

## **A Review of Literature on *Ijtihad* and *Taqlid* in the Growth of Islamic Law: Challenges and Prospects in Modern Times**

By

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### **Abstract**

*Islamic law assists in the justice process since the classic era to modern times. This trend continues in nations with sizeable Muslim population that allows Islamic law on Muslim personal matters. However, the jurisprudence has quite a few mechanisms laid down to justice within the Muslim Ummah. This study attempts to discuss the avenues for obtaining the new rules and at the same time safeguarding the old rules to enable justice under Islamic law. Islamic law gives room to following a jurist ruling without probing the sources of the authority for the development of the Jurisprudence. This study examines the impact of Ijtihad and Taqlid so as not to be misused. Also, the paper examines concept Ijtihad and Taqlid and its relationship with Islamic law in modern era. The aim is to dissuade the problem of taqlid without proper ijtiḥad process. This paper discusses the concept of Maqasid Al-Shariah as part and parcel of Islamic law. This paper uses doctoral legal research to examine the discourse. This article makes useful recommendations on the way forward on Ijtihad and Taqlid on the growth of Islamic law in modern times.*

**Keywords:** *Ijtihad, Taqlid, Growth, Islamic law, and Modern Times*

### **1.0 INTRODUCTION**

Scholars argue that Islamic law means the way leading to a place of water, in the technical sense they posit it is the collection of religious law that encompasses part of Islamic norms.<sup>1</sup> The Shariah is totally different from the Western systems of law. The Shariah covers wide scope, and it is a

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<sup>1</sup> Sunbul Al-Karamal, 'The True Meaning of Shariah' *The Progressive Magazine* (USA 28 September 2020) <https://progressive.org/op-eds/the-true-meaning-of-shariah-ali-karamali-200928/> accessed 20 December 2023.

divine law and free from man-made content instructions.<sup>2</sup> The sources of Islamic law are primary and secondary sources. However, the primary sources are the divine book of Allah given to the Prophet of Islam (the Quran) and the Traditions of the Prophet (Sunnah), the secondary sources, are (legal opinions of the companions or Muslim ummah) *Ijma*, (Analogical reasoning) *Qiyas*; (Juristic Opinions) *Istihsan*. (Presumption of continuity of rule (*Istislan*. Public Interest) *Qawl-Sahaabah* (Opinions of a companion) and customs (*Urf*).<sup>3</sup> On the other hand, Islamic Jurisprudence, *Usul al-Fiqh* may be explained to mean ‘Usul’ meaning roots or foundation<sup>4</sup> while in the technical sense it is defines fight is explained as the knowledge of Islamic legal rules dealing to behavior of the subject that can be sourced from specific evidences.<sup>4</sup>

*Ijtihad* is a creation of necessity in Islamic law and regarded as one of the secondary sources of Islamic Jurisprudence. It involves the use of one’s knowledge to resolve and find an answer to a case. This is a kind of deep thinking among of Islamic Jurists, such thinking assists to arrive at a logical destination on a legal matter.<sup>5</sup> *Taqlid*, however, involves blindly tracking a jurist as though without the knowledge of the place the jurist found it from. *Taqlid* may, however, be described as the use of the pronouncement or actions of another individual as authoritative with believe in their thoroughness without probing their thoughts. In modern times, *Ijtihad* and *Taqlid* experience some set-back and since they need the solutions to modern challenges. Such problem needs to be resolved and a way forward for smooth development of Islamic law.<sup>6</sup>

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<sup>2</sup> Ahmed El Shamsy, ‘*Sharia*, Definition, Law & Countries’ <https://www.britannica.com/topic/Shariah>. accessed 8 April 2023 The scope of *Sharia’ah* is wider since it regulates the individuals’s relationship not only with neighbors and with the state which is the limit of most other legal systems but also with God and with the individual’s own conscience, also from the same literature.

<sup>3</sup> Hamzah Adesola Dawood, ‘*Ijtihad* and *Taqlid* in the development of Islamic Jurisprudence’ (2000) <http://catalog.abu.ng/cgi-bin/koha/opac-search.pl?Fq%Dau:52522Dawood,%2520Hamzah%2520Adesola2522> accessed 4 Marched 2022.

<sup>4</sup> Dawah Institute, ‘What is *Usul Al-Fiqh*’, <https://dawahinstitute.org/brave-tan/what-is-usul-al-fiqh/> accessed 8 May 2023.

<sup>5</sup> Faculty of law, National Open University of Nigeria, *A reader in the Principles of Islamic Jurisprudence*, (NOUN Press 2021) [https://nou.edu.ng/coursewarecontent/ISL839\\_%20A%20Reader%20in%20the%20Principles%20of%20Islamic%20Jurisprudence.pdf](https://nou.edu.ng/coursewarecontent/ISL839_%20A%20Reader%20in%20the%20Principles%20of%20Islamic%20Jurisprudence.pdf) accessed 21 October 2022

<sup>6</sup> Ibid.

## 2.0 CONCEPT *IJTIHAD* AND *TAQLID* IN THE GROWTH OF ISLAMIC LAW

This discourse focuses on concept *Ijtihad* and *Taqlid* in the growth of Islamic law, the impact of the concepts and challenges and solutions in the modern times. Although several studies have been conducted on justice system in the Muslim world and beyond, yet literature survey has revealed that few scholars written on the jurists' approach in the growth of Islamic law particularly in modern times. Despite this reality, there are no studies done on the impact of *Ijtihad* and *Taqlid* under Islamic law. It is against this background the study makes a discourse on *Ijtihad* and *Taqlid* on the growth of Islamic law, problems and challenges.

Juma,<sup>7</sup> he discusses *Ijtihad* mainly, the scholar explains the meaning of the concept both literally and technically. Furthermore, the scholar highlights the purpose of the ruling and proof and the pivots of *Ijtihad*. The author outlines the theory of *Mujtahid*, including its requirements and the classification of *Mujtahid*. Though this work is relevant to the study, it failed to address the challenges that hindered *Ijtihad* and there were little comments on the emergence of *Ijtihad* and related matters.

According to research material,<sup>8</sup> published by the National Open University of Nigeria (NOUN), it examines *Usul-ul-Fiqh*, the discourse glossed over the concept of *Taqlid* and *Ijtihad* and said nothing on the challenges hindering *Ijtihad* and *Taqlid*. The study material failed to prepare solutions to the challenges. No doubt the study is useful to the present work. Hashimi,<sup>9</sup> addresses the sources of Islamic law essentially, that is the glorious Quran and the Tradition of the Prophet, *Ijma*, *Qiyas* and *Ijtihad* to mention just a few. But the scholar overlooked the meaning of each of the concepts and ignored discussing issues on the challenges affecting *Ijtihad* and *Taqlid*. The work, however, provides useful window in understanding the sources of Islamic law, this is relevant to the study at hand.

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<sup>7</sup> Juma Shaban Chibilolo, 'Understanding *Ijtihad* or Personal Reasoning in Islam' (2021) V(V) IJRISS <https://www.rsisinternational.org/journals/ijriss/Digital-Library/volume-5-issues-5/530-537.pdf> accessed 20 October 2023

<sup>8</sup> Faculty of law, National Open University of Nigeria, *A reader in the Principles of Islamic Jurisprudence*, (NOUN Press 2021) [https://nou.edu.ng/coursewarecontnet/ISL839\\_%20A%20Reader%20in%20th%20Principles%20of%20Islamic%20Jurisprudene.pdf](https://nou.edu.ng/coursewarecontnet/ISL839_%20A%20Reader%20in%20th%20Principles%20of%20Islamic%20Jurisprudene.pdf) accessed 11 October 2023.

<sup>9</sup> Mustafa Hashimi, 'Mapping Shari'ah Normative Reasoning Concept' (2020) 12(1) JOCIH <https://journalofcatalanintellectualhistory.org/index.php/jocih/article/view/25> accessed 28 October 2023

Tar et al,<sup>10</sup> explains the concept of *Ijtihad* and discusses it from the perspective of a Muslim scholar, Zakariya Al-Sunaiki. The submission is of benefit to the study under discourse. His critical point of view sheds more light on the concept of *Ijtihad*. The study, however, failed to identify modern challenges associated with *Ijtihad* and overlooked contemporary solutions to *Ijtihad*. Idris and Ibrahim<sup>11</sup> give brief meaning on *Ijtihad*, *Taqlid* and *Ittiba*, the authors argue that the door towards *Ijtihad* is not assessable. The closure of the door of *Ijtihad* is rather very controversial but the scholars stand-point assist in understanding *Ijtihad* and *Taqlid* better. However, the author did not highlight the challenges addressed by the earlier intellectuals and contemporary scholars.

Thalib et al,<sup>12</sup> give accounts on the Holy Book and the Tradition of the Prophet, the impacts of *Ijtihad*, and explain meaning of the concept and methods of *Ijtihad*. The work used the Quran, Sunnah and *Ijtihad* in explanation as a source of Islamic law. The authors' perspective enriches the knowledge and improves the arguments on the matter under review. The study did not address the emergence of *Ijtihad* and the challenge affecting the concept in modern era. Saeed,<sup>13</sup> comments on different meanings of the *Ijtihad* and explains that *Taqlid* is the opposite of *Ijtihad*. The author expresses opinion that *Ijtihad* resolves the development of things happening in the universe in the contemporary times. The scholar recommends the principle of collective *Ijtihad*. Her submission is useful to this study. But she did not mention the solutions to the challenges of *Mujtahid*. Thereby making it difficult to generate a new position (*Ijtihad*). Though a comprehensive study of *Ijtihad* and *Taliq* and relevant to the study, yet the scholar overlooked the challenges facing the concepts in modern era.

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<sup>10</sup> Tar Abdullahi and Mohammad Issa Alhourani and Suad Al-Waely, '*Ijtihad*: Concept, Requirements, <https://produccionceintificaluz.org/index.php/opcio/article/view/32036> accessed 11 October 2023

<sup>11</sup> Abdul Rasyid Idris and Basir Ibrahim, 'Analysis of Claim that Door of *Ijtihad* is Closed in Muslim Community' (2020) 10(9) International Journal of Academic Research in Business and Social Sceinces [https://hrmars.com/paper\\_Subimitted/7883/analysis-for-claim-that-door-of-Ijtihad-is-closed-in-muslim-community.pdf](https://hrmars.com/paper_Subimitted/7883/analysis-for-claim-that-door-of-Ijtihad-is-closed-in-muslim-community.pdf) accessed 28th October 2023

<sup>12</sup> Prawitra Thalib and Faizal Kurniawan and Mohamad Nur Kholiq, 'The Application of Qur'anic interpretation, the *Sunna* and *Ijtihad* as a Source of Islamic law' (2020) 15(2) RECHTIDEE <https://www.google.com/url?sa=t&source=web&rct=j&url=> accessed 10 October 2022.

<sup>13</sup> Maryam Saeed '*Ijtihad* Philosophy' (2019) <https://www.researchgate.net/publication/336679071> accessed 20 June 2023

Dogan et al,<sup>14</sup> discuss Taqlid literally and comments on definition of Mujtahid. These authors generate the legal position of *Taqlid* and they establish the relationship between Ijtihad and Taqlid. But the scholar did not discuss the historical development of the two concepts under review. The scholar said nothing on the challenges facing Ijtihad and Taqlid in contemporary era and failed to make recommendations. Hassan,<sup>15</sup> argues on way of *Ittibba* and Taliq from the classic era to present era. According to the scholar Taqlid needs to be followed by all the writers of Islam. The scholar rested his arguments on the position of the Quran verses on the matter: with the position of the Qur'an, he posits that Taqlid should be expressly followed by all writers on the above subject matter. But the scholar submission ignored the challenges facing Taqlid in modern era and the relationship between Taqlid and Ijtihad. Aboobackar,<sup>16</sup> expresses his opinion on the meaning, and the scope of Ijtihad. Also, he mentions the controversy on the conspiracy theory of closing the gate of Ijtihad. Besides, he examines the relationship between *Ijtihad* and *Taqlid* in the contemporary times. The scholar submits that Ijtihad is a useful avenue that can assist in the growth of Islamic law in the modern era. But the author glossed over the relationship between Taqlid and Ijtihad. The scholar did not comment on the solutions to the challenges facing the concepts in modern times.

Albelahi et al,<sup>17</sup> examines on the concept of Ijtihad, they highlight on the meaning of the concept and discuss the significance and the challenges facing Ijtihad in recent times. They pinpoint suggestions to remedy the problems. The authors assist to enrich the literature on the study at hand, the work is a worthy contribution to the study. But the scholars failed to address the relationship between Taqlid and Ijtihad. These scholars overlooked the relationship between the two concepts

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<sup>14</sup> Zayyanu Musa Dogon Daji and Abubakar Bako, 'The Concept of *Al-Taqlid* (Following an Expert on Islamic Jurisprudence) among Contemporary Nigerian Muslims' (2019) 1(4) EASJHCS <https://www.easppublisher.co./get-articles/354> accessed 11 October 2023.

<sup>15</sup> Suh aib Hassan, 'The Right Way in the Matter of *Ittibba*' and *Taqlid*' the Assembly of Muslim Jurist of America, 15<sup>th</sup> Annual Imams Conference (Houston, United states, 23-25 February 2018) <https://www.amjaonline.org/wp-content/uploads/2019/02/The-Right-Way-in-the-matter-of-Ittibba%E2%80%99-and-Taqlid-Dr.SuhaibHassan.pdf> accessed 10 October 2023.

<sup>16</sup> Anas P. Aboobackar, 'Institution of *Ijtihad* and Modern world' (2019) [https://www.researchgate.net/publication/3304825\\_Institution\\_of\\_Ijtihad\\_and\\_Moder\\_World](https://www.researchgate.net/publication/3304825_Institution_of_Ijtihad_and_Moder_World) accessed 10 October 2023

<sup>17</sup> Abdulrahman M.A. Albelahi, The Theory of Interpretation in Solving Contemporary Issues: With a Focus on the Instrument of *Ijtihad*' (2018) [https://www.researchgate.net/publication/323362154\\_The\\_Theory\\_of\\_Interpretation\\_In\\_Solving\\_Comtemporay\\_Legal\\_Issues\\_With\\_A\\_Focus\\_on\\_the\\_Instrument\\_of\\_Ijtihad](https://www.researchgate.net/publication/323362154_The_Theory_of_Interpretation_In_Solving_Comtemporay_Legal_Issues_With_A_Focus_on_the_Instrument_of_Ijtihad) accessed 20 October 2023.

and the contemporary challenges. Saleh,<sup>18</sup> posits on the principles of Ijtihad at different period, the scholar identifies some contemporary challenges and solutions. However, the author failed to mention the challenges as regard Ijtihad and solutions to such challenges to safeguard for true Ijtihad for use of Ijtihad in guiding the contemporary challenges. The scholar submission assists in the understanding of the concepts at hand as it relates to modern era.

### 3.0 RELATIONSHIP BETWEEN THE CONCEPTS AND THEIR INPUTS

Several authors write on Ijtihad and Taqlid from the classic era point of view. Though, these scholars appreciated the contributions of Ijtihad and Taqlid to scholarship of Islamic Jurisprudence, yet most scholars are quiet on the relationship between the two concepts are ignored. However, comments Maqasid Al-Shariah often omitted.

Asni,<sup>19</sup> overviews the philosophy of the concepts of Fatwa, Ijtihad and Fatwa, He highlights on decisions be it personal or generated by a number of Mujtahid in issues on Islamic law that emerges from the divine sources. The work provides a new horizon to the scholarship of the Ijtihad, thus relevant to the study. But the shortcoming of the work is that it failed to talk about the challenge facing the concepts in modern era. The scholar identifies some contemporary challenges but says nothing on the way forward on Ijtihad and Taqlid. Valciukas,<sup>20</sup> comments on the concept of Sharia in Islam, the evolution and the sources of Islamic law. The work lays proper foundation in the understanding of Islamic law. Hence useful contribution to the study. But this submission overlooked the challenges of Ijtihad and Taqlid. Nothing mentioned on solutions.

Yusuf,<sup>21</sup> argues on the meaning of Maqasid al-Shariah and traces the history and the importance of Maqasid Al-Shariah. The author examines the relationship between Ijtihad and maqasid at

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<sup>18</sup> Fauzi Saleh, 'The Principles of *Ijtihad* in Response to the Contemporary Problems' (2018) XLII(2) MIQOT [https://www.researchgate.net/publication/331040036\\_THE\\_PRINCIPLES-FOR-IJTIHA\\_IN\\_RESPONSE-TO-THE-CONTEMPORARY\\_PROBLEMS](https://www.researchgate.net/publication/331040036_THE_PRINCIPLES-FOR-IJTIHA_IN_RESPONSE-TO-THE-CONTEMPORARY_PROBLEMS) accessed 20 October 2023

<sup>19</sup> Fatullah Asni, 'Analysis of the Concept of *Fatwa* Uniformity According *Mura'ah Al-Khilaf* Method' (2018) [https://www.researchgate.net/publication/327039408\\_Analysis\\_of\\_the\\_Concept\\_of\\_Fatwa\\_Uniformity\\_according\\_Mura'ah\\_Al-Khilaf\\_Method](https://www.researchgate.net/publication/327039408_Analysis_of_the_Concept_of_Fatwa_Uniformity_according_Mura'ah_Al-Khilaf_Method) accessed 11 October 2023

<sup>20</sup> Juozas Valciukas, 'Islamic law: A Question of Adaptability' (Doctoral Dissertation, Mykolas Romeris University, Vilnius, 2018) <https://repository.mruni.eu/handle/007/15197> accessed 10 October 2023.

<sup>21</sup> AbdulHameed Badmus Yusuf, '*Maqasid Al-Shari'ah*: A General Overview of Objectives of Islamic Law' (2018) (@) *Al-Hikmah University Journal of Islamic Law*; 1-21

shariah. The discourse did not express opinion on the challenges of Ijtihad in modern times and the way forward. The study provides a new dimension to the study but with some weaknesses. This study endeavors to bridge the gap. Sriyanto,<sup>22</sup> highlights on the objectives of Islam reformation, the author argues that Ijtihad provides direction for Islam reform and Islam modernism reform in some Islamic nations. The author acknowledges the challenges as regard Ijtihad in modern times, and the relationship between Taqlid and Ijtihad. Thus, no doubt it is a contemporary touch in the development of the concepts. The author failed to pinpoint solutions to the challenges and did not discuss the relationship between Ijtihad and Taqlid.

Pakeeza et al,<sup>23</sup> gives the meaning Ijtihad, Fatwa and Taqliq. The scholars discuss the concepts importance in the legislative process under the Sharia. They explain the challenges regarding Taqlid in contemporary with Pakisan as a case study. Although this work is useful to the current study, the scholars did not mention challenges and solutions of Ijtihad and Taqlid in recent times, and the relationship between Ijtihad and Taqlid. Ibrahim,<sup>24</sup> in his work explains the principles of al Taqlid, the attributes of mufti and *mustafti*. He explains the principles of Ijtihad and Ijtihad in the Prophet's time. He highlights a jurist that used two verdicts for a single matter. Studying indeed sheds more light in the understating to the study, hence relevant to the discourse. Although the book gives vivid explanations on the principles of Ijtihad and Taqlid. The author was silent on the challenges related to both concepts in modern times.

Abdullah,<sup>25</sup> posits on the emergence of Taqlid and effects of Taqlid. Also, he examines Taqlid and the study of the Holy Quran. The scholar mentions that Taqlid should be checked and that Muslims need to rely less on using the principles of Taqlid in their domestic affairs. Though the author

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<sup>22</sup> Sriyanto, 'Modernism of Islam, a Descriptive Historical Analysis' 4th International Conference the Community Development (ASEAN 2017) [https://mpsi.umm.ac.id/files/file/745\\_Modernism%20Of\\_%20Islam,%20Descriptive%20Historical%20Analysis.pdf](https://mpsi.umm.ac.id/files/file/745_Modernism%20Of_%20Islam,%20Descriptive%20Historical%20Analysis.pdf) accessed 10 October 2023

<sup>23</sup> Shahzai Pakeeza and Fariha Fatima, 'Ijtihad as a Legislative Function: Role of Ijtihad, Ifta and Taqleed in Legislative Process, (2016) I(I) Journal of Islamic and Religious studies [https://www.researchgate.net/publication/313493110\\_Ijtihad\\_as\\_a\\_Legislative\\_Function\\_Role\\_of\\_Ijtihad\\_Ifta\\_and\\_Taqleed\\_in\\_Legislative\\_Process](https://www.researchgate.net/publication/313493110_Ijtihad_as_a_Legislative_Function_Role_of_Ijtihad_Ifta_and_Taqleed_in_Legislative_Process) accessed 11 October 2023.

<sup>24</sup> Abu Ishaq Ibrahim, *The Refulgence of the Principles of Islamic Jurisprudence (Al-Luma' fi Usul Al-Fiqh)* IBFIM Kuala Lumpur 2016).

<sup>25</sup> Abdul-Karim Abdullah, 'Overcoming Taqlid in Muslim Institution of Learning' (2015) [https://www.researchgate.net/publication/281561442\\_Overcoming\\_Taqlid\\_in\\_Muslim\\_Institution\\_of\\_Learning](https://www.researchgate.net/publication/281561442_Overcoming_Taqlid_in_Muslim_Institution_of_Learning) accessed 20 October 2023.

specifically talks about Taqlid, the scope of study is not wide enough to address the issue under review. Yet, it is relevant to our study. Haftador and Khodaparast,<sup>26</sup> give the technical meaning of Ijtihad, and the conditions for the development of Ijtihad. The authors explain the growth of Ijtihad and Tafsir, and its permissibility. The work however, overlooked the development of Ijtihad and its impact on the development of Islamic law. But importantly, the work is silent on the challenges and the way forward to the problems.

Abdulrahman and Abdulrahim,<sup>27</sup> argue on Iqbal's works: Iqbal's Framework of Ijtihad and framework of Shura with reference to Ijtihad in recent times. The study though uses scholarly approach in the examination of the subject matter at hand and relevant to the present scholarship. The main shortcoming of the study is that it is silent on the concept of Ijtihad and Taqlid in modern times. Nothing said about the challenges and the solutions to the problems in recent times. Rahman,<sup>28</sup> highlights, on the statements of classic scholars of Islamic Jurisprudence: Hanafi; Shafii; Maliki and Hambali. The writer also reviews the basic qualifications required of a Mujtahid. The work provides insight into the classic scholars' views on the subject matter. This is a relevant contribution to the study. This submission though useful to our discourse but the author said nothing on the concept of Ijtihad in contemporary era.

Razi,<sup>29</sup> explains on the scope of Ijtihad, he argues that Taqlid is a challenge for Muslim scholars and the generality of the Muslim Ummah in a modern time.<sup>30</sup> Though the work enriches the literature of the present study. The weakness of scholarships is that they are silent on the challenges in modern times.

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<sup>26</sup> Hasan Razaee Haftador and AZam Khodaparast, 'Ijtihad in Quranic Exegesis' (2015) 11(27) [https://www.researchgate.net/publication/284513869\\_Ijtihad\\_In\\_Quranic\\_Exegesis](https://www.researchgate.net/publication/284513869_Ijtihad_In_Quranic_Exegesis) accessed 10 October 2023.

<sup>27</sup> Adibah Adul Rahman and Anita AbdulRahim. 'A Study on Muhammad Iqbal's Framework of Ijtihad' (2014) 36 (2) <http://journalarticle.ukm.my/8161/1/7685-19997-1-SM.pdf> accessed 23 October 2023.

<sup>28</sup> Zameelur Rahman, 'The Obligation of Adhering to a Single Madhah in all its Ruling' (Studing Thesis, Darul Iftaa, 2014) <https://daruliftaa.net/wp-content/uploads/2020/02/ADHERING-TO-A-MADHAB.pdf> accessed 10 October 2022

<sup>29</sup> Naseem Razi, 'Taqlid a Dilemma for Muslim Intellect: An Analysis in the Light of Contemporary Issues of Muslim Ummah' (2014) 3(1) [https://www.researchgate.net/publication/346412491\\_Taqlid\\_A\\_Dilemma\\_for\\_Muslim\\_Intellect\\_An\\_Analysis\\_in\\_the\\_light\\_of\\_Comtemporary\\_Issues\\_of\\_Muslim\\_Ummah](https://www.researchgate.net/publication/346412491_Taqlid_A_Dilemma_for_Muslim_Intellect_An_Analysis_in_the_light_of_Comtemporary_Issues_of_Muslim_Ummah) access 21 October 2022.

<sup>30</sup> The argument of the scholar is of significance to the present scholarship for it assist in providing rich ingredients to the present study.

#### 4.0 *IJTIHAD* AND *TAQLID* IN MODERN TIMES

Ijtihad and Taqlid in modern times in contemporary era many scholars have written on Ijtihad and Taqlid in contemporary times. Though these scholars explain the fact that Ijtihad and Taqlid are of value to Muslim jurists, yet little is done to explain how best to resolve the challenges in modern times.

Man,<sup>31</sup> reviews the historical development of Ijtihad and the relationship between Ijtihad and Fatwa with particular reference to Malaysia.<sup>32</sup> The work no doubt will be useful to other Muslim nation to improve Islamic law. The contribution is relevant to the present study. The scholar was rather silent on the challenges associated with Ijtihad in modern Islamic Ummah. Khan,<sup>33</sup> discusses solely on Islamic Jurisprudence without any mention of Ijtihad. Though he explains the source of Islamic jurisprudence. He argues on the meaning of Ijtihad, and explains the legal proof of Ijtihad, the writer further examines how Ijtihad can be useful to tackle contemporary challenges. The scholarship is a worthy effort because it enriches the literature of the present work. However, the study failed to explain the concept of Ijtihad and the relationship between Ijtihad and Taqlid. The study overlooked the challenges of the concepts in recent times.

Al-Zarqa,<sup>34</sup> outlines on Islamic Jurisprudence and identifies Ijtihad under the source of Jurisprudence. This work talks about the Ijtihad as an important source of Jurisprudence.<sup>35</sup> But the work is silent on the historical development of Ijtihad and its significance in tackling challenges of modern issues. The work enriches the present scholarship. The effort shed more light in the understanding of Islamic law and therefore is of importance to the present study. Sajaad,<sup>36</sup> comments on the basic argument to Taqlid and explains the evolution of Taqlid according to the

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<sup>31</sup> Saadan Man, 'Patterns of Contemporary *Ijtihad* in Malaysia: Analysis of *Fatwas* in Malaysian National Fatwa Council' (2014) [https://www.google.com/url?sa=t&source=web&rct=j&url=https://core.ac.uk/download/pdf/16201425.pdf&ved=2ahUKEwjf9bb25Kr7AhVwi\\_0HHZv-BNUQFnoECA8QAQ&usg=aOvVaw2fcCW5Zkyk1b61\\_elHp81](https://www.google.com/url?sa=t&source=web&rct=j&url=https://core.ac.uk/download/pdf/16201425.pdf&ved=2ahUKEwjf9bb25Kr7AhVwi_0HHZv-BNUQFnoECA8QAQ&usg=aOvVaw2fcCW5Zkyk1b61_elHp81) accessed 11 October 2023.

<sup>32</sup> Although the work is of limited scope yet the contributions is of great importance to the present discourse. Since the submission can be of benefit to other Muslim Ummah. The work did not address the relationship between Ijtihad and Taqlid.

<sup>33</sup> M.M Khan, *Jurisprudence Under Islamic Law* (1<sup>st</sup> ed, Discovery Publishing House P.V.T.LTD 2014)

<sup>34</sup> Mustafa Ahmad Al-Zarqa, *Introduction to Islamic Jurisprudence* (IBFIM Kuala Lumpur 2014)

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<sup>36</sup> Muhammad Sajaad, *Understanding Taqlid Following One of the Four Great Imams* (2<sup>nd</sup> edn 2013) <https://archive.org/detail/UnderstandingTaqlid2ndEd.MuftiMuhammadSajaad> accessed 10 October 2023.

doctrine of the four juristic positions. The scholar examines on the permissibility of Taqlid and he posits that contemporary Muslims blindly follow the opinions of scholars without asking for the proof of their opinions. No doubt, the work is relevant to our discourse for it highlights vividly on Taqlid essentially but failed to examine Ijtihad and the challenges of both concepts in modern times, this study endeavors to bridge the gap.

Abdelaal,<sup>37</sup> examines the meaning of Islamic law and its sources. In addition, he finds meaning to Taqlid, Muqalid and the notable conditions of Taqlid. The author gives narrative on position of a Muqalid judge in search for reference and the mechanism of Taqlid. He emphasizes certain mechanisms that need to be followed in Taqlid. The article is a useful reference material for theme but omitted the historical development of Taqlid and Ijtihad and its relevance to Islamic law in modern era. Javed and Javed,<sup>38</sup> in their work posit about Ijtihad and its historical background and argues that the door of Ijtihad has been sealed. They suggest however, that Muslim community need to rely in Ijtihad to solve the modern challenges. Their submissions assist to open the frontier of knowledge on Taqlid and Ijtihad. But the work overlooked the discussion on the solutions to the challenges affecting Ijtihad and Taqlid in modern era.

Basaran,<sup>39</sup> explains the concept of Taqlid and the biased faith. He identifies different meanings of Taqlid. The scholar also highlights the concept of knowledge and proof. The article skipped discussion on the development of Ijtihad and the relationship between Ijtihad and Taqlid. Also, work failed to address the challenges and the war forward on the subject matter in modern times. The article only examines Taqlid comprehensively and it is value to the present study. Hashish,<sup>40</sup> his submission focuses on the fact that Islamic law is a culture of the Arabs. He explains the

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<sup>37</sup> Mohamed A. Abdelaal. 'Taqlid v Ijtihad: The Rise of Taqlid as a Secondary Judicial Approach in Islamic Jurisprudence' (2012) (151) [https://www.google.com/url?sa=t&source=web&=web&rct=j^url=https://www.researchgate.net/publication/256029089\\_Talid\\_v\\_Ijtihad\\_The\\_Rise\\_of\\_Taqlid\\_as\\_the\\_Secondary\\_Judicial\\_Approach\\_in\\_Islamic\\_Jurisprudence&ved+2ahUKEwi44eTE5ar7Ah@BgPOHHR6TAWIQFnoECAgQAQ&usg=AOvVaw27zgvqaOXCsmatmD8489](https://www.google.com/url?sa=t&source=web&=web&rct=j^url=https://www.researchgate.net/publication/256029089_Talid_v_Ijtihad_The_Rise_of_Taqlid_as_the_Secondary_Judicial_Approach_in_Islamic_Jurisprudence&ved+2ahUKEwi44eTE5ar7Ah@BgPOHHR6TAWIQFnoECAgQAQ&usg=AOvVaw27zgvqaOXCsmatmD8489) accessed 10 October 2023

<sup>38</sup> Arshia Javed and Muhammad Javed, 'The Need of Ijtihad for Sustainable Development in Islam' (2011) (9) IIUC Studies <https://www.banglajol.info/index.php/IIUCS/article/view/24027> accessed 10 October 2023.

<sup>39</sup> Yasin Ramazan Basaran, 'The Idea of Subjective Faith in Al-Maturidi's Theology' (2011) Journal of Islamic Reserch [https://www.researchgate.net/publication/316673732\\_The\\_Idea\\_of\\_Subjective\\_Faith\\_in\\_Al-Maturidi's\\_Theology](https://www.researchgate.net/publication/316673732_The_Idea_of_Subjective_Faith_in_Al-Maturidi's_Theology) accessed 11 October 2023

<sup>40</sup> Adham A. Hashish, 'Ijtihad-Institutions: The Key to Islamic Democracy Bridging and Balancing Political and Intellectual Islam' (2010) 9(1) Richmond Journal of Global Law & Business <https://scholarship.richmond.edu/global/vol9/iss1/4/> accessed 11 October 2023.

meaning of Ijtihad and the Ijtihad institution. Also states its relevance to Islamic jurisprudence and Islamic democracy. The work is of benefit to the present work for it widened scope of understanding the present study. This is a useful work to our discourse, but its shortcoming is that it fails to examine the challenges of Ijtihad and Taqlid in modern era of Islamic law.

Butts,<sup>41</sup> his work examines Islamic law and the significance of Ijtihad in Islamic law together with the growth of Ijtihad. The author emphasizes the closure of the gate of Ijtihad which he claims is not correct. He identifies the notions in some quarters on the closure of the gate. The work is a wider perspective in understanding Islamic law. This piece is of value to the study. The weakness of the work is that it failed to examine the relationship between Ijtihad and Taqlid and the challenges of the concepts in recent times. Auda,<sup>42</sup> Identifies the different method to the subject matter, the scholar contributes essentially on Maqasid Al-Shariah with a contemporary touch. Furthermore, he explains vividly on Islamic law and the four Juristic Schools of Thought and the various theories of Islamic law. He argues in a comparative manner of Ijtihad in the classic era and in modern times. Though the author extensively examines the concept of Ijtihad in modern era. But he failed to explain the challenges facing Ijtihad in recent times and the relationship between Ijtihad and Taqlid.

Attia,<sup>43</sup> in his publication, explains the role, innate grasp and experience. The scholar explains the different types of Maqasid. He posits the arrangement of the Maqasid, particularly in relation to other matters. The scholar establishes the arrangement with each Maqasid. Similarly, he examines the new theory of Maqasid and the relationship with Ijtihad. The main weakness of the work is that it overlooks the challenges facing Ijtihad and Taqlid in recent era. Tahir-ul-Qadri,<sup>44</sup> examines Ijtihad and Taqlid from different perspectives, he expresses, the meaning of Ijtihad and the extent

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<sup>41</sup> Ayesha W. Butt, 'The Question of *Ijtihad*' (Student Thesis on Completion of Masters Degree, Temple University, (2010).

<sup>42</sup> Jazeer Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A system Approach* (Islamic Turst, Kuala Lumpur 2010).

<sup>43</sup> Gamal Eldin Attia, *Toward Realization of the Higher intents of Islamic Law (Maqasid Al-Shariah A Functional Approach)* (Islamic Book Trust, Kuala Lumpur, 2010)

<sup>44</sup> Muhammad Tahir-ul-Qadir, *Ijtihad: Meanings, Applications and Scope* (Minhaj-ul-Qur'an Publications 2007) [https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.minhajbooks.com/images-books/ijtihad/ijtihad\\_1pdf&ved=2ahUKEwir-Zm5qajAhWugf0HHewPAMEQFnoECA0QAAQ&sug=usg=AOvVaw0c1RNv4z4nz\\_SX0y88mfu](https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.minhajbooks.com/images-books/ijtihad/ijtihad_1pdf&ved=2ahUKEwir-Zm5qajAhWugf0HHewPAMEQFnoECA0QAAQ&sug=usg=AOvVaw0c1RNv4z4nz_SX0y88mfu) accessed 11 October 2023.

of law-making improvement in Islamic law. Besides, he points out the importance of Ijtihad in legislation and the unique roles of the four juristic views on Ijtihad. The author lists the various classification of Ijtihad by the four juristic scholars. He also posits on the matter of reformation of the theories of Ijtihad by the different four Juristic opinions. Despite the laudable contributions of the work to this study, the author failed to discuss the concept of Ijtihad and Taqlid as to the growth of Islamic law in modern era. In addition, he omitted the explanations on relationship between Ijtihad and Taqlid and the way forward. Besides, he ignored the solutions to the challenges of Ijtihad and Taqlid.

Kayadib,<sup>45</sup> explains briefly the meaning of Istihsan, Ijtihad, and Ra'y. He establishes the relationship between Ijtihad and Ra'y. Similarly, he posits on different methods to Ijtihad. Though the submission added a new dimension to the study for it widened the scope of knowledge and added value to the present study. The author did not discuss the relationship between Ijtihad and Taqlid. He was silent on the challenges facing Ijtihad and Taqlid in modern era.

Ashur,<sup>46</sup> establishes his position on Maqasid Al-Shariah and reviews the concept of Ijtihad. The scholar explains the relationship between Ijtihad and Maqasid Al-Shariah. Though vivid discussion was made on the issue of Maqasid Al-Shariah, thereby contributing to scholarship of Islamic law, yet attention was not given to the challenges of Ijtihad and Taqlid and no mention of Ijtihad and Taqlid and its challenges in modern era. Abdur-Rahim,<sup>47</sup> writes on the history and the development of the Islamic legal system and highlights on the sources of Islamic Jurisprudence. A comprehensive package in understanding Islamic law. The contributions are assets to the study. His book, however, failed to talk about the growth of Ijtihad in modern era. Smock,<sup>48</sup> identifies the usefulness of Ijtihad and other related matters. This work injected lot of value into this study.

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<sup>45</sup> Saim Kayadib, 'Ijtihad by Ra'y: The Main Source of Inspiration Behind Istishan' (2007) 24(1) The American Journal of Islamic Social Sciences [https://www.researchgate.net/publication/340915842-Ijtihad by Ra'y The Main Source of Inspiration Behind Istishan](https://www.researchgate.net/publication/340915842-Ijtihad_by_Ra'y_The_Main_Source_of_Inspiration_Behind_Istishan) accessed 11 October 2023.

<sup>46</sup> Muhammad Al-Tahir Ibn Ashur, *Ibn Ashur Treatise on Maqasid al-Shariah* (Al-Furquan Islamic Heritage Foundation 2006)

<sup>47</sup> M.A. AbdulRahim, *The Principles of Islamic Jurisprudence According to the Hanafi, Maliki, Shafi'I and Hambali Schools* (3<sup>rd</sup> Edn, Kitab Bhavan, 2006)

<sup>48</sup> David Smock, 'Applying Islamic Principles in the Twenty-First Century: Nigeria, Iran, and Indonesia' *United States Institute of Peace* (Washington DC September 2005) <https://www.suip.org/sites/default/files/resources/sr150.pdf> accessed 11 October 2023.

Despite the laudable contributions to the present scholarship. The author failed to discuss the challenges and solutions to the concept in modern times. Nyazee,<sup>49</sup> his publication, posits on the concept of Islamic law and gives meaning to the concept of Ijtihad and the modes of Ijtihad, the book is relevant to the present study, but did not pay attention to contemporary issues on the subject matter in modern times.

Dawood,<sup>50</sup> his thesis focuses on sources of Islamic law, the Historical Background of Ijtihad and principles of Ijtihad. Similarly, the thesis addresses the qualification of Mujtahid, the concept of Taqlid and Maqasid al – shariah, though the thesis is useful to the present study, yet little is said on the challenges facing Ijtihad and Taliq and the way forward to such problems. Al-Alwani,<sup>51</sup> in his write up explains vividly on Ijtihad and submits that Ijtihad a necessity for Islamic nation, his book argues that Muslim ummah must uphold Ijtihad as a avenue to tackle various issues of Ijtihad. The work is rather a comprehensive package in the development of Islamic law, yet the author did not capture trends on Ijtihad in recent era. Al-Hibri<sup>52</sup> highlights the various focus of family planning. He argues on the traditional approach and emphasizes on use of abortion and establishes the relationship between family planning and Ijtihad under Islamic law. This effort is laudable and relevant to the study at hand, yet the work was quiet on Taqlid. Al-Alwani,<sup>53</sup> posits on the evolution and the rise of Taqlid. Furthermore, he argues that Taqlid is derivative for Muslims with cautions approaches to its usage. Although it is valuable contribution, yet the submission did not capture the challenges of Taliq not to talk of Ijtihad as it relates to the contemporary era.

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<sup>49</sup> Imran Ahsan Khan Nyazee, *Theories of Islamic law: The Methodology of Ijtihad* (Islamic Book Trust Kuala Lumpur 2002)

<sup>50</sup> Hamzah Adesola Dawood, 'Ijtihad and Taqlid in the development of Islamic Jurisprudence' (2000) <http://catalog.abu.edu.ng/cgi-bin/koh/opac-search.pl%3Dau:%2522Dawood,%2520Hamzah%520Adesola%2522> accessed 14 March 2023.

<sup>51</sup> Taha Jabir Al-Alwani, *Ijtihad* (International Institute of Islamic Thought 1993) <https://www.academia.edu/43630218/Ijtihad> accessed 10 October 2023.

<sup>52</sup> Azizah Y. Al-Hibri, 'Family Planning and Islamic Jurisprudence' (1993) <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1154&context=law=faculty-publications> accessed 20 October 2023

<sup>53</sup> Taha J. Al-Alwani, *Taqlid and the Stagnation of Muslim Minds* (1991) 8(3) *The American Journal of Islamic Social Science* [https://www.researchgate.net/publication/346975672\\_Taha\\_Jabir\\_Alwani\\_Taqlid\\_and\\_the\\_Stagnation\\_of\\_the\\_Muslim\\_Mind-Assessment\\_11](https://www.researchgate.net/publication/346975672_Taha_Jabir_Alwani_Taqlid_and_the_Stagnation_of_the_Muslim_Mind-Assessment_11) access 20 October 2023

## **5.0 WAY FORWARD IN MODERN TIMES**

This paper suggested the translation of the classic works on the primary sources of Islamic law to English language for the growth of Ijtihad and Taqlid in Modern times. Besides, the role of a Mujtahid needs to be improved upon for such scholar that qualifies to use the tool of Ijtihad. Therefore, a Mujtahid must understand the classic language of the Arabs with knowledge of grammar, Morphology, Al-bayan to enable them to perform their role efficiently. Similarly, the paper argued that a Mujtahid must have at its grabs Islamic theory of knowledge knowing Ijtihad from the perspective of experience, reality and practice. This will make him an asset in tackling contemporary problems as it relates to Ijtihad and Taqlid in recent times.

However, with the recent trend over reliance of Taqlid and disengagement of Ijtihad could best be settled by codification of some Madhhab guided by the support of government and encouraging the Muslim Ummah to abide by it and support only those Madhhab followed by a sizeable number of Muslim in such community. On the other hand, a Muqalid judge needs to be a scholar versatile in hadith to enable such Jurist to interpret them to arrive at decision objectively. The duty of Muqalid Judge is to connect with those that have expert knowledge in a particular subject matter in question and figure out the proper way forward on an issue. The world has come of age with the digital revolution. Hence, Muslim Scholars, Jurists and all those involved in the scholarship of Islamic law need to be computer literate and be connected to the cyber space for upliftment of Islamic law in modern times

## **6.0 CONCLUSION**

The paper examined on the concept of Ijtihad and Taqlid and its growth in modern Islamic law. The study established relationship between Ijtihad and Taqlid and critically discussed the two concepts in modern times. The recent challenges of Ijtihad and that of Taqlid had resulted in various controversies on how to generate solution to these challenges and allowing such resolution to be in line with Maqasid Al-Shariah. Muslim ummah have started setting the awareness of the significance Ijtihad and how such endeavor can assist to the challenges of the modern era. Besides, usually relying on Taqlid may be of negative consequences and therefore must be handled with

great caution. Both concepts have reformed Islamic law in modern era and though the discourse may be regarded as work in progress.