilm al-ḥadīth* (the science of ḥadīth), to distinguish between sound and weak reports, and identification of *'ilal* (hidden defects). The *mujtahid* may rely on the expertise of specialists in this science.

4. Knowledge of 'Uṣūl al-Fiqh (Principles of Jurisprudence):

This includes general principles and universal maxims.

5. Familiarity with previous *madhāhib* (juristic schools) and rulings related to the issue under consideration.

Part Two: *Al-Taqlīd* (Jurisprudential Imitation)

First: The linguistic and technical definitions of *taqlīd*:

Linguistically, *taqlīd* refers to something worn; for instance, the phrase “*qalladahū al-sayf*” means “he clothed him with the sword.”

Terminologically, it refers to a person following someone else in a statement or action, believing in its correctness without knowledge of the other’s proof.

Our phrase, “a person follows someone else,” excludes the following of the Prophet Muhammad (peace and blessings be upon him), for that is not considered *taqlīd* but rather *ittibā’* (obedient following), since he is the Legislator. It also excludes general law, as that is also considered *ittibā’*.

Second: The ruling on *taqlīd*:

Scholars have categorized the ruling of *taqlīd* based on the domain in which it is applied.

1. *Taqlīd* in beliefs and general fundamentals of religion:

The majority of scholars hold that *taqlīd* is impermissible in matters of ‘*aqīdah*’ (Islamic faith) and general fundamentals such as ethics and essentially-known aspects of religion as these matters require personal conviction from the *mukallaf* (accountable individual).

Some scholars, however, held that *taqlīd* is permissible in matters of faith, arguing that we accept the Islam of one who pronounces the *shahādatayn* (two testimonies of faith) without inquiring whether they engaged in theological reflection or not.

Others went further, asserting that *taqlīd* is obligatory in matters of faith and general fundamentals, since reason is limited and may lead to flawed conclusions if relied upon independently.

2. *Taqlīd* in practical subsidiaries:

Scholars have also differed in this regard:

- **First opinion:** *Taqlīd* is not permissible in practical subsidiaries, and every legally accountable individual is obliged to engage in *ijtihād* to know the correct ruling. This is the view of the *Zāhiriyyah*, some of the *Mu'tazilah*, and some of the *Imāmiyyah*.
- **Second opinion:** *Taqlīd* is obligatory after the era of the pioneering *Imāms*, and the door of *ijtihād* is closed, as the collective effort of the early *mujtahidūn* suffices us. This opinion is clearly flawed.
- **Third opinion:** A detailed view—whoever possesses the tools of *ijtihād* must engage in it, and whoever does not, may perform *taqlīd*. This is the position of the four canonical schools of Islamic thought.

Allāh Almighty says: “So ask the people of knowledge if you do not know.” [Al-Naḥl 16:43].

The correct opinion is that imitating a knowledge scholar is permissible for everyone. In fact, a scholar may imitate another scholar in a specific issue. For example, *Imām Abū Ḥanīfah* imitated his student *Abū Yūsuf* in the matter of *al-mash' 'ala al-jawrab* (wiping over socks), and *Imām Al-Shāfi'ī* imitated *Abū Ḥanīfah* in omitting the *qunūt* (supplication) during the *Fajr* (dawn) prayer.

Types of *taqlīd*:

1. ***Madhhab-based taqlīd*:** Following a specific school of Islamic thought, such as one of the four well-known *madhāhib* or others.
2. ***Muftī-based taqlīd*:** Referring to a specific *muftī* (verdict issuer) in a particular issue, and to another in a different issue.

Part Three: *Al-Talfiq* (Combining Legal Opinions)

Linguistically, *al-talfiq* means the joining of things together. It is said, *lafaqa ath-thawb*—he joined one piece of cloth to another and sewed them together.

Terminologically, *al-talfiq* refers to producing a legal outcome that no single *mujtahid* (qualified scholar) has endorsed entirely. It is the process of validating an act by combining opinions from two different legal schools, even though each opinion individually would render the act invalid according to the respective school.

Example 1:

The disagreement over the *'iddah* (waiting period) of a pregnant woman whose husband has died:

- **Opinion 1:** Her waiting period ends when she delivers, no matter how long that takes. This is the position of the majority of scholars from the four legal schools, and consensus has been transmitted on it.
- **Opinion 2:** Her waiting period is the longer of the two: either delivery or the passage of four months and ten days. This view is attributed to 'Alī and Ibn 'Abbās (may Allāh be pleased with them).

Al-Talfiq would be to take part of the first opinion and part of the second, and then produce a third view—such as saying her waiting period ends upon delivery only if it occurs after a specific duration—thus combining both the delivery and the months.

Example 2:

Someone contracts a marriage without a guardian, based on the Ḥanafī school, and without witnesses, based on the Mālikī school.

Example 3:

Someone in a state of ritual purity touches a woman (which invalidates *wuḍū'* according to the Shāfi'ī school), and bleeds (which invalidates *wuḍū'* according to the Ḥanafī school), yet considers his *wuḍū'* valid by combining the two opinions.

Example 4:

Someone prays on a surface licked by a dog (valid according to the Mālikī school), and performs *wuḍū'* by wiping over only three hairs (valid according to the Shāfi'ī school).

Example 5:

A man divorces his wife irrevocably. She then marries a nine-year-old boy based on the Shāfi'ī school, and he immediately divorces her, and she remarries her first husband without waiting for an '*iddah*', following the Ḥanbalī view that a boy's marriage is not legally considered valid.

Ruling on *Al-Talfiq*:

Scholars unanimously prohibit *talfiq* in certain cases, including:

1. Essentially-known aspects of religion, such as matters of *tawḥīd* (monotheism) and the fundamental pillars of Islam.
2. *Talfiq* that nullifies an official judicial ruling of the ruler, because legal judgments resolve disagreements and must be final.
3. *Talfiq* that leads to the legitimization of forbidden acts, such as one who analogizes wine to *nabīdh* (a fermented date drink)—with some permitting the latter while others consider it a type of wine.

Types of *Talfiq*:

1. *Talfiq* between different legal chapters: For example, following the Ḥanafī school in one chapter and the Shāfi'ī school in another.
2. *Talfiq* within the same chapter: For example, adopting the Ḥanafī view on what necessitates *ghusl* (ritual bathing) and the Shāfi'ī view on how to perform *ghusl*.
3. *Talfiq* within a single legal issue: as in the previous examples.

There is no doubt that the first two types are broad and permissible, but the third type poses the risk of producing corrupt rulings and introducing new positions not upheld by any scholar.

Scholarly Views on Seeking *Rukhaṣ* (Legal Concessions):

Scholars differ regarding the permissibility of seeking out concessions across different schools:

- The Mālikī and Ḥanbalī schools (according to the soundest view), along with Al-Ghazālī and Al-Subkī in the Shāfi'ī school, held that it is impermissible to pursue concessions across schools.
- The Ḥanafīs and the majority of Shāfi'īs, along with Al-Qarāfī in the Mālikī school, considered it permissible as a form of legal facilitation.

Permissible Cases of *Talfīq*:

1. Between general legal chapters: As when one follows the Ḥanafī school in one chapter and another school in a different one.
2. Within a single issue, as when one follows the Ḥanafī school in holding that reciting Sūrat al-Fātiḥah is not a pillar in obligatory prayer, and performs *jam'* (combining two prayers) according to the majority view. Since the two acts are of different categories, combining views here is permissible. Or, one may omit the audible *basmalah* in an audible prayer (Ḥanafī view) and remain silent after Sūrat al-Fātiḥah when leading the prayer (Shāfi'ī view).
3. In issuing legal verdicts: It is permissible for a *muftī* to issue a *fatwā* combining opinions from different schools. For example, a Ḥanafī issuing a *fatwā* based on a Shāfi'ī opinion.

Difference Between *Talfīq* and Seeking Concessions:

Although both *talfīq* and the pursuit of legal concessions aim to provide facilitation and remove hardship, the distinction lies in this:

- Seeking concessions involves various issues and different chapters.
- *Talfīq*, however, involves combining divergent opinions in a single issue, resulting in a position not endorsed by any individual school or scholar.

Part Four: *Al-Iftā'* (Issuing Legal Verdicts)

Linguistically, *al-iftā'* means clarification. '*Aftāhu* (he gave him a *fatwā*) means he clarified the matter for him.

Terminologically, it is: to convey the *shar'ī* ruling concerning a particular issue.

The Components of *Iftā'*:

1. *Al-Mustaftī*: The individual requesting an answer.
2. *Al-Muftī*: The one issuing the verdict, typically a *mujtahid* or a qualified *faqīh* (jurist).
3. *Al-Mas'alah*: The legal issue in question.
4. *Al-Fatwā*: The answer given to the issue.

From this, we observe a distinction between *iftā'* and *ijtihād*. Though both aim to determine the ruling, *iftā'* arises due to a question posed, whereas *ijtihād* may occur with or without such prompting. Thus, *ijtihād* is broader than *iftā'*.

Allāh Almighty said: “So ask the people of knowledge if you do not know.” [Al-Nahl 16:43].

And He said: “Had they referred it to the Messenger and to those in authority among them, those who can draw conclusions would have known it.” [Al-Nisā' 4:83].

1. *Al-Muftī*:

By *muftī*, we mean one who has studied *fiqh* and '*uṣūl al-fiqh*, at minimum within one of the recognized *madhhabs*, and is aware of *shar'ī* rulings—whether officially appointed or not.

Conditions for being a *muftī*:

- Sound intellect
- Legal maturity

- Knowledge of jurisprudential rulings through both *'uṣūl* (principles) and a wide range of *furū'* (subsidiaries)
- Awareness of the context and time in which one is issuing *fatwā*
- Comprehensiveness in understanding the issue being addressed
- Personal uprightness—someone who is corrupt or driven by desire is not to be consulted for *fatwā*
- Insight into the intellectual, social, psychological, and religious state of the *mustaftī* (questioner)

Must One Ask the Most Knowledgeable, or Is It Permissible to Choose Among *Muftīs*?

- The majority—including the Ḥanafīs, Mālikīs, Shāfi'īs, and most Ḥanbalīs—held that it is permissible to choose among qualified *muftīs*. This is based on the general wording of: “the people of knowledge” [Al-Nahl 16:43], and because the average Muslim often cannot distinguish who is more knowledgeable. Even among the Companions, there were varying levels of knowledge, yet we select from their opinions.
- Some Ḥanbalīs and Shāfi'īs—such as Ibn Surayj, Al-Qaffāl, and Al-Ghazālī—held that one must ask the most knowledgeable.

2. *Al-Muftī*:

Conditions for the *muftī*:

- Honesty in presenting the issue and its surrounding details
- Asking only about matters that are of benefit Allāh Almighty criticized the disbelievers: “They ask you only to argue. In fact, they are a contentious people.” [Al-Zukhruf 43:58]. And the Prophet (peace and blessings be upon him) said: “The most hated of men to Allāh is the argumentative opponent.”
- Commitment to adhere to the *fatwā* after hearing it

3. The Issue:

This refers to the matter about which the *fatwā* is issued. It may pertain to:

- *Ijtihād*-based issues: In which case the process is called *ijtihād*
- Established rulings: In which case the process is called *khavar* (reporting the ruling)

It is preferred that the question concern something that has already occurred, though asking about hypothetical scenarios for preparedness is not prohibited.

4. The Ruling:

This is the objective of *iftā'*.

The ruling may vary depending on which *mufī* is asked. In this case, scholars differed on whose ruling should be followed:

- **First opinion:** Follow the most trustworthy, knowledgeable, and preferred among them.
- **Second opinion:** The average person may choose among the available opinions.
This is the correct view because the average person cannot distinguish between stronger and weaker opinions.

Conditions for a Valid Ruling:

It must align with the higher objectives of the *Sharī'ah* and its universal legal maxims. It must not contradict an established consensus.

Is It Obligatory to Issue *Fatwā* According to the *Rājiḥ* (Stronger) View?

- A group of scholars—including Imām al-Ghazālī—held that issuing *fatwā* based on the *rājiḥ* opinion is obligatory, since it is most likely to reflect the truth.
- Others permitted issuing *fatwā* according to the *marjūḥ* (weaker) opinion, even when the *rājiḥ* is known, for the sake of ease and facilitation.
This is the correct view.

The '*iftā'*' is subject to all legal rulings. It may be:

1. Obligatory: When the *mufī* has knowledge and there is no one else available, or if he fears the questioner will be misguided otherwise.

2. Recommended: When there are multiple *muftīs* or scholars available.
3. Forbidden: For someone who is not qualified to issue *fatwā*.

It has been said regarding those who issue *fatwā* without knowledge or falsely claim it:

*A fool obsessed has climbed the scholar's seat,
Though ignorance and pride in him compete,
Yet "jurist" is the title he'll repeat.
The learned ought, and rightly so, to say,
That ancient verse well-known in every way,
In gatherings where truth must find its way.
She wasted down till all her bones showed through,
Her kidneys bared, a pitiful, thin view—
Till paupers sought to claim and bargain too.*

Shaykh al-Islām Ibn Taymiyyah would harshly rebuke those who issue *fatwā* without knowledge. When someone once asked him, "Have you appointed yourself a regulator over *fatwā*?", he replied: "There are regulators for bakers and cooks—shall there not be one for *fatwā*?"

The 'adāb (etiquettes) of al-muftī:

1. Sincerity—seeking the Pleasure of Allāh
2. Personal piety and God-consciousness
3. Dignity and modesty
4. Asceticism and clear religious integrity
5. Avoiding *fatwā* when hungry, angry, or in need "No one should issue *fatwā* if there is no flour in his house."
6. Gentleness and compassion in delivering the *fatwā*

7. Independence in judgment

It is permissible for a *mufī* to take compensation from the collective funds of the Muslims, such as from *Bayt al-Māl*, the government, or an administrative board.

Scholars differed on whether it is permissible to take payment directly from the *mustafī*: Ḥanbalīs permitted it if the *mufī* has no other means of support. Shāfi'īs (in their soundest view) prohibited it.

Scholars also differed regarding the acceptance of gifts from the *mustafī*: Some allowed it. Others prohibited it by analogy to the *qāḍī* (judge).

Part Five: *Al-Ḥiyal* (Legal Artifices)

Al-Ḥiyal (legal artifices) is the plural of *ḥīlah*, which linguistically refers to cleverness and the quality of perceptive judgment.

Al-Ḥiyal may also be referred to by the term *makhārij* (loopholes), which linguistically denotes a way of escape or release from a matter.

The jurists differed in defining *al-ḥiyal*, depending on their perspective. Some defined it based on its negative aspects, others based on its permissible or positive aspects, while some combined both considerations.

Categories of *al-Ḥiyal*:

First: Classification Based on Purpose:

1. Lawful:

These are artifices that do not nullify a foundational legal principle nor contradict a public interest. An example is someone uttering words of disbelief under coercion, or lying to the enemy as in the artifice used by Nu'aym ibn Mas'ūd (may Allāh be pleased with him).

2. Unlawful:

These are artifices that undermine a *maqṣad shar'ī* (legal objective). For example, someone gifting his wealth to his minor son before a full year passes in order to avoid *zakāh*.

3. Disputed Artifices:

These are cases where the harm or contradiction to the objective of the *Sharī'ah* is not clearly apparent.

Second: Classification Based on Means:

This refers to the method employed. For example, someone who has a rightful claim over money that is being unjustly denied may use false witnesses to retrieve it—this is forbidden. However, if the means used are permissible, such as obtaining a confession through trickery, then it is allowed.

Means are further divided into:

1. Unlawful Means:

Such as a man marrying a woman with the intent of making her lawful for her former husband.

2. Permissible in Essence, but Impermissible in Intent:

Such as someone traveling solely to break his fast or to shorten his prayers.

Summary: The Categories of *al-Ḥiyal*:

1. Lawful Artifices:

Where both the purpose and the means are lawful. An example is delaying the *Zuḥr* prayer until its end time and offering *ʿaṣr* at its earliest time, thereby simulating the combined prayer.

2. Unlawful Artifices:

Where both the means and the purpose are unlawful.

3. Disputed Artifices:

These fall into two subtypes:

- a. The means are impermissible, while the purpose is lawful.
- b. The means are lawful, but the purpose is to alter the legal ruling.

Scholarly Disagreement on This Type:

1. Forbiddance:

This is the view of the *Mālikī* and *Ḥanbalī* schools. They cite the story of the *People of the Sabbath* and the story of the *People of the Garden*.

Also, the *ḥadīth* of the Prophet (peace and blessings be upon him): “May Allāh curse the Jews. When Allāh forbade them the fat (of animals), they rendered it and sold it, then consumed its price.”

2. Permissibility:

This is the view of the *Ḥanafī*s, *Shāfiʿī*s, and *Zāhirī*s. Their evidence includes:

The verse: “And whoever is mindful of Allāh, He will make for him a way out.” [Al-Ṭalāq 65:2] — and the *ḥīlah* is considered a way out.

The story of Prophet Ayyūb (peace be upon him) in Sūrat Ṣād: “And take in your hand a bunch (of grass), and strike with it.” [Ṣād 38:44].

The story of our master Yūsuf (peace be upon him) when he took his brother by means of an artifice.

The *ḥadīth* regarding *al-janīb* (dates of good quality), where the Prophet (peace and blessings be upon him) said: “Sell *al-jam'* (the unwanted mixed dates) for dirhams, and then use the dirhams to buy *janīb*.”

The *ḥadīth* regarding measuring by *al-'ithkāl* (a cluster of dates used as a unit of measure).